

Cause Courts Act; and it must be that the Court, when exercising the jurisdiction of a Court of Small Causes which has been vested in it, must necessarily be a Court of Small Causes. If any distinction had been intended it would certainly have been made clear in section 24(4) and some such words "as constituted under the Provincial Small Cause Courts Act" would certainly have been inserted after the words "Court of Small Causes." That there is no distinction is, as I have already said, the view which is now taken by the Courts of Calcutta, Madras, Bombay and Allahabad and in my opinion it is the correct view. The learned Subordinate Judge has, for the contrary view, relied on the case of *Dulal Chandra Deb v. Ram Narain Deb* (1). This decision has, however, been dissented from in the case of *Madhusudan Gope v. Behari Lal Gope* (2), and cannot now be treated as an authority.

In the result then no appeal in my opinion lay against the decision of the Munsif. The Subordinate Judge, therefore, acted without jurisdiction and his decision must be set aside. I would accordingly set aside the decree of the learned Subordinate Judge and would allow this application with costs.

ADAMI, J.—I agree.

Decree set aside.

APPELLATE CIVIL.

Before Coultts and Das, J.J.

TEJ NARAIN SAHU

v.

DAL RAM SAHU.*

1922.

June, 13.

Appeal—parties—decree for joint possession, appeal from—one plaintiff not impleaded as respondent—death of a

* Appeal from Original Decree No. 133 of 1919, from a decision of Babu Amarnath Chatterji, Subordinate Judge of Bhagalpur, dated the 29th May, 1919.

(1) (1904) I. L. R. 31 Cal. 1057. (2) (1918) 27 Cal. L. J. 461.

1922. *respondent—plaintiff who was omitted brought on the record as representative of deceased respondent, effect of.*

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An appeal by the defendant from a decree awarding joint possession of the land in dispute to the plaintiffs is not maintainable unless all the plaintiffs are impleaded as respondents. *Baser Sikh v. Fazle Karim*(1), followed.

Where, in such a case, only four out of the five plaintiffs were impleaded as respondents and on the death of one of them the remaining plaintiff was impleaded as the representative of the deceased respondent, *held*, that the appeal was not maintainable.

Appeal by the defendants, 1st party.

The facts of the case material to this report are stated in the judgment of Courts, J.

S. P. Sen, for the appellants.

Narendra Nath Sen and *Shivnarain Bose*, for the respondents.

COURTS, J.—This appeal arises out of a suit brought by five persons for possession of certain land. They obtained a decree for joint possession in favour of all. The defendants have appealed to this Court but only four plaintiffs have been made respondents and a preliminary objection has been taken that the appeal cannot be heard because the decree was one for joint possession so that even if the appeal were successful it would be infructuous because the plaintiff who was not made a respondent would still be able to execute the decree. In my opinion this contention must succeed and if authority be needed in support of this, I would refer to the case of *Baser Sikh v. Fazle Karim* (1) which followed the previous decisions on the point.

It has been urged, however, by the learned Counsel for the appellants that in the case before us one of the other respondents has died and the plaintiff who was omitted from the category of respondents has been substituted in his place, and consequently the objection

(1) (1914-15) 19 Cal. W. N. 290.

which has been urged has no force. I am unable to accept this contention. In the first place, although this plaintiff is now on the record, he is only on the record as representing the respondent who has died; he is not on the record in his own capacity, and, secondly, he has been brought on the record long after the period of limitation for filing this appeal had expired. Next we have been asked to extend the period of limitation under section 5 of the Limitation Act, but in the first place no application for extension of the period of limitation has been filed although the learned Counsel for the appellants was warned some considerable time ago that if he wishes to ask for an extension of the period of limitation an application should be filed, and, in the second place, there are no grounds for extending the period in this particular case.

In these circumstances it is unnecessary to go into the merits of this case and I would dismiss this appeal with costs.

DAS, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Coutts and Das, J.J.

KAMAL NAIN SINGH

v.

MAHARAJA BAHADUR KESHO PRASAD SINGH.*

Execution of Decree—first application not in accordance with law—subsequent application, whether is in continuation of first application—Limitation Act, 1908 (Act IX of 1908),

1922.

TEJ
NARAIN
SAHU
v.
DAL RAM
SAHU.
COUTTS, J.

1922.

June, 13.

* Appeal from Appellate Order No. 245 of 1921, from an order of H. W. Williams, Esq., District Judge of Shahabad, dated the 23rd September, 1921, confirming an order of Maulavi Salyid Ghalib Hasnain, Subordinate Judge of Arrah, dated the 23rd June, 1921.