

This confirms me in the view I have taken and I would return this reference to the Chief Controlling Revenue Authority with the opinion that the matters referred are, under the circumstances, not within the jurisdiction of this High Court.

RAFIQ, J.—I agree.

PIGGOTT, J.—I agree.

Reference answered accordingly.

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STAMP
REFERENCE
BY THE
BOARD OF
REVENUE.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

ANT RAM (PLAINTIFF) v. MITHAN LAL AND ANOTHER (DEPENDANTS)*.
Act No IX of 1887 (Provincial Small Cause Courts Act), schedule II, article 41—Decree for maintenance against three persons, two of whom were made liable only in case of default by the third—Suit to recover proportionate amount of payments made—Suit cognizable by a Court of Small Causes.

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A decree was passed against three brothers for payment of a maintenance allowance to the widow of a fourth brother deceased. It was, however, provided by the decree that one of the three, Ant Ram, should alone be primarily liable for payment of the allowance, and the others only in case of default being made by Ant Ram. Ant Ram, having made certain payments, sued to recover a proportionate part thereof from the other brothers. *Held* that the suit was not one for contribution; but was a suit cognizable by a Court of Small Causes. *Mavula Ammal v. Mavula Maracoor* (1) and *Ramuswami Pantulu v. Narayanamoorthy Pantulu* (2) followed, *Fatima Bibi v. Hamida Bibi* (3) referred to.

IN this case a decree was passed in 1910, against three brothers for payment of a maintenance allowance at the rate of Rs. 10 per mensem to the widow of a fourth brother then deceased. But the court which passed the decree included in it an express direction that one of the brothers, Ant Ram, should alone be liable for the payment of the allowance, the liability of the others only arising in case of default being made by Ant Ram. Ant Ram, having paid the allowance decreed for some time, sued his brothers for recovery, as their proportionate share thereof, of a sum of Rs. 340. The court of first instance decreed the claim in full, but on appeal the amount decreed was considerably

* Second Appeal No. 149 of 1916, from a decree of B. C. Forbes, Subordinate Judge of Muttra, dated the 7th of December, 1915, modifying a decree of Gauri Prasad, Munsif of Mahaban, dated the 27th of January, 1915.

(1) (1906) I.L.R., 30 Mad., 212. (2) (1906) 14 M.L.J., 480.

(3) (1915) 13 A.L.J., 452.

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reduced. Ant Ram thereupon appealed to the High Court. When the appeal came on for hearing a preliminary objection was raised to the effect that the suit was one cognizable by a Court of Small Causes and therefore no second appeal lay.

The Hon'ble Munshi *Narayan Prasad Ashthana*, for the appellants.

Mr. *M. L. Agarwala*, for the respondents.

PIGGOTT and WALSH, JJ. :—This is a second appeal by a plaintiff, whose suit to recover from the two defendants, his own brothers, a sum amounting to Rs. 340, after having been decreed by the court of first instance, has been decreed in part only by the lower appellate court. The sum covered by this appeal is Rs. 190. On behalf of the defendants respondents a preliminary objection was raised to the effect that the cognizance of this appeal is barred by section 102 of the Code of Civil Procedure. We have to determine whether the suit brought by the plaintiff, Ant Ram, was or was not one of a nature cognizable by a Court of Small Causes. It was a simple claim for money to an amount falling short of Rs. 500, and therefore fell within the cognizance of a Court of Small Causes, unless excluded by some article in the second schedule of the Provincial Small Cause Courts Act, No. IX of 1887. There is really one article alone (article 41) about which there can be any substantial argument. Something has been said about articles 38 and 40, but they are so clearly inapplicable that we need not mention them further. On behalf of the appellants it is contended that the suit in question was a suit for contribution and that it was brought by himself, either as a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or in the alternative made by him as a manager of joint property on account of the said property. As a matter of fact the question raised by this preliminary objection is one which we should have to consider in one form or another at the hearing of the appeal itself, because the only question decided against the plaintiff has been one of limitation, and in order to determine the question of limitation it would be necessary to determine the nature of the suit as brought. We have come to the conclusion that the preliminary objection must prevail, as the suit in question is not a suit for

