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SURAJ
BAKSHI
SINGH
v.
BALDEO
SINGH

Srivastava,
C. J.
and
Smith J.

of the additional evidence produced by the parties the position as regards the constitution of the village is not fully clear, yet it seems to us that the fact that there is a separate lambardar for each *thok* is a strong circumstance in favour of the *thoks* being treated as mahals. In any case we are quite clear that the appellant has failed to make out any case for each patti being treated as a mahal.

The appeal must therefore fail, and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty

RAM CHARAN (PLAINTIFF-APPELLANT) v. KEDAR NATH
AND OTHERS (DEFENDANTS-RESPONDENTS)*

1937
February, 2

*Civil Procedure Code (Act V of 1908), sections 102 and 115—
Suit of nature cognizable by Court of Small Causes—Provincial Small Causes Courts Act (IX of 1887), section 23—
Small Cause Court erroneously returning plaint under section 23, Small Causes Courts Act—Suit tried on regular side—
Appeal—Second appeal, if lies—Revision, if competent.*

Section 102 of the Code of Civil Procedure clearly lays down that if a suit is of the nature cognizable by Courts of Small Causes and the value of the suit does not exceed Rs.500 no second appeal will lie, although the suit has not been tried in a Small Causes Court and although the Small Causes Court returns the plaint under section 23 of the Provincial Small Causes Courts Act to be presented to another court on the ground that it involves a question of title and is not, therefore, cognizable by that court. Nor can an appeal in such a case be treated as an application for revision under section 115 of the Code of Civil Procedure on the ground that as the trial court had no jurisdiction to try the suit on the regular side,

*Second Civil Appeal No. 236 of 1935, against the decree of Pandit Kishun Lal Kaul, Civil Judge of Sultanpur, dated the 18th of April, 1935, setting aside the decree of Babu Kamta Nath Gupta, Munsif, Sadar, Sultanpur, dated the 5th of January, 1935.

therefore his whole proceedings are vitiated by lack of jurisdiction for the simple reason that it is the nature of the suit and not the court in which the suit is tried that determines the right of second appeal conferred upon a party. *Radha Charan Rai Chaudhry v. Kailash Chandra Pramanik* (1), distinguished. *Narpat Singh v. Jagoo Singh* (2), relied on.

Messrs. *Hargovind Dayal* and *S. N. Srivastava*, for the appellant.

Mr. *Iftikhar Husain*, for the respondents.

NANAVUTTY, J.—This is a plaintiff's appeal against an appellate judgment and decree of the court of the Civil Judge of Sultanpur reversing the judgment and decree of the court of the Munsif of Sultanpur.

At the hearing of this appeal, a preliminary objection has been raised by the learned counsel for the defendants-respondents that no second appeal lies under the provisions of section 102 of the Code of Civil Procedure. Section 102 of the Code of Civil Procedure is as follows:

“No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed Rs.500.”

I have examined the plaint in this suit. The plaintiff Ram Charan sued for the recovery of Rs.59-10 on the allegation that Janki Sah was a cloth dealer at Sultanpur, who died in June, 1931 and that the plaintiff Ram Charan owed him, at the time of his death, Rs.57-6 as the price of cloth purchased from him some time ago, that Janki Sah, by his will, bequeathed all his property to Sri Thakur Ram Janki, that the plaintiff paid Rs.35 to the trustees appointed by Janki Sah under his will, that subsequently one Ram Dularey purporting to be the *mutawalli* of the trust created by Janki Sah sued the plaintiff for the recovery of the price of cloth and that the claim was decreed in full. Upon these allegations, the plaintiff claimed a money decree against the defendants.

(1) (1928) A.I.R., Cal., 776.

(2) (1935) O.W.N., 503.

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Various defences were set up and the learned Munsif framed the following issues:

"1. Did defendants realise the money from the plaintiff representing to him that they were the legal representatives of the late Janki Sah?

2. (a) Did Janki Sah execute a will of his entire property in favour of Sri Thakurji and appoint defendants 3 to 5 and Mahadeo, and Lala Sarju Prasad as managers of the property and guardian of Sri Thakurji?

(b) If so, were defendants entitled to realise the money from the plaintiff?

