

1922.

BANAMALI
DAS,
In the
matter of-

DAWSON
MILLER,
C. J.

severely, I think it is a case in which the pleader through his neglect to carry out the rules, has brought himself into a precarious position and it is a case in which I think he ought to be reprimanded and warned to be more careful in the future.

MULLICK, J.—I agree.

JWALA PRASAD, J.—I agree.

REVISIONAL CIVIL.

Before Coutts and Adami, J.J.

BHAGAWAN DAS

v.

KESHWAR LAL.*

1922.

June, 12.

Code of Civil Procedure, 1908 (Act V of 1908), section 24(4)—Court invested with powers of Small Cause Court, transfer of suit from—Appeal from decision in such suit, whether lies.

No appeal lies from the decision in a suit instituted in a court invested with Small Cause Court powers even though the suit was transferred for trial by the District Judge to, and tried by a court not invested with such powers.

Ramchandra v. Ganesh(1), and *Dalal Chandra Deb v. Ram Narain Deb*(2), not followed.

Sukha v. Raghunath Das(3), followed.

Madhusudan Gope v. Behari Lal Gope(4), *Sankararama Iyer v. R. Padmanabha Iyer*(5) and *Narayan Sitaram Mulay v. Bhagubin Ganga Ghanekar*(6), referred to.

Application by the defendants.

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

* Civil Revision No. 25 of 1921, against a decision of Babu Harihar Charan, Subordinate Judge of Patna, dated the 7th October, 1920, reversing a decision of Babu Krishna Sahay, Munsif of Patna, dated the 31st January, 1920.

(1) (1899) I. L. R. 23 Bom. 382. (4) (1918) 27 Cal. L. J. 461.

(2) (1904) I. L. R. 31 Cal. 1057. (5) (1915) I. L. R. 38 Mad. 25.

(3) (1917) I. L. R. 39 All. 214. (6) (1907) I. L. R. 31 Bom. 314, F.B.

Susil Madhab Mullick and *A. N. Das* (for *B. C. Mitter*), for the appellants.

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Kulwant Sahay and *Bimola Charan Sinha*, for the respondents.

BHAGWAN
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COURTS, J.

COURTS, J.—This application in revision arises out of a suit brought by the petitioner, Bhagwan Das, for the price of cloth and gunny bags, and for damages for non-delivery of grain which he had purchased from the opposite party, Keshwar Lal. The whole claim with interest amounted to Rs. 575. The petitioner obtained a decree in the Court of first instance but on appeal the decision was set aside by the Subordinate Judