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to repay it. The plaintiff sued to recover the amount then due. The recital of the above facts constitutes the plaintiff's cause of action which seems to us to be one and indivisible. We do not see how the fact that the plaintiff recorded the transaction in his account book or private diary can give him another or a different cause of action. The plaintiff sued to recover the amount due and his suit was dismissed. It was not dismissed because of any inherent defect in the promissory note itself but it was dismissed because the plaintiff failed to put in an appearance. Therefore it is inaccurate to say, as was said by the plaintiff in paragraph No. 4 of his plaint, that the promissory note is altogether null and void and ineffectual. It is a perfectly good promissory note and this is not one of those cases in which the courts have held that where a promissory note is invalid and amounts really to nothing more than a piece of waste paper, the plaintiff can fall back upon an action for money had and received by the defendants to the plaintiff's use on the ground that there is a total failure of the consideration by reason of the invalidity of the promissory note. It seems that what we have said above is really the law as laid down in the case on which the learned Subordinate Judge relied, that is to say, *Baij Nath Das* v. *Salig Ram* (1). The facts of this case are distinguishable from the various cases which have been referred to in argument before us. The result is that we allow the appeal and, setting aside the order of remand of the learned Subordinate Judge, restore the order of the Munsif with costs.

Appeal decreed.

REVISIONAL CIVIL.

Before Mr. Justice Lindsay.

BINDESRI AND ANOTHER (PETITIONERS) *v.* GANGA PRASAD (OPPOSITE PARTY).†

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Act No. IX of 1887 (Provincial Small Cause Courts Act), section 25—Revision—Suit filed before munsif not having Small Cause Court powers but decided by one who had, though as a regular suit—Appeal.

A suit which according to the frame of it was a Small Cause Court suit was filed in the court of a munsif at a time when the permanent incumbent,

* Civil Revision No. 54 of 1919.

(1) (1912) 16 Indian Cases, 88.

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who was invested with Small Cause Court powers, was on leave, and the temporary incumbent was not invested with Small Cause Court powers. Before the suit came to a hearing the permanent incumbent returned. He tried the suit and tried it as an ordinary suit and not as a Small Cause Court suit.

Held, that the munsif was right in so doing, and that an appeal lay from his decision to the Subordinate Judge. *Jagmohan Lal* v. *Lakha* (1), *Mahima Chandra* v. *Kali Mandol* (2), *Hari Kamayya* v. *Hari Venkayya* (3), and *Sambhu Dhanaji Sirdar* v. *Ram Vithu* (4), referred to.

THE facts of the case are briefly as below :—

The substantive Munsif of Mirzapur had a jurisdiction to try suits of a Small Cause Court nature to the value of Rs. 50. He went on leave and was succeeded by an officiating Munsif who had not been invested with such powers. After the officiating Munsif had taken charge, the present suit for the recovery of Rs. 47 and odd on account of the price of sugar and flour was filed in his court. The suit was instituted and registered on the regular side. During the pendency of the suit, however, the permanent Munsif returned, but the suit was continued on the regular side and tried and dismissed by him as such. The plaintiff filed an appeal in the Subordinate Judge's Court of Mirzapur who reversed the decree and decreed the suit. No question of jurisdiction was raised by the defendants in the first court or in the lower appellate court. The defendants came in revision to the High Court against the appellate decree.

Babu *Anil Chandra Mitra* (for whom Munshi *Bhagwati Shankar*), for the applicant :—

The suit was of a Small Cause Court nature. It was tried by a Munsif who had power to try small causes. Though the suit was filed and tried as a regular suit yet it retained its Small Cause Court nature and must be deemed to have been tried and decided as a Small Cause Court suit. No appeal, therefore, lay from that decision and the decree of the lower appellate court was passed without jurisdiction. Sections 16 and 27 of Act IX of 1887 of the Provincial Small Cause Court Act. The question of jurisdiction was not raised in the lower appellate court. That fact, however, could not give any jurisdiction to that court. *Minakshi Naidu* v. *Subramanya Sastri* (5). The High Court

(1) (1911) 9 Indian Cases, 264.
(2) (1907) 12 C. W. N., 167
(3) (1903) I. L. R., 26 Mad., 212.
(4) (1903) I. L. R., 28 Bom., 244.
(5) (1887) I. L. R., 11 Mad., 26.

is 'bound' to interfere and set that decree aside ; *Abdul Majid* v. *Bedyadhar Saran Das* (1), *Kollipara Seetapathy* v. *Kankipati Subbayya* (2) and *Indra Chandra Mukherjee* v. *Srish Chandra Banerjee* (3).

