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EMPEROR
v.
TULSI RAM.

lie to the court of the Sessions Judge. I therefore direct that the memorandum of appeal be returned to the appellants to be filed in the proper court. The Sessions Judge will no doubt under the circumstances of the case admit the appeal although they may be out of time when presented to him.

Memorandum of appeal returned.

REVISIONAL CIVIL.

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Before Mr. Justice Tudball.

ABDUL HAMID KHAN (PLAINTIFF) v. BABU LAL AND OTHERS
(DEFENDANTS).*

Act No. X of 1897 (General Clauses Act), section 3 (25)—Act No. IX of 1887 (Provincial Small Cause Courts Act), schedule II, article 13—Court of Small Causes—Jurisdiction—Ferry—“Immovable property”—Suit to recover tolls alleged to be due to plaintiff as lessee of a ferry.

Held that the right to a ferry is a benefit which arises out of land and comes within the definition of immovable property under section 3 (25) of the General Clauses Act, 1897, and a suit by a lessee of a ferry to levy a toll alleged to be recoverable by him as such lessee falls under article 13 of the second schedule to the Provincial Small Cause Courts Act and is therefore not cognizable by that court. *Gokal Chand v. Lal Chand* (1) and *Desa Singh v. Narain Das* (2) approved.

THE plaintiff in the case out of which the present application arose was the lessee of a certain ferry from the cantonment authorities of Allahabad. He filed a suit in the Court of Small Causes to recover from certain fishermen sums of money to which he alleged himself to be entitled as lessee of the ferry by way of a toll on their boats. The Court of Small Causes returned the plaint, holding that, by reason of section 3 (25) of the General Clauses Act, 1897, and article 13 of the second schedule to the Provincial Small Cause Courts Act, 1887, the suit was not cognizable by that Court. The plaintiff thereupon applied in revision to the High Court.

Maulvi Ghulam Mujtaba, for the applicant.

Babu Sital Prasad Ghosh, for the opposite parties.

TUDBALL, J.:—This is an application in revision against the order of the Judge of the Small Cause Court at Allahabad. The plaintiff, who is the applicant here, is a lessee of a ferry from the Cantonment Committee of Allahabad. The defendants are

* Civil Revision No. 113 of 1912.

(1) *Punj. Rec.*, 1897, C. J., 215.

(2) *Punj. Rec.*, 1898, C. J., 278.

fishermen, who, according to the plaintiff, are landing their fish on the river bank where his ferry is situate. He claims that as lessee of the ferry he is entitled to a fixed toll of Rs. 8 per boat. The suit was instituted in the Court of Small Causes at Allahabad, and the Judge of that court has held that he had no jurisdiction, as the suit is one which falls under article 13 of the second schedule to the Provincial Small Cause Courts Act. The plaintiff comes here in revision and urges that the suit is cognizable by the court below. Article 13 contemplates a suit to enforce payment of dues when such dues are payable to a person by reason of his interest in immovable property and the question is whether the plaintiff by reason of his lease of the ferry has an interest in immovable property. The point was considered in two cases, namely, *Gokal Chand v. Lal Chand* (1) and *Desa Singh v. Narain Das* (2). The right to a ferry no doubt is a benefit which arises out of land and comes within the definition of immovable property under section 3 (25) of the General Clauses Act. I fully agree with the two above mentioned rulings. In my opinion the order of the court below is perfectly right. I dismiss the application. The costs of this application will abide the result and will be costs in the cause.

Application dismissed.

Before Mr. Justice Tudball.

KALYAN MAL (PLAINTIFF) v. SAMAND AND OTHERS (DEFENDANTS).*

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 58 and 200—Appeal—Question of proprietary title—Defendants setting up a title as mortgagees of the proprietary rights.

In a suit for ejectment under section 58 of the Agra Tenancy Act, 1901, the defendants pleaded that they were not tenants but mortgagees of the proprietary rights of which the plaintiff was alleged to be the purchaser of the equity of redemption. *Held* that this amounted to a distinct claiming of a proprietary title or at least of a portion of the bundle of rights which go to make up a proprietary title and the appeal would lie to the District Judge.

THE facts of this case are fully stated in the judgement of the Court.

Mr. M. L. Agarwal, for the applicant.

Maulvi Muhammad Ishaq, for the opposite parties.

* Civil Revision No. 111 of 1912.

(1) *Punj. Rec.*, 1897, C. J., 215.

(2) *Punj. Rec.*, 1898, C. J., 278.

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