

*Before Sir Grimwood Mears, Knight, Chief Justice, and
Mr. Justice Dalal.*

1927
February,
28.

THE MUNICIPAL BOARD OF BENARES (DEFENDANT)
v. SHAMBHU NATH (PLAINTIFF).*

Act No. IX of 1887 (*Provincial Small Cause Courts Act*), section 16—*Suit cognizable by a Court of Small Causes, but tried by a munsif—Question of jurisdiction raised in appeal.*

An objection to the jurisdiction must be taken notice of by any court, however late it may be raised, if it happens that on the facts admitted or proved it is manifest that there is a defect of jurisdiction. *Ramlal Hargopal v. Kishanchand* (1), followed.

THE facts of this case are fully stated in the judgement of the Court.

Dr. Kailas Nath Katju, for the appellant.

Babu Piari Lal Banerji and *Munshi Shiva Prasad Sinha*, for the respondent.

MEARS, C. J., and DALAL, J. :—On the 24th of March, 1925, one Shambhu Nath sued the Municipal Board of Benares and one Babu Chandra Bal for damages laid at Rs. 1,440. This amount was split into two sums of Rs. 440 and Rs. 1,000, Rs. 440 being the damages said to have been sustained by an order whereby a certain balcony over a footpath was ordered to be removed by the Municipal Board; and Rs. 1,000 were the damages claimed by the plaintiff in respect of alleged improper acts of the Municipal Board of Benares and by Babu Chandra Bal personally. On the 24th of August, 1925, the plaintiff made an application by which he sought to be allowed to exempt Babu Chandra Bal against whom he had made allegations of wrong-doing. The Munsif, no doubt,

* Second Appeal No. 1052 of 1926, from a decree of Raja Ram, Additional Subordinate Judge of Benares, dated the 22nd of February, 1926, confirming a decree of Niraj Nath Mukerji, City Munsif of Benares, dated the 20th of October, 1925.

(1) (1923) I.L.R., 51 Calc., 361.

accepted the application as an admission on the part of the plaintiff that the allegations against Chandra Bal were entirely groundless and allowed the application. The plaintiff also asked that his claim for Rs. 1,000 damages should be struck out and that was done; and thereupon from the moment that the amendment was made, the claim ceased to be a claim for Rs. 1,440 and became a claim for Rs. 440. At this date, 24th of August, 1925, Babu Hanuman Prasad Varma was the presiding officer of the Small Cause Court at Benares with jurisdiction up to Rs. 500, and, in our opinion, it was the duty of the court as a necessary consequence of allowing the amendment at once to return the papers to the plaintiff with instructions to him to proceed in the Small Cause Court if he wished to continue the action in its then state. The result of the matter in the court of the Munsif was that the claim of Shambhu Nath was decreed for Rs. 200. The Municipal Board appealed and we are told, although we have not gone into the matter, that the decision of the Additional Subordinate Judge seems to have been based upon the pleadings as they existed before the amendment. We do not know how that may be and it is not material for our decision today to discuss the question of either of the decisions arrived at by either court, because a point has been taken that the Munsif had no jurisdiction to enter upon the trial of this matter when once it had been reduced by amendment to a claim for Rs. 440. Section 16 of the Provincial Small Cause Courts Act, 1887, has been read to us and the imperative nature of the terms of that section provides that a suit cognizable by a Court of Small Causes shall not be tried by any other court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable. We think the objection of

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the Municipal Board at Benares a good one and that the objection to the jurisdiction which, we are informed today, according to Mr. *Piari Lal Banerji* is only an objection to the decision on appeal of the Additional Subordinate Judge, must nevertheless by us be regarded as a matter affecting the jurisdiction of the Munsif and the objection must be given weight to in both courts. In the case of *Ramlal Hargopāl v. Kishanchand* (1) there is a passage in the middle of page 372. which lays down that an objection to the jurisdiction must be taken notice of by any court, however late in the day it may be raised, if it happens that on the facts admitted or proved it is manifest that there is a defect of jurisdiction. There was, in our opinion, a defect of jurisdiction from the 24th of August, 1925, and the Munsif having thereafter entertained the case, we sweep aside the decision of the Munsif and of the Additional Subordinate Judge and order that the plaint be returned to Babu Shambhu Nath for presentation to a proper court if he has not already had a sufficient amount of litigation about this matter. The costs of all these proceedings will abide the result. If no suit is instituted within one month, the matter is to come in our list for decision as to the question of costs before allowing him any costs. And we shall require some explanation from the plaintiff as to the circumstances under which he made unfounded charges of fraud in the plaint as originally drawn.

Appeal allowed.

(1) (1923) I.L.R., 51 Calc., 361 (372).