contribution at all within meaning of article 41 aforesaid and cannot be held to be concerned with joint property within the meaning of that article. The somewhat peculiar circumstances out of which the litigation arises need not be gone into at length. The essential point is that a decree was passed on the 15th of February, 1910, against all the three brothers who were parties to the present suit in favour of Musammat Basanti, the widow of a previously deceased brother. The object of that decree was to secure to this lady maintenance at the rate of Rs. 10 per mensem chargeable on the whole of the property which had belonged to the father of the three defendants. In consequence, however, of certain antecedent circumstances which need not be gone into, the court thought fit to include in its decree an express direction that the present plaintiff, Ant Ram, should alone be liable for the payment of the money. The consequence of this is that the liability of the property, and therefore the liability of the remaining defendants, could not come into existence except in the event of failure on the part of Ant Ram to comply with the terms of the decree. We do not think there is any getting away from the fact that, at the time when he made the payments which formed the basis of his cause of action, Ant Ram alone was liable to make them under the terms of the decree. No doubt, under the peculiar circumstances, the fact of his making these payments gave rise to an equity in his favour as against his two brothers, and this equity has been recognized by the decree passed in the courts below. The fact remains nevertheless that the suit as brought cannot be treated as one for contribution and therefore was not excluded from the cognizance of a Court of Small Causes. For authorities on this point it is sufficient to refer to two judgements of the Madras High Court, *Mavula Ammal v. Mavula Maraoor* (1) and *Ramaswami Pantulu v. Narayanamoorthy Pantulu* (2). We were referred in argument on the other side to a case of this Court *Fatima Bibi v. Hamida Bibi* (3); but that case is fully reconcilable with the Madras authorities, and indeed proceeds on the same principles of law. What the learned Judge of this Court who decided

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(1) (1908) I.L.R., 30 Mad., 212. (2) (1908) 14 M.L.J., 480.

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that case laid stress upon was that the liability which the plaintiff had satisfied was a joint liability as between himself and the defendants at the moment when the payment was made. moreover, a liability attaching to a joint tenancy and therefore attaching to property jointly held by the parties to the suit. It was therefore a suit for contribution in the full sense of the word. We hold accordingly that no second appeal lies in this case and we dismiss this petition of appeal accordingly with costs.

WALSH, J.—I entirely agree. One thing is quite clear that it is only suits for contribution of a peculiar and special character which are included in this exemption. If what is ordinarily known as a suit for contribution was intended to be exempted nothing would have been easier than to say so. I think it must be taken that a litigant who wants to bring himself within article 41 must clearly establish that his suit in every respect complies with the very precise definition.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Justice Sir Pramada Charan Banerji.

EMPEROR v LIAQAT HUSAIN AND OTHERS, *

1917
December, 13.

Criminal Procedure Code, sections 303 and 437—Complaint—Summary dismissal of complaint—Order for further inquiry made without notice to show cause being given to accused.

Held that it is not necessary to the setting aside of an order under section 203 of the Code of Criminal Procedure, where the person against whom the complaint was made has never been called on to appear, that notice to show cause should be given to such person. *Angan v. Ram Pirbhan* (1) and *Hari Dass Sanyal v. Saritulla* (2) followed.

In this case a complaint was made by one Ganga Sahai against Liaqat Husain and others charging them with offences under sections 342, 323 and 454 of the Indian Penal Code. The magistrate before whom the complaint was filed examined the complainant and ordered an inquiry under section 202 of the Code of Criminal Procedure by a magistrate of the third

* Criminal Revision No. 850 of 1917, from an order of W. F. Kirton, Sessions Judge of Aligarh, dated the 15th of September, 1917.

(1) (1912) I. L. R., 35 All., 78. (2) (1887) I. L. R., 15 Cal., 608.