Munshi *Kailas Chandra Mital*, for the opposite party :—

The Munsif before whom the suit was instituted was only an officiating one who was not invested with any Small Cause Court powers but had ceased to be a Munsif at all during the pendency of this very suit. The Munsif who was invested with powers to try small causes and who tried the suit came more than a month after the filing of the suit. He was right in trying the suit as a regular suit ; *Tirbhuavan* v. *Sham Sunder* (4), *Mahima Chandra Sirdar* v. *Kali Mandol* (5), *Hari Kamayya* v. *Hari Venkayya* (6) and *Sambhu Dhanaji* v. *Ram Vithu* (7). According to section 27 of the Small Cause Courts Act, the decree to be final must be made by a Court of Small Causes. It is not sufficient that the nature of the suit is that of small causes.

The decision of the Munsif in this case on the regular side cannot be deemed to be a decision of a Small Cause Court, and the appellate court's decree was not without jurisdiction. The revisional powers of the High Court are purely discretionary, and unless some substantial injustice to a party has resulted this Court will be slow to interfere ; *Muhammad Bakar* v. *Bahal Singh* (8). Section 115 of the Code of Civil Procedure is still more limited in its scope than section 25, Small Cause Courts Act, under which that ruling was passed.

Munshi *Bhagwati Shankar*, in reply, cited *Chaturi Singh* v. *Rania* (9) and *Narayan Ravji* v. *Gangaram Ratanchand* (3).

LINDSAY, J. :—I have listened to the arguments in this case and have made up my mind that the application should be dismissed. I may say at once that the case being a case under section 25 of the Provincial Small Cause Courts Act, I should not be disposed to interfere unless the law obliges

(1) (1916) I. L. R., 39 All., 101.
(2) (1909) I. L. R., 33 Mad., 323.
(3) (1913) I L. R, 40 Calc., 537.
(4) (1913) 11 A. L. J., 360.
(5) (1907) 12 C. W. N., 167.
(6) (1903) I. L. R., 26 Mad., 212
(7) (1903) I. L. R., 28 Bom., 244.
(8) (1890) I. L. R., 13 All., 277.
(9) (1918) I. L. R., 40 All., 525.
(10) (1903) I. L. R., 33 Bom., 664.

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me to. The suit was a suit for Rs. 47-4-0. It was tried in the court of a Munsif who admittedly was possessed of Small Cause Court powers up to a limit of Rs. 50. The Munsif, however, tried the suit as a regular suit and gave a decree in favour of the defendants. The plaintiff appealed and the appeal was heard by the Subordinate Judge of Mirzapur. He reversed the decision of the court below and gave a decree in favour of the plaintiff. Now we have this application in revision in which it is contended on behalf of the defendants that no appeal lay to the court below and that the order of the Subordinate Judge is void as having been passed without jurisdiction. The way the case was put on behalf of the petitioners is this. It is said that the suit as framed was a suit exclusively cognizable by a Court of Small Causes and that the Munsif who decided the case being a Munsif invested with the powers of the Small Cause Court, it ought to be taken that his decision was the decision of a Court of Small Causes and was not therefore open to appeal. I take it as admitted that the suit was a suit ordinarily cognizable by a Court of Small Causes and that to this extent the case put forward by the petitioners is correct. Even then I should not be disposed to interfere in these proceedings in view of the fact that the case has been fully tried out and has not been disposed of in the summary way in which Small Cause Court cases are usually dealt with. The learned counsel for the petitioners, however, referred me to a judgment of this Court, *Abdul Majid* v. *Bedyadhar Saran Das* (1). That case follows a full bench decision of the Madras High Court—*Kollipara Seetapathy* v. *Kankipati Subbayya* (2). The view taken in this latter case was that where a Small Cause suit is tried by a Munsif on the original side and his decision is reversed in appeal by the subordinate court the High Court is bound to set aside the decree in appeal as having been passed without jurisdiction.

