

sideration money under section 55 of the Transfer of Property Act, against the share sold by Ismail Hasan. It is not necessary for us to enter into a discussion of this question, as the defendants have not alleged that the money which they paid to Raja Pratab Singh was not the money left with Bhabhuti Singh by Ismail Hasan and as no such case was raised on the pleadings of the parties in any of the two lower courts.

The result, therefore, is that I would allow the appeal, set aside the decision of the Additional Subordinate Judge and restore that of the Munsif. The appellant will get his costs in all the courts from the defendants-respondents.

BY THE COURT :—The appeal is allowed, the decree of the court below set aside and that of the court of first instance restored with costs in all courts.

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice A. G. P. Pullan.

RAM DAYAL (DEFENDANT-APPLICANT) *v.* TIRBENI *alias*
TIRLOKI NATH (PLAINTIFF-OPPOSITE PARTY).*

1930
February,
12.

*Provincial Small Cause Courts Act (IX of 1887), article 35(2)—
Suit for damages for cutting and removing a tree—Jurisdiction of small cause court—Small Cause Court, whether has jurisdiction to try suit for damages for cutting and removing a tree.*

A suit for damages in respect of a portion of a tree which had been cut and removed by the defendant is a civil matter and is within the jurisdiction of the Small Cause Court. *Kuarpal v. Bakshi Madan Mohan* (1), and *Kunwar Singh v. Ujagar* (2), relied on. *Deoki Rai v. Harakh Narain Lal* (3), dissented from.

*Section 25, Application No. 1 of 1930, against the order of Babu Shiva Charan, Munsif as Judge of Small Cause Court, Ramsanehighat at Bara Banki, dated the 30th of September, 1929.

(1) (1923) 21 A.L.J., 213.

(2) (1921) 8 O.L.J., 391.

(3) (1926) 24 A.L.J., 1017.

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MUHAMMAD
MIAN
v.
THAKUR
BHARAT
SINGH.

Srivastava,
J.

1930

RAM DAYAL
v.
TIRBENI
alias
TIRLOKI
NATH.

Mr. *Ghulam Imam*, for the applicant.

Messrs. *R. B. Lal* and *Harish Chandra*, for the opposite party.

PULLAN, J. :—This is an application for revision of an order passed by a Court of Small Causes on the ground that the Judge had no jurisdiction to try the case. The plaintiff sued for damages in respect of a portion of a tree which had been cut and removed by the defendant. The defendant pleaded that this portion of the tree had been purchased by him at an auction and that it did not belong to the plaintiff. The question between the parties therefore was a purely civil question. I am asked in revision to hold on the authority of a Bench decision of the Allahabad High Court reported in *Deoki Rai v. Harakh Narain Lal* (1), that the allegations in the plaint amount to a case of theft and therefore I should find that this case is not cognizable by the Small Cause Court under the provisions of Article 35(ii) of the Provincial Small Cause Courts Act. The principle laid down by the Judges of the Allahabad High Court is that “to determine of what nature the suit is we have to see what is sued for, and that brings us to the plaint and there is no need to go any further.” This extreme view is not taken by the other Judges of the Allahabad High Court, for instance, Mr. Justice LINDSAY in the case of *Kuarpal v. Bakshi Madan Mohan* (2), and it is not a view which has ever been expressed as far as I am aware by any Judge of this Court or by the Judicial Commissioners of Oudh. A contrary opinion was expressed by one of the late Judicial Commissioners in a case reported in *Kunwar Singh v. Ujagar* (3). Even however if the judgment to which I have been referred of the Bench of the Allahabad High Court in *Deoki Rai v. Harakh Narain Lal* (1), is to be followed I would not be prepared to say that the present case is removed from the jurisdiction of the Small Cause Court. It is true

(1) (1926) 24 A.L.J., 1017.

(2) (1923) 21 A.L.J., 213.

(3) (1921) 8 O.L.J., 391.

that in clause (4) of the plaint the plaintiff says that "one part of the tree fell down which the defendant with the help of his brother and other persons took away illegally.

Illegally does not necessarily mean criminally and there is nothing in this clause to suggest that the plaintiff wished to imply that the defendant was unable to set up an adverse title. He certainly affirmed that he had not a good title but this may be a title which is not good in civil law and does not imply necessarily that he was committing a criminal offence. The case was fought out between the parties as a civil matter and in my opinion it was a civil matter such as would fall under Chapter IV of the Indian Penal Code (section 79) which runs :—

"Nothing is an offence which is done by any person who by reason of a mistake of fact believes himself to be justified by law in doing it."

We have no reason to suppose that the defendant when he removed this wood was purposely committing an act of theft. Indeed in face of his own defence he cannot properly make such an assertion now and I must suppose that he removed the wood under the impression that he was a *bona fide* purchaser and that he was entitled in law to remove it. Such a case would not have been entertained in a criminal court and I am of opinion that the Small Cause Court had jurisdiction to try and dispose of it. There is no other ground for interference with the decree of the lower court and I dismiss this application with costs.

Application dismissed.

1930

RAM DAYAL

v.

TIRBENI

alias

TIRLOKI

NATH.

Pullan, J.