

see no reason to agree with him. Even according to him the plaintiff's vendors would not be totally excluded.

We were asked to consider the question of religious efficacy and the recent ruling of the Privy Council in *Budha Singh v. Lattu Singh* (1), was referred to. As we hold that the maternal uncle's son is of nearer consanguinity than the maternal aunt's son, the question of funeral oblations need not be considered. We may observe that the plea of superior efficacy of oblations was fully answered by the Madras High Court in the case in I. L. R., 33 Mad., 439.

As the mother's brother's son is, for the reasons stated above, a preferential heir, as compared with the mother's sister's son, the court below was wrong in dismissing the claim, and its decree must be set aside and the case remanded for trial of other questions which were not determined by that court. We, accordingly, allow the appeal, reverse the decree of the court below and remand the case to that court under Order XLI, rule 23, of the Code of Civil Procedure, with directions to re-admit it under its original number and try the other questions which arise in the appeal. Costs here and hitherto will be costs in the cause.

Appeal decreed and cause remanded.

REVISIONAL CIVIL.

Before Justice Sir Pramada Charan Banerji.

CHHOTRY LAL (PLAINTIFF) v. LAKHMI CHAND MAGAN LAL (DEFENDANT)*
Act No. IX of 1887 (Provincial Small Cause Courts Act), section 17—Civil Procedure Code (1908), section 24—Suit transferred from Subordinate Judge with Small Cause Court powers to Munsif—Ex parte decree—Procedure.

Held, that section 24, sub-clause 4, of the Code of Civil Procedure contemplates a court vested with the powers of a Court of Small Causes and that when a suit is transferred from that court to another court, the court trying it is to be deemed a Court of Small Causes and its procedure is to be governed by the provisions of the Provincial Small Cause Courts Act. Therefore when such a suit is transferred to a Munsif from the court of a Subordinate Judge vested with Small Cause Court powers and the former passes an *ex parte* decree in the suit, an application to have the *ex parte* decree set aside must be accompanied by a deposit of the amount of the decree or a security in respect of the amount as required by section 17 of the Provincial

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Small Cause Courts Act, the provisions of which are mandatory. *Mangal Sen v. Rup Chand* (1), *Jagan Nath v. Chet Ram* (2), referred to. *Sarju Prasad v. Mahadeo Pande* (3), distinguished.

A SUIT to recover Rs. 282 as damages on account of the breach of a contract for supply of goods was instituted as a Small Cause Court suit in the court of the Subordinate Judge of Muttra, who was vested with the jurisdiction of a Court of Small Causes up to the pecuniary limit of Rs. 500. The suit was transferred by order of the District Judge to the court of the Munsif of Muttra, who had been invested with Small Cause Court jurisdiction up to the limit of Rs. 50 only. On the date fixed for hearing, the defendant did not appear and the suit was decreed *ex parte*. The decree was drawn up in the form in which decrees of a Court of Small Causes are drawn up. Within thirty days of the *ex parte* decree the defendant applied to have it set aside, alleging that he had been prevented by illness from attending on the date fixed for hearing. At the time of presenting the application he neither deposited the decretal amount nor gave security for the performance of the decree as required by section 17 of the Provincial Small Cause Courts Act. Objection on this score was taken by the plaintiff, but the Munsif held that the section did not apply and granted the defendant's application. The plaintiff thereupon applied in revision to the the High Court.

Munshi *Gulzari Lal*, for the applicant:—

Section 24, clause (4), of the Code of Civil Procedure lays down that when a suit is transferred from a Court of Small Causes to another court the latter shall, for the purposes of such suit, be deemed to be a Court of Small Causes. Therefore the Munsif of Muttra was, to all intents and purposes, so far as this suit was concerned, a Court of Small Causes; so that all the incidents applicable to a suit tried by a Court of Small Causes apply to the present suit. The suit remained throughout a Small Cause Court suit and as a matter of fact the summary procedure, form of decree, etc., usual to Small Cause Court suits, were adopted by the Munsif in disposing of the case. Reference was made to *Mangal Sen v. Rup Chand* (1) and *Sankararama Iyer v. R. Padmanabha Iyer* (4). Section 17 of the Provincial Small

(1) (1891) 1.L.R., 13 All., 324.