The learned counsel for the opposite party, however, has been able, in my opinion to put a different complexion on the facts, and after some argument it has been admitted before me that the statements of facts made by the learned counsel for the opposite party are correct. It seems that this suit was

(1) (1916) I. L. R., 39 All., 101. (2) (1909) I. L. R., 33 Mad., 328.

filed on the 6th of August, 1918, and it was filed in the court of the Munsif of Mirzapur. At that time the permanent incumbent had gone on leave and there was officiating in his place one Mr. Charu Chandra who admittedly was not invested with the powers of a Small Cause Court Judge. The case was instituted in his court and was necessarily registered as an ordinary suit. The case came on for trial in the month of November, 1918. By that time Mr. Raj Rajeshwar Sahai, the permanent Munsif, had returned from leave. It is not disputed that this gentleman was invested at that time with the jurisdiction of a Court of Small Causes up to the pecuniary limit of Rs. 50. Mr. Raj Rajeshwar Sahai, as I have said, tried the case as an ordinary suit and in my opinion that was the proper course for him to adopt. The suit was filed while his *locum tenens*, who was not invested with the Small Cause Court powers, was the presiding officer and consequently, under the provisions of section 32, sub-section (2), of the Provincial Small Cause Courts Act, I think it was the duty of the Munsif who finally dealt with the case to try the case as a regular suit. If any authority on this proposition is required it will be found in a ruling of this Court which appears to me to be exactly in point. That is the decision of a single Judge of this Court (1). I cannot distinguish the facts of that case from the facts of the case before me. Apart from this authority of this Court there are at least three other cases which support this view; *Mahima Chandra Sirdar* v. *Kali Mandol* (2), *Hari Kamayya* v. *Hari Venkayya* (3), *Sambhu Dhanaji* v. *Ram Vithu* (4). It seems to me, therefore, that it is not any longer possible to contend that there was any irregularity in the trial of the first court. On the contrary, the procedure of the Munsif was perfectly correct, and if he tried the suit out as a regular suit and did not exercise his powers in this particular instance as a Court of Small Causes, it follows that the petitioners here are not entitled to argue that the decree of the first court was a final decree as provided by section 27 of Act IX of 1887. On the authorities to which I have referred an appeal certainly lay to the District Judge, and the result, therefore, is that I hold

(1) (1911) 9 Indian Cases, 264.
(2) (1907) 12 C. W. N., 167.
(3) (1903) I. L. R., 26 Mad., 212.
(4) (1903) I. L. R., 28 Bom., 24.

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that there was no want of jurisdiction in the court below to hear the appeal. The application fails and is dismissed with costs to the opposite party.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Tudball and Mr. Justice Ryves.

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November, 27.

AMBA PRASAD (DEFENDANT) *v.* MUSHTAQ HUSAIN (PLAINTIFF).*

Civil Procedure Code (1908), *order XLIII, rule* 1 *(u)—Remand—Appeal—Suit of the nature cognizable by a Court of Small Causes.*

A mahal having been divided by perfect partition into two, thereafter the owner of one of the new mahals was made to pay a sum of Rs. 127, as Government revenue, which was in fact payable by the owner of the other mahal. He then sued the owner of the other mahal to recover the sum so paid The suit was filed in the court of a Munsif, who held that the suit did not lie and dismissed it. The plaintiff thereupon appealed, to the Subordinate Judge, who reversed the finding of the Munsif and remanded the suit for disposal on the merits.

Held, that no appeal lay from the order of remand, inasmuch as the suit was one of the nature cognizable by a Court of Small Causes. Since, however, the plaintiff had paid the money which he was seeking to recover and it not been refunded, the High Court declined to treat the appeal as an application in revision. *Nath Prasad* v. *Baij Nath* (1), *Qutub Husain* v. *Abul Hasan* (2), and *Tulsa Kunwar* v. *Jageshar Prasad* (3), referred to.

THE facts of this case are fully set forth in the judgment of the court.

The Hon'ble *Saiyid Raza Ali*, for the appellant.

Dr. *S. M. Sulaiman*, for the respondent.

TUDBALL and RYVES, JJ.:—A preliminary objection is raised in this appeal that no second appeal lies. The facts are briefly as follows:—The plaintiff respondent and the defendant appellant with effect from the 1st of July, 1914, that is, the beginning of the year 1322 Fasli, were owners of two separate mahals in a village after a perfect partition had been effected. In the year 1322 Fasli the revenue of both these mahals fell into arrears. The plaintiff was forced to pay the revenue not only of his own

* First Appeal No. 46 of 1919, from an order of Lalta Prasad Johri, Subordinate Judge of Moradabad, dated the 9th of December, 1918.

(1) (1880) I. L. R., 3 All., 66. (2) (1881) I. L. R., 4 All., 134.

(3) (1906) I. L. R., 28 All., 563.