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paid by him at the registration office after he had been informed of it.

There is no doubt that the burden is on the defendant vendee to satisfy the court that he is a transferee for value who has paid his money in good faith and without notice of the original contract. Where a defendant has paid only a small part of the consideration previously and pays the bulk of the consideration after notice, it is impossible to hold that he is acting in good faith or is a person who has paid his money without notice of the original contract. In the present case it is not necessary to decide where the line has to be drawn and what the position would be if a vendee pays a substantial portion before notice and the balance after such notice. We are clearly of opinion that in a case where the vendee has not paid at least a substantial portion of the sale consideration before notice, he cannot be said to have paid his money in good faith so as to be entitled to the protection given by section 27. In this view of the matter the appeal has no force, and we accordingly dismiss it with costs. The vendor Shambhu Prasad will bear his own costs.

REVISIONAL CIVIL

Before Mr. Justice Kendall

1934
July, 26

BRIJ BEHARI LAL (PLAINTIFF) v. LALTA PRASAD & SONS
(DEFENDANTS)*

Provincial Small Cause Courts Act (IX of 1887), sections 17, proviso, and 35—Ex parte decree passed by Small Cause Court—Subsequent abolition of that court—Application in Munsif's court for setting aside the ex parte decree—Deposit or security for decretal amount necessary.

An *ex parte* decree was passed by a small cause court, and thereafter that court was abolished. An application to set aside the *ex parte* decree was then made to the court of the Munsif, according to the provisions of section 35 of the Provincial Small Cause Courts Act. *Held* that the application being a proceed-

ing arising out of a suit which had been decided by a small cause court, the procedure would be governed by the provisions of section 17 of the Act, and therefore the proviso to that section would apply and a deposit or security was obligatory on the applicant, in default of which the application must be dismissed.

Mr G. S. Pathak, for the applicant.

Mr. L. M. Roy, for the opposite party.

KENDALL, J.:—This application has given rise to a somewhat difficult question of jurisdiction. The circumstances are that the plaintiff applicant had obtained an *ex parte* decree in a small cause court. That court was subsequently abolished, and an application to set aside the *ex parte* decree was made to the Munsif; but the judgment-debtor did not deposit the amount of the decree or give security to the satisfaction of the court for the performance of the decree, as he was required to do by the first proviso to section 17 of the Provincial Small Cause Courts Act of 1887. The learned Munsif held that the provisions of section 35 of the Act empowered him to proceed as if the matter were one governed by the procedure for the regular courts and not by the special procedure laid down in the Small Cause Courts Act, and he therefore allowed the application to set aside the *ex parte* decree.

Section 17(1) of the Provincial Small Cause Courts Act is to the following effect: "The procedure prescribed in the Code of Civil Procedure, 1908, shall, save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in the court of small causes in all suits cognizable by it and *in all proceedings arising out of such suits.*" The present proceeding is undoubtedly a proceeding arising out of a suit which was cognizable by a small cause court, and had in fact been decided by a court of that description. There is nothing in section 35 of the Act which in terms modifies the provisions of section 17, and it appears to me therefore that in the absence of authority to the contrary it must be held that any proceeding arising out of a suit

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which has been decided by a small cause court must be governed by the provisions of the Small Cause Courts Act.

On behalf of the opposite party I have been referred to some authorities of this Court in somewhat analogous cases. In the case of *Sarju Prasad v. Mahadeo Pande* (1) it was held that when a Munsif vested with the powers of a court of small causes was succeeded by a Munsif not vested with such powers, the latter is, under section 35 of the Provincial Small Cause Courts Act, bound to try the suits pending on the file *as regular suits* and an appeal lies against his decision. In the case of *Lachman Das v. Ahmad Hasan* (2), it was held by a single Judge of this Court that where a court of small causes had passed a decree and was then abolished, and the execution proceedings were taken in the court of a Munsif, the Munsif's orders passed in the execution proceedings were not the orders of a small cause court and were therefore open to appeal. This case is the more nearly analogous to the present one than any to which I have been referred, but it will be seen that the decision is merely to the effect that as the order passed in execution proceedings was not the order of a small cause court Judge, it was open to appeal. The position in the present case is different. There is no question of whether an order passed by the court is open to appeal. It is a question of whether the procedure in this application is to be regulated by section 17 of the Small Cause Courts Act or by the Civil Procedure Code. If it is to be regulated by the Small Cause Courts Act, a deposit or security was obligatory on the judgment-debtor, and, in my view, the wording of section 17 of the Act shows that the procedure of the Act ought to be applied because the proceeding is one arising out of a small cause court suit.

I therefore allow the application with costs, set aside the order of the Munsif and direct that the *ex parte* decree in favour of the applicant be restored.

(1) (1915) I.L.R., 37 All., 470.

(2) (1917) I.L.R., 39 All., 357.