

both sides with the object of putting an end to a controversy. The arrangement in the present case was neither *bona fide* nor did it put an end to the controversy. It is true that it is not essential that all members of the family need be party to a family settlement. But in the present case the situation was such that Kandhai Singh was a necessary party and there could be no final adjustment of the dispute in his absence.

In *Bhagat v. Madho Prasad* (1) to which one of us was a party it was held that where a document is a record of a family arrangement it is not liable to compulsory registration because it is based upon a recognition of a pre-existing right. In the present case there can be no question of recognition of any pre-existing right, nor does the transaction satisfy the necessary requirements of a family settlement. It cannot therefore be enforced for want of registration. The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice Ziaul Hasan*

BISHESHAR PANDE (APPLICANT) *v.* TIRLOKI PANDE
(OPPOSITE-PARTY)*

1937
April 14

Provincial Small Cause Courts Act (IX of 1887), sections 24 and 35—Suit filed in Small Cause Court—Transfer of Judge—Successor not having Small Cause Court powers to try suit—Munsif trying suit on regular side—Appeal from decree, if lies.

Where a Court of Small Causes ceases to have jurisdiction with respect to a case on account of the presiding officer's transfer and all proceedings in the case are under section 35 of the Provincial Small Cause Courts Act to be taken in the Court of Munsif, which is the Court in which the suit would have been filed

*Section 115 Application No. 120 of 1935, against the order of Babu Maheshwar Prasad Asthana, 2nd Additional Civil Judge of Fyzabad, dated the 17th of July, 1935, confirming the order of Syed Khadim Ali, Munsif of Akbarpur at Fyzabad, dated the 5th of January, 1935.

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on the regular side if brought after the transfer of the Small Cause Court Judge and the Munsif tries the suit on the regular side and not as a Judge of a Court of Small Causes there is no reason why an appeal should not lie against his decree. Section 24 contemplates the transfer of a case from one existing court to any other existing court and not from a court which has ceased to exist. If a Court of Small Causes has ceased to exist or the officer invested with Small Cause Court power has been transferred from the district and there is no other officer possessing such powers, there would be no court from which the District Court can under section 24 transfer a case to an ordinary court. *Bhagwati Pande v. Badri Pande* (1), relied on. *Ram Charan Banwari Lal v. Kishori Lal Ram Sarup* (2), not followed. *Baijoo v. Tulsha* (3), referred to.

Dr. *Qutubuddin Ahmad*, for the applicant.

Mr. *Akhlaque Husain*, for the opposite-party.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is an application for revision of an order of the learned Additional Civil Judge of Fyzabad, dated the 17th of July, 1935.

The suit which has given rise to this application was brought by the plaintiff-applicant on the Small Cause Court side in the court of Mr. Hasan Irshad, Munsif of Akbarpur, for recovery of Rs.205 on foot of a bond. Mr. Hasan Irsad had jurisdiction to try Small Cause Court suits up to Rs.250. The case was fixed for final hearing on the 30th of July, 1934, but before that date, Mr. Hasan Irshad was transferred and was succeeded by Mr. Khadim Ali, whose jurisdiction to try Small Cause Court suits extended up to Rs.100 only. Under orders of the District Judge of Fyzabad, the suit was tried by Mr. Khadim Ali on the regular side and was dismissed. The plaintiff appealed against the decree dismissing his suit but the learned Additional Civil Judge who heard the appeal was of opinion that the decision of Mr. Khadim Ali was final and that no appeal lay against the decree. He therefore dismissed the appeal. Against this order the present application has been filed.

(1) (1931) A.I.R., All., 574.

(2) (1928) I.L.R., 50 All., 810.

(3) (1917) 20 O.C., 350.

It is contended before us that the learned Additional Civil Judge was in error in holding that no appeal lay against the decree of the trial court in this case and we agree with this contention. Section 35(1) of the Provincial Small Cause Courts Act (IX of 1887) lays down that where a Court of Small Causes or a court invested with the jurisdiction of a Court of Small Causes has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after the decree which, if the court had not ceased to have jurisdiction, might have been had therein, may be had in the court which, if the suit out of which the proceeding had arisen were about to be instituted, would have jurisdiction to try the suit. It is clear from this that when the court of Mr. Hasan Irshad ceased to have jurisdiction with respect to the present case on account of that officer's transfer from Akbarpur, all proceedings in the case were under this section to be taken in the court of Mr. Khadim Ali, Munsif, which was the court in which the suit would have been filed on the regular side if brought after the transfer of Mr. Hasan Irshad. Mr. Khadim Ali tried the suit on the regular side and not as a Judge of a Court of Small Causes and there is, therefore, no reason why an appeal should not lie against his decree.