(2) (1906) 1.L.R., 28 All., 470.

(3) (1915) 1.L.R., 37 All., 450.

(4) (1912) 1.L.R., 38 Mad., 25.

Cause Courts Act, therefore, applied to the case and the defendant should with his application have either deposited the decretal amount or given security. He having failed to do so, his application could not be heard, as the provisions of section 17 are mandatory; *Jagan Nath v. Chat Ram* (1). The Munsif has held that section 17 is not applicable to the case, inasmuch as section 24, clause (4), of the Civil Procedure Code applies only to suits originally instituted in "purely" Small Cause Courts; that is to say, courts constituted under the provisions of Act IX of 1887. This point was raised and negatived in the case in I. L. R., 38 Mad., 25.

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Mr. *M. L. Agarwala*, for the opposite party:—

The words used in section 24, clause (4), Civil Procedure Code, are "a Court of Small Causes" and not "a court invested with the jurisdiction of a Court of Small Causes." A Civil Court upon which the powers of a Court of Small Causes have been conferred under section 25 of Act XII of 1887, is not necessarily "a Court of Small Causes," which words, strictly speaking, can be applied only to courts constituted under the Provincial Small Cause Courts Act. That Act itself recognizes the distinction between these two classes of courts; *vide*, the language used in sections 33, 34 and 35 of the Act. In section 35, the two classes of courts are mentioned in juxtaposition to each other; if no difference had been intended or recognized it would be unnecessary to say, in section 35, "a Court of Small Causes or a court invested with the jurisdiction of a Court of Small Causes." The Munsif of Muttra was not invested with jurisdiction to try this suit as a Small Cause Court suit. When the case came before him he could try it only as a suit of ordinary civil jurisdiction. The suit could not continue to be a Small Cause Court suit. The Judges who decided that case of *Sarju Prasad v. Mahadeo Pande*, (2) dissented from the case in I. L. R., 13 All., cited by the applicant. Then, the merits having been found in favour of the defendant the order of the lower court which directs a re-trial of the suit should not be interfered with in revision.

BANERJI, J.—This is an application for revision under section 25 of the Provincial Small Cause Courts Act. The suit out of

(1) (1906) I.L.R., 28 All., 470.

(2) (1915) I.L.R., 37 All., 450.

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which it arises was instituted in the court of the Subordinate Judge of Muttra, who was vested with the powers of a Judge of a Court of Small Causes. By an order of the District Judge the case was transferred to the court of the Munsif of Muttra. The learned Munsif passed an *ex parte* decree on the 29th of September, 1915, the defendant not having entered appearance. The defendant thereupon applied to have the *ex parte* decree set aside on the allegation that he had been prevented by illness from attending the court on the date fixed for hearing. He did not deposit with his application the amount of the decree, nor did he furnish security in respect of that amount as required by section 17 of the Provincial Small Cause Courts Act. The plaintiff objected to the hearing of the application on the ground that no deposit had been made or security furnished. The learned Munsif overruled the objection relying on the recent decision of this Court in *Sarju Prasad v. Mahadeo Pande* (1). That case clearly had no bearing on the question before me. That was not a case in which a suit had been transferred from a court vested with the powers of a Small Cause Court to the court of a Munsif. The real question in this case is whether section 17 of the Small Cause Courts Act applies to the present case. For the determination of this question it is to be seen whether the learned Munsif who made the decree *ex parte* was to be deemed to be a Judge of a Court of Small Causes and his procedure was to be governed by the procedure laid down in the Provincial Small Cause Courts Act. Section 24 of the Code of Civil Procedure provides in sub-section 4, that the court trying any suit transferred or withdrawn under the section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes. If the court from which the suit was transferred to the learned Munsif was a Court of Small Causes within the meaning of the section, the court of the Munsif was, for the purposes of the suit, to be deemed to be a Court of Small Causes and its procedure was to be governed by the procedure laid down in the Provincial Small Cause Courts Act. If that procedure applied to the case before me it was incumbent on the defendant, who applied to have the *ex parte* decree set aside, to deposit with his application

the amount of the decree or to furnish security in respect of that amount. It was held by this Court in *Jagan Nath v. Chet Ram* (1), that the provisions of section 17 of the Provincial Small Cause Courts Act, were mandatory and that unless the amount of the decree were deposited or security furnished, the application could not be entertained. Therefore if section 17 applied to the case the court below was wrong in entertaining the application, inasmuch as the defendant had not with his application deposited the amount of the decree or furnished security. It has been contended that the Court of Small Causes, referred to in section 24 of the Code of Civil Procedure, is a Court of Small Causes established under Act IX of 1887, and that the provisions of that section are not applicable to a court which was vested with the powers of a Court of Small Causes. This contention is in my opinion untenable. Section 33 of the Small Cause Courts Act provides that a court invested with the jurisdiction of a Court of Small Causes shall, with respect to the exercise of that jurisdiction, be deemed to be a different court from the same Court with respect to the exercise of its jurisdiction in suits of a nature not cognizable by a Court of Small Causes. This clearly shows that a court vested with the powers of a Court of Small Causes is to be deemed, for all practical purposes, to be a Court of Small Causes, and section 24 of the Code of Civil Procedure empowers the district court to transfer a case pending in such court to any other court. When such a transfer has been made the court trying the suit is to be deemed to be a court of Small Causes and all the provisions of the Small Cause Courts Act should regulate the procedure of that court in respect of the suit so transferred. In *Mangal Sen v. Rup Chand* (2), this Court held that a suit transferred from the court of a Subordinate Judge vested with Small Cause Court powers was to be deemed to be a Small Cause Court suit when tried by a Munsif to whose court it was transferred, and no appeal lay from the decision of the Munsif. The opinion expressed in that case as to the applicability or otherwise of section 35 of the Small Cause Courts Act to such a suit was no doubt dissented from in the case of *Sarju Prasad v. Mahadeo Pande* (3), but in so far as the Court held

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that a suit transferred from the court of a Subordinate Judge vested with the powers of a Small Cause Court Judge to another court was to be deemed to be a suit brought in a Court of Small Causes, the ruling was not disapproved of. A similar view was held by the Madras High Court in the recent case of *Sankararama Iyer v. R. Padmanabha Iyer* (1). I am of opinion that a court vested with the powers of a Court of Small Causes is contemplated by section 24 of the Code of Civil Procedure, and that when a suit is transferred from that court to another court, the court trying it is to be deemed to be a Court of Small Causes and its procedure is to be governed by the provisions of the Provincial Small Cause Courts Act. Therefore when such a suit is transferred to a Munsif and he passes an *ex parte* decree in the suit an application to have the *ex parte* decree set aside must be accompanied by a deposit of the amount of the decree or a security in respect of that amount. No deposit having been made or security furnished at the time of the presentation of the application by the defendant in this case, that application ought to have been dismissed and the court below was wrong in entertaining it. I accordingly allow this application for revision, set aside the order of the court below and dismiss the application presented in that court by the defendants on the 11th of October, 1915. Having regard to the circumstances I make no order as to costs.

Application allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Piggott.

EMPEROR v. JAWAHIR THAKUR *

Act No. XLV of 1860 (Indian Penal Code), sections 30 and 467—"Valuable security"—Forgery—Incomplete documents bearing forged signature of executant

Two documents were found in the possession of the accused each bearing a signature which purported to be that of one Bindhayachal, but which in fact was a forged signature. One document was intended to be filled up as a promissory note, the other as a receipt, but the spaces for particulars of the amount, the name of the person in whose favour the document was executed, the date and place of execution and the rate of interest were

* Criminal Appeal No. 244 of 1916, from an order of Soti Raghuvansa Lal, additional Sessions Judge of Gorakhpur, dated the 28th of February, 1916.

(1) (1913) I.L.R., 38 Mad., 25.

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