3. Does the judgment in Small Cause Court suit of the Court of Munsif, Amethi, operate as *res judicata* and create estoppel by judgment between the parties?

4. Has the plaintiff no cause of action as alleged in paragraph 19 of the written statement?

5. To what relief, if any, is the plaintiff entitled?"

The learned Munsif found issue no. 1 in favour of the plaintiff. He found issue 2(a) and 2(b) in favour of the defendant. His finding on issue no. 3 was against the plaintiff. He decided issue no. 4 against the defendant. He accordingly gave the plaintiff a money decree for the amount claimed with costs and future interest at 3 per cent. per annum. The defendants appealed and in appeal the learned Civil Judge of Sultanpur allowed the appeal, set aside the decree passed by the learned Munsif and dismissed the plaintiff's suit with costs.

The plaintiff has, therefore, come up in second appeal.

It is clear from the pleadings set forth in the plaint of the plaintiff-appellant Ram Charan that the suit filed by him was a suit of the nature cognizable by Courts of Small Causes. In fact that suit was originally filed in the Court of the Judge of Small Causes but the Munsif returned the plaint to the plaintiff, under section 23 of the Provincial Small Causes Courts Act to be presented on the regular side. Whether a suit is or is not of the nature cognizable by a Court of Small Causes is to be

determined in the light of the provisions of the Provincial Small Causes Courts Act (IX of 1887). Section 102 of the Code of Civil Procedure clearly lays down that if a suit is of the nature cognizable by Courts of Small causes and the value of the suit does not exceed Rs.500, no second appeal will lie, although the suit has not been tried in a Small Causes Court and although the Small Causes Court returns the plaint under section 23 of the Provincial Small Causes Courts Act to be presented to another court on the ground that it involves a question of title and is not, therefore, cognizable by that court.

The learned counsel for the plaintiff-appellant has argued that under article 35 of the second Schedule of the Provincial Small Causes Courts Act, this suit was not cognizable by the Small Causes Court and was not of the nature of suits cognizable by Courts of Small Causes because in effect the plaintiff's suit, in the present case, was one for compensation for an act which would amount to an offence punishable under section 415 of the Indian Penal Code and that the defendants had really cheated the plaintiff out of his money. There is no force in this contention. There is not a word said in the plaint that the plaintiff claims any compensation or that any offence of cheating or any other offence punishable under the Indian Penal Code was alleged to have been committed by the defendants.

It was further contended on behalf of the plaintiff appellant that even if no second appeal lies, the present appeal may be treated as an application for revision under section 115 of the Code of Civil Procedure and that as the Munsif had no jurisdiction to try this suit on the regular side, therefore his whole proceedings are vitiated by lack of jurisdiction and therefore the decision of the trial court should be reversed and the case should be sent back to a Judge of the Small Causes for disposal in accordance with law. I cannot accept this contention for the simple reason that it is the nature of the suit and not the court in which the suit is tried that

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determines the right of second appeal conferred upon a party. It would be absurd to imagine that after a suit has been fully tried on the regular side, it should be set aside and tried in a summary manner under the provisions of the Provincial Small Causes Courts Act. The learned counsel for the plaintiff-appellant relied upon a ruling reported in *Radha Charan Rai Chaudhry and another v. Kailash Chandra Pramanik and another* (1) where a suit was filed by the judgment-debtor for recovery of the excess amount paid to the decree-holder under fraud and cheating, and it was held that the suit was not of a Small Cause Court nature and second appeal was entertainable. That ruling is, however, not applicable to the facts of the present case where no fraud and cheating have been alleged.

On the other hand, the learned counsel for the defendants-respondents relies upon a ruling of this Court reported in *Narpat Singh v. Jagoo Singh and another* (2), in which it was held that section 102 of the Code of Civil Procedure contemplated a suit of the nature cognizable by a Court of Small Causes irrespective of the fact what defence was put up in the case and that no second appeal lay in a suit for damages for cutting some trees and appropriating the fruit of other trees even though the defence involved a question of title to immovable property.

In my opinion the preliminary objection must prevail and I must hold that no second appeal lies in this case on the facts of the case. The result, therefore, is that this appeal fails and is dismissed with costs.

Appeal dismissed.

(1) (1928) A.I.R., Cal., 776.

(2) (1935) O.W.N., 503.