The learned Additional Civil Judge has relied on section 24(4) of the Code of Civil Procedure which provides that the court trying any suit transferred or withdrawn under section 24 from a Court of Small Causes shall for the purposes of such suit be deemed to be a Court of Small Causes, and his reasoning is that as the District Judge transferred this case to the file of the Munsif, the latter's court must be deemed to be a Court of Small Causes for the purposes of the suit; but section 24 contemplates the transfer of a case from one existing court to any other existing court and not from a court which has ceased to exist, as was held in the Full Bench case of *Bhagwati Pande v. Badri*

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Pande (1). It was held in that case that if a Court of Small Causes has ceased to exist or the officer invested with Small Cause Court powers has been transferred from the district and there is no other officer possessing such powers, there would be no court from which the District Court can under section 24 transfer a case to an ordinary court and it was further said that the contingency where no court or officer invested with Small Cause Court powers exists is provided for in section 35 of the Provincial Small Cause Courts Act. We entirely agree with this view and are of opinion that the present case is governed by section 35 of the Provincial Small Cause Courts Act, so that proceedings in the case would automatically be held in the court of Mr. Khadim Ali after the transfer of Mr. Hasan Irshad even though the learned District Judge passed an order of transfer of the case presumably under section 24 of the Code of Civil Procedure.

The learned Judge of the lower appellate court has also relied on the case of *Ram Charan Banwari Lal v. Kishori Lal Ram Sarup* (2). In that case a learned Judge of the Allahabad High Court sitting singly no doubt held that in a case in which during the pendency of a suit before a Subordinate Judge having Small Cause Court powers, the Subordinate Judge was transferred and was replaced by another Subordinate Judge who had no such powers and the suit was transferred by order of the District Judge to a Munsif, section 24(4) of the Code of Civil Procedure was applicable and that no appeal lay from the decision of the Munsif but this case was not followed in the Full Bench case referred to above.

It was also urged that as under clause (b)(ii) of section 24(1) of the Code of Civil Procedure it is necessary that the court to which a suit is transferred for trial should be competent to try the same, the order of the learned District Judge transferring the present suit to the court of the Munsif was illegal and in this connection the

(1) (1931) A.I.R., All., 574.

(2) (1928) I.L.R., 50 All., 810.

learned counsel for the appellant relied on *Baijoo v. Musammatt Tulsha* (1), but this is a point which it is not necessary for us to go into for the purposes of this appeal. It is sufficient for the purposes of this appeal that, as we have said above, section 35 of the Provincial Small Cause Courts Act applies.

We therefore allow this application with costs and setting aside the decree of the lower appellate court remand the appeal to that court for decision on the merits.

Application allowed.

REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith*

JIA LAL (DEFENDANT-APPLICANT) *v.* JAGMOHAN LAL
(PLAINTIFF-OPPOSITE PARTY)*

1937
April 14,

Promissory note—Assignment of pronote made by written deed, validity of—Assignee, if can sue on pronote—Endorsement of transfer on pronote, if essential for its transfer.

A written assignment of a promissory note is valid and under the general law, apart from the Transfer of Property Act, such assignment gives to the assignee the right of suit upon the note. There is no authority to show that assignment of a pronote is not possible except by means of an endorsement. *Palawan v. B. Kanu* (2), relied on. *Parsotam Saran v. Bankey Lal* (3), *Harkishore Barua v. Guru Mian Chowdhry* (4), and *Maung Saw v. Ingraswamy* (5), distinguished.

Mr. G. P. Shukla, for the applicant.

Messrs. H. D. Shandra and Nasir Ullah Beg, for the opposite-party.

SRIVASTAVA, C.J. and SMITH, J.:—This is an application in revision under section 25 of the Provincial Small Cause Courts Act against the decree of the learned Second Additional Judge of the Small Cause Court

*Section 25 Application No. 115 of 1935, against the decree of Pandit Girja Shankar Misra, Second Additional Judge, Small Cause Court, Lucknow, dated the 30th of September, 1935.

(1) (1917) 20 O.C., 350.

(2) (1922) 66 I.C., 501.

(3) (1935) A.I.R., All., 1041.

(4) (1931) A.I.R., Cal., 387.

(5) (1920) 56 I.C., 259.

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