

REVISIONAL CIVIL.

Before Mr. Justice Abdul Raouf.

MAKHAJ LAL, PARSOTAM DAS (DEFENDANTS) v. OHUNNI LAL, BIRJ LAL (PLAINTIFFS).*

Act No. IX of 1887 (Provincial Small Cause Courts Act), section 25—Decision of a preliminary question of jurisdiction which does not dispose of the suit—Revision.

Held that no revision would lie under section 25 of the Provincial Small Cause Courts Act, 1887, from an order of a Court of Small Causes deciding a question of jurisdiction, which decision still left the suit undisposed of in the Small Cause Court. *Ramanathan Chetty v. Maruthappa Kona* (1) referred to.

THE facts of this case were as follows :—

The plaintiff brought a suit in the Court of Small Causes at Agra, claiming compensation for an alleged breach of contract by the defendant. The suit was contested by the defendant on two grounds, namely, (1) that the suit was not cognizable by the Small Cause Court at Agra as the alleged breach of contract had taken place at Allahabad, and (2) that there was no breach on the part of the defendant and that the suit was not maintainable against him. As regards the first point the Judge of the Small Cause Court took evidence and came to the conclusion that the suit was rightly instituted in the Court of Small Causes at Agra. It appears that the parties had requested the court to decide the first point at that stage before taking up the question raised on the second plea in defence.

Against this order declaring that the suit was properly brought at Agra the defendant applied in revision to the High Court.

Munshi *Damodar Das*, for the applicant.

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

ABDUL RAOUF, J.:—A preliminary objection is raised on behalf of the opposite party to the hearing of this application. The facts of the case are these :—The plaintiff brought a suit in the Court of Small Causes at Agra, claiming compensation for an alleged breach of contract by the defendant. The suit was contested by the defendant on two grounds, namely, (1) that the suit was

* Civil Revision No. 114 of 1918.

(1) (1914) 25 Indian Cases, 643.

not cognizable by the Small Cause Court at Agra as the alleged breach of contract had taken place at Allahabad, and (2) that there was no breach on the part of the defendant and that the suit was not maintainable against him. As regards the first point the learned Judge of the court below took evidence and came to the conclusion that the suit was rightly instituted in the Court of Small Causes at Agra. It appears that the parties had requested the court to decide the first point at that stage before taking up the question raised on the second plea in defence. The defendant has filed this application for revision against the decision of the court below on the question of jurisdiction. Mr. *Narayan Prasad* argues that under section 25 of the Provincial Small Cause Courts Act in order to entitle a party to come up in revision it is necessary that the case must have been decided by the court below. That section runs thus:—"The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit." The learned vakil who appears for the applicant replies that there has been a decision in the case by the court below within the meaning of section 25, and he relies upon two cases, namely, *Ramanathan Chetty v. Maruthappa Kone* (1) and *Umesh Chandra Palodhi v. Rakhai Chandra Chatterjee* (2). The particulars of the latter case are clearly distinguishable from the facts of the present case. In that case what happened was that in a suit filed in a Court of Small Causes a question of title arose on the allegations contained in the plaint and the court was of opinion with reference to the provisions of section 23 of Act IX of 1887 that the suit should be tried by a Civil Court on the regular side. The plaint was therefore returned for presentation to a regular Civil Court. It was against the order returning the plaint under section 23 of the aforesaid Act that a revision was applied for, and it was argued by the opposite party that as the case had not been decided on the merits the High Court had no power under section 25 of the Act to revise the order. It was held by the Calcutta High Court that it was not contemplated by the word "decided" that the case should have been decided

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(2) (1911) 15 C. W. N., 666.

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on the merits. The learned Judges observed in their judgment as follows :—“ We are not prepared as at present advised to put this narrow construction upon the terms of section 25 nor to adopt the view suggested by the learned vakil for the opposite party, that the term ‘ decided ’ in section 25 means to adjudicate finally on the merits. Besides in so far as the Small Cause Court is concerned the case has been decided.”

In the case of *Ramanathan Chetty v. Maruthappa Kone* (1), the learned Judge who decided the case observed :—“ Mr. *Sheshagiri Shastri* raises a preliminary objection before me that this petition does not lie under section 25 of the Small Cause Courts Act because there is no case decided by the Subordinate Judge sitting on the Small Cause side, and he quoted *Subal Ram Dutt v. Jagadanunda Mazumdar* (2), for the proposition that unless there has been a decision on the merits section 25 has no application. With all respect, I am unable to follow this decision. The word ‘ decided ’ in section 25 means ‘ disposed of.’ It does not mean that there must be a decision upon the merits.” In the present instance the case has neither been decided on the merits nor has it been disposed of in any other manner. It is still on the file of the court awaiting decision. Merely a preliminary issue as to jurisdiction has been decided, and the application for revision is made against this decision of the preliminary issue. None of the cases cited are, therefore, applicable. The preliminary objection must prevail and the application must be rejected. Over and above this, having regard to the circumstances of this case, I do not think that this is a proper case for revision. I accordingly dismiss the application with costs. The stay order is hereby discharged. The record of the case will be sent back to the court below,

Application dismissed.

(1) (1914) 25 Indian Cases, 643.

(2) (1903) 1 Indian Cases, 288; 13 C. W. N., 403.