

REVISIONAL CIVIL.

Before Mr. Justice Muhammad Rafiq.

BOHRA BHOJ RAJ (DEFENDANT) v. RAM CHANDRA AND OTHERS

(PLAINTIFFS) *

1920
March, 30.

Act No. IX of 1887 (*Provincial Small Cause Courts Act*), schedule II, article (13)
—*Small Cause Court—Jurisdiction—Suit by zamindar to recover part of price of trees sold by tenant.*

Held that a suit brought by the zamindars of a village upon the basis of a custom recorded in the village wajib-ul-arz to recover from a tenant half of the price of certain trees alleged to have been sold by him was not a suit excluded from the jurisdiction of a Court of Small Causes.

THE plaintiffs, who were zamindars, sued to recover from the defendant, in accordance with a custom recorded in the village wajib-ul-arz one half of the price of certain trees which the defendants had sold. The suit was brought in a Court of Small Causes. The claim was resisted on various grounds, but was decreed. The defendants applied in revision to the High Court upon the ground that the plaintiffs' suit was not cognizable by a Court of Small Causes in view of article (13) of the second schedule to the Provincial Small Cause Courts Act, 1887.

Munshi Panna Lal, for the applicant.

Munshi Gulzari Lal, for the opposite parties.

MUHAMMAD RAFIQ, J. :—This is an application in revision from the decree of the Small Cause Court Judge on the ground that the learned Judge had no jurisdiction to entertain the suit. The plaintiffs, the opposite party, sued in the court of the Judge of Small Causes at Kasganj, for the recovery of half the price of the trees sold by the applicant; on the allegation that under the custom prevailing in the village, the plaintiffs, who were the zamindars, were entitled to half the sale proceeds. The claim was resisted on various grounds, but it was decreed. In revision to this Court it is stated that under article (13), schedule II, of the Small Cause Courts Act, the present suit is not cognizable by the Small Cause Court. I do not think that the contention for the applicant is well-founded. Mr. Rustomji in his commentary on the small Cause Courts Act says :—

“ If the claim is simply on the basis of a contract or custom, for example, as recorded in the wajib-ul-arz, article (13) has no application and the suit is *prima facie* small cause.”

Under this note he gives rulings of several High Courts, vide, page 63 of this book. The *haq* that the plaintiffs are claiming was not in respect of any immovable property but in respect of the price of the trees sold, and their claim is based on the terms of the *wajib-ul-arz* of the village. The objection fails, and I dismiss the application with costs.

Application dismissed.

Before Mr. Justice Muhammad Rafiq.

OHHANGA MAL (DEFENDANT) v. SHEO PRASAD (PLAINTIFF) *

Act No. IX of 1872 (*Indian Contract Act*), sections 30 and 65—Wagering contract—Money advanced on account of *satta* transactions not recoverable.

Held that no suit will lie for the recovery of money deposited with another on account of *satta* transactions. *Dayabhai Tribhovandas v. Lakhmichand Panachand* (1) followed.

THE plaintiff came into court alleging that he had advanced Rs. 100 to the defendant with the object of his doing certain business for the plaintiff; that the business had not been carried out; that the defendant had returned Rs. 35, and Rs. 65 were still due from him. It appeared from the evidence of both parties in the court below that the business in respect of which the money claimed was deposited with the defendant was what are known as *satta* transactions, i. e., wagering contracts, and the defendant stated that he had made certain of such contracts on behalf of the plaintiff by reason of which part of the money advanced to him had been lost. The court below did not believe the defendant's statement as to the losses incurred and gave the plaintiff a decree for the amount claimed. The defendant then applied in revision urging that the money was not recoverable inasmuch as it was in any case advanced on account of wagering contracts.

Pandit *Narbadeshwar Prasad Upadhyya*, for the applicant.

Munshi *Sarkar Bahadur Johri*, for the opposite party.

MUHAMMAD RAFIQ, J. :—This application in revision is against a decree of the Small Cause Court Judge of Cawnpore, dated 16th of September, 1919. It appears that the opposite party, the plaintiff, sued to recover Rs. 65 on the allegation that he had

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* Civil Revision No. 166 of 1919.

(1) (1885) I. L. R., 9 Bom., 358.