

rebutts that produced for the prosecution or renders it so incredible or unreliable that a conviction will not follow, he may act upon his opinion and may pass an order of discharge under section 213 of the Code of Criminal Procedure. That was the view taken by Mr. Justice PIGGOTT in the case of *Dharam Singh v. Joti Prasad* (1). I agree with the view taken by the learned Judge. That was also a case in which defence evidence had been called in the committing magistrate's court and the Magistrate had come to the conclusion that the defence witnesses were more worthy of belief than those produced by the prosecution. I have decided, therefore, that this case should not be allowed to go any further. The order of discharge was in my opinion correct. I dismiss this application.

Application rejected.

REVISIONAL CIVIL.

Before Justice Sir Pramada Charan Banerji.

ZAMIR-UL-HASAN KHAN (DEPENDANT) *v.* IMDAD ALI KHAN.
(PLAINTIFF).*

Act No. IX of 1887 (Provincial Small Cause Courts Act), section 35—Jurisdiction—Appeal—Suit instituted in Court of Munsif having Small Cause Court Jurisdiction—Munsif succeeded by another not having such jurisdiction—Suit tried by latter officer—Appeal.

A suit for damages for cutting a branch of a tree was instituted in the Court of a Munsif having Small Cause Court powers. Before the suit was heard the Munsif went on leave and was succeeded by a Munsif who had not Small Cause Court powers, and who accordingly tried the suit as a regular suit.

Held that this procedure was correct and an appeal lay from the decree passed in it. *Sarju Prasad v. Mahadeo Fande* (2) referred to.

THIS was an application for revision under the Provincial Small Cause Courts Act, 1887.

The facts of the case sufficiently appear from the judgment of the Court.

Mr. *S. Abu Ali*, for the applicant.

The opposite party was not represented.

BANERJI, J.:—This is an application for revision against an order of the First Additional Subordinate Judge of Aligarh, refusing to entertain an appeal preferred by the applicant and

* Civil Revision No. 137 of 1920.

(1) (1915) I. L. R., 37 All., 355. (2) (1915) I. L. R., 37 All., 450.

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dismissing it on the ground that no appeal lay. The facts were these :—A suit was brought in the Court of a Munsif who had been vested with the jurisdiction of a Court of Small Causes for the recovery of damages for cutting down the branch of a tree. The suit was undoubtedly one of the nature cognizable in a Court of Small Causes and was accordingly instituted on the Small Cause Court side of the Munsif's Court. Before the cause came to trial the Munsif proceeded on leave and was succeeded by an officer who was not vested with the powers of a Small Cause Court Judge. He tried the suit as a regular suit and made a decree for a portion of the claim. An appeal was preferred from that decree, but the appellate court refused to entertain the appeal and held that no appeal lay. This view of the lower appellate court is in my opinion erroneous. Under the provisions of section 35 of the Provincial Small Cause Courts Act, if a court vested with the powers of a Court of Small Causes ceases to have such powers, the officer who tries the case should try it as a suit which he would ordinarily have tried. In the present case the Munsif who tried the suit had no Small Cause Court powers, and, therefore, he was bound to try the suit as a regular suit instituted in the Court of a Munsif who did not possess Small Cause Court powers. In the present instance the Munsif tried the suit, and, therefore, an appeal lay from his decree to the District Judge. The appellate court seems to have been of the opinion that the Munsif ought to have returned the plaint for presentation on the regular side of the court. I do not agree with this view, as at the time when the Munsif proceeded to try the suit he had no jurisdiction to try it as a Small Cause Court suit, and this is what section 35 of the Small Cause Courts Act provides. This case is very similar to that of *Surju Prasad v. Mahadeo Pande* (1). I agree with the ruling in that case and I hold that the District Judge had jurisdiction to entertain the appeal and the lower appellate court ought to have tried it on the merits. I allow the application, set aside the decree of the lower appellate court and remand the case to that court with directions to try it on the merits. Costs here and hitherto will be costs in the cause.

Application allowed.