

1932

SHUBBAHAN

v.

DHANPAT
GADABEZA.

mensem from 1908, when the building was erected, to the date of the decree which we take to be the present date. The interest will be calculated in complete years, as the exact dates are not forthcoming, i.e., for 24 years. The interest will be simple. A decree under order XXXIV, rule 7, of the Code of Civil Procedure will be framed. We allow six months to pay. The decree will stand in other respects. The appellants as mortgagees will have their costs of the litigation throughout. The cross-objections fail and they are dismissed with costs.

REVISIONAL CIVIL.

Before Sir Shah Muhammad Sulaiman, Chief Justice.

BIBI KASTURI AND ANOTHER (PLAINTIFFS) v. BAL-
MUKAND (DEFENDANT).*

1932

June, 21.

Provincial Small Cause Courts Act (IX of 1887), sections 23, 25—Order returning a plaint—Revision—"Case decided"—Civil Procedure Code, order VII, rule 10—Provincial Small Cause Courts Act (IX of 1887), sections 17(1), 27—Plaint returned by Small Cause Court—Appeal.

Where a plaint was returned by the Judge of the Small Cause Court, as he considered that the case depended upon the proof or disproof of a title to immovable property, the order returning the plaint was one passed under section 23 of the Provincial Small Cause Courts Act and not under order VII, rule 10, of the Civil Procedure Code. By section 27 of the Act no appeal lay from the order; and the provisions of the Civil Procedure Code could not be invoked for the purpose of an appeal, as by section 17(1) of the Act the Civil Procedure Code was applicable only so far as it was not inconsistent with the provisions of the Act.

If a court of small causes has, in ordering a plaint to be returned, acted grossly wrongly or with material irregularity, for instance where the case does not come under section 23 of the Act and the court arbitrarily returns the plaint, the order can be interfered with in revision under section 25, as the return of the plaint terminates the proceedings in the court of

small causes and there is a "case decided" thereby, within the meaning of that section.

Mr. S. B. Johari, for the applicants.

Dr. K. N. Malaviya, for the opposite party.

SULAIMAN, C. J. :—A preliminary objection is taken to the hearing of this revision. The court of small causes has returned the plaint for presentation to the proper court. It is urged that the order was appealable inasmuch as an appeal lay to the District Judge, and as none has been filed there could be no revision. In the second place it is urged that the order of the court of small causes returning the plaint does not come within the meaning of section 25 of the Small Cause Courts Act and that therefore no revision lies. Reliance is placed on the case of *Subal Ram Dutt v. Jagadanunda Mazumdar* (1).

In my opinion the order returning the plaint purported to have been passed under section 23 of the Provincial Small Cause Courts Act, and not under order VII of the Civil Procedure Code. Section 27 of the Act makes the order final. It cannot, therefore, be contended that an appeal lay from the order, because the Civil Procedure Code was applicable under section 17(1) of the Act only so far as it was not inconsistent with provisions of the Act.

I also see no force in the second objection. Where a court has exercised discretion, the High Court would not interfere in revision with that discretion. But that is a matter quite different from saying that no case is decided and a High Court can never have any jurisdiction to interfere at all. It seems to me that if a court of small causes has acted grossly wrongly or with material irregularity, for instance, where the plaintiff's right does not in any way depend on the proof or disproof of title to immovable property or any other title and the court arbitrarily returns the plaint for presentation to the proper court, it must be treated as if a case has been decided

1932

 BIBI
 KASTURI
 S.
 BALMIGKAND.

(1) (1909) 1 Indian Cases, 283.

1932

BIBI
KASTURI
v.
BALMUKAND.

which would give jurisdiction to the High Court to interfere under section 25. If the learned Judges in the case of *Subal Ram Dutt v. Jagadanunda Mazumdar* (1) meant to lay down as a general proposition that any order purporting to be passed under section 23 of the Provincial Small Cause Courts Act for the return of a plaint to be filed in the proper court is not an order passed in a case decided within the meaning of section 25 of the Act, I am, with great respect, unable to agree with them. As stated above, if the question is merely one of an exercise of discretion, then there would be no interference. But if the order is illegal or irregular, the High Court would have jurisdiction to interfere, because the return of the plaint terminates the proceedings in the court of small causes and, in my opinion, a case is decided thereby. The word "case" is used in a wider sense than "suit", and must include the termination of a legal proceeding pending in a court which, so long as the order is not set aside, cannot be revoked. I accordingly overrule the preliminary objection.

The plaintiffs' case was based on the supposition that they were the heirs of Gopal Das, who had put the defendant in possession as tenant. The defendant admitted that he was the tenant of Bhagwan Das and Gopal Das, but did not admit that the present plaintiffs were the heirs of his landlord. The court below has very properly considered that the question depends on the proof or disproof of a title to property, and that the case is a fit one to be tried on the original side. I am unable to interfere with the exercise of discretion by the court below. The application is dismissed with costs.

(1) (1909) 1 Indian Cases, 288.