

1915
May 7.

Before Mr. Justice Chamier and Mr. Justice Piggott.

SARJU PRASAD (PLAINTIFF) v. MAHADEO PANDE AND OTHERS
(DEFENDANTS),*

Act No. IX of 1887 (*Provincial Small Cause Courts Act*), section 35—
Jurisdiction—Munsif vested with the powers of a Judge of the Court of Small Causes succeeded by one not vested with such powers—Appeal.

When a Munsif vested with the powers of a court of small causes is succeeded in office by a munsif not vested with such powers, the latter is under section 35 of the Provincial Small Cause Courts Act, bound to try the suits pending on the file as regular suits and an appeal lies against his decision *Shiam Behari Lal v. Kali* (1) followed, *Mangal Sen v. Rup Chand* (2) dissented from, *Kamta Prasad v. Mahabal Singh* (3), *Dulal Chandra Deb v. Ram Narain Deb* (4), *Ram Chandra v. Ganesb* (5) referred to.

THE facts of this case were as follows :—

A suit was instituted in the court of a munsif who had been invested with the powers of a Judge of a Small Cause Court up to a certain pecuniary limit. The suit was registered on the Small Cause Court side. Sometime after the written statement had been filed the Munsif went on leave and was succeeded by an officer who had not been invested with the powers of a Small Cause Court. The latter officer passed an order transferring to the regular side all Small Cause Court suits which he then found pending in the court and he tried out those cases as regular suits. He dismissed the present suit. The plaintiff appealed. The Subordinate Judge before whom this appeal came up for hearing held that no appeal lay. The plaintiff filed an application for revision of that order.

Babu *Jogendra Nath Mukerji*, for the applicant.

Babu *Sital Prasad Ghose*, for the respondents.

CHAMIER and PIGGOTT, JJ.—This is an application for revision of an order of the Additional Subordinate Judge of Gorakhpur rejecting an appeal by the appellant on the ground that the suit out of which it arose was a Small Cause Court suit, and therefore no appeal lay. The facts are that the suit was instituted in the court of a Munsif who had been invested under section 25 of the Bengal, N.-W.P. and Assam Civil Courts Act, No. XII of 1887, with the

*Civil Revision No. 139 of 1914.

- (1) (1914) 12 A. L. J. R., 109. (3) (1903) 6 O. C., 81
(2) (1891) I.L.R., 13 All., 324. (4) (1904) I. L. R., 31 Cal., 1057.
(5) (1898) I.L.R., 23 Bom., 822.

jurisdiction of a Judge of a Court of Small Causes up to a certain pecuniary limit. The suit was registered on the Small Cause Court side. Sometime after the written statement had been filed the Munsif went on leave and was succeeded by an officer who had not been invested with the jurisdiction of a Judge of a Court of Small Causes. The latter officer passed an order transferring to the regular side all Small Cause Court suits which he found pending in the court and tried them out as regular suits. One of those suits was the suit out of which this application has arisen. The Munsif dismissed it and the plaintiff appealed. The Subordinate Judge purporting to follow the decision of this Court in *Mangal Sen v. Rup Chand* (1) has held that no appeal lay. The facts of that case are not on all fours with those of the present case, for in that case an order had been passed under section 25 of the Code of Civil Procedure of 1882, and the court was of opinion that under the last paragraph of that section the court to which a Small Cause Court suit is transferred must for the purposes of the suit be deemed to be a Court of Small Causes. It is true that the learned Judges referred also to section 35 of the Provincial Small Cause Courts Act and indicated that their opinion would have been the same whether the case was transferred under section 25 of the Code of Civil Procedure or section 35 of the Provincial Small Cause Courts Act. The decision referred to has been dissented from by the Calcutta High Court in *Dulal Chandra Deb v. Ram Narain Deb* (2), and also by the Bombay High Court in *Ram Chandra v. Ganesh* (3). In Oudh the view taken for several years past has been that which has been adopted by the Calcutta and Bombay High Courts, *vide Kamta Prasad v. Mahabal Singh* (4). In a very recent case *Shiam Behari Lal v. Kali* (5) Mr. JUSTICE KNOX, who was one of the Judges, who took part in the decision of the case of *Mangal Sen v. Rup Chand* (1), held that in a case of this kind the officer who succeeded the officer before whom the suit was filed was bound to try such a suit as this as a regular suit. A decree had been passed in the form of Small Cause Courts decree.

1915.

 SARIJU
 PRASAD
 v.
 MAHADEO
 PANDE.

(1) (1891) I.L.R., 13 All., 324. (3) (1898) I.L.R., 23 Bom., 382.

(2) (1904) I.L.R., 31 Cal., 1057. (4) (1903) 6 O. C., 81.

(5) (1914) 12 A. L. J. R., 109.

1915

SARJU
PRASAD
v.
MAHADEO
PANDE.

Mr. JUSTICE KNOX held that the unsuccessful party had been prejudiced by the procedure adopted inasmuch as he had been deprived of the right of appeal, and he set aside the decree. The view taken in the case of *Shiam Behari Lal v. Kali* (1) is in agreement with the view taken by the Calcutta, Bombay and Oudh Courts and is, we think, correct. It seems to us that under section 35 of Act IX of 1887 the Munsif who tried the suit, not having been invested with the jurisdiction of a Court of Small Causes, was bound to try out the suit as a regular suit, and that there was a right of appeal against his decision. We allow this application, set aside the order of the Subordinate Judge, return the record to his court and direct that the appeal be restored to the pending file and disposed of according to law. Costs of this application will be costs in the cause.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Chamier and Mr. Justice Piggott.

KASHI NATH AND ANOTHER (DECREE-HOLDERS) v. KANHAIYA LAL SHARMA
(RECIPIENT).*

1915,
May 10.

Act No. III of 1907 (Provincial Insolvency Act), section 34—Decree for sale of certain property was obtained by one of the creditors—Prior to sale judgment-debtor was adjudged insolvent—Position of other creditors.

Section 34 of the Provincial Insolvency Act was intended to put the creditors of the insolvent who have not actually attached the property before the date of the order of adjudication in as good a position as creditors of the insolvent who but for his insolvency would have been entitled to a rateable distribution of the assets realised on an execution sale. Certain property was attached before judgement and a decree was subsequently obtained for its sale; but prior to a sale actually taking place the judgement-debtor was adjudged an insolvent. *Held*, that as the order of adjudication was passed prior to the sale of the property it must be regarded as the property of the judgement-debtor and as such was available to the general body of creditors.

THE facts of this case were as follows:—

One Kashi Nath and another brought a simple money suit in the court of the Subordinate Judge of Aligarh, against one Keshab Deo and obtained attachment before judgement of certain immoveable property of the defendant in 1909. In

* First Appeal No. 34 of 1915, from an order of W. F. Kirton, Second Additional Judge of Aligarh, dated the 27th of January, 1915.

(1) (1898) I. L. R., 23 Bom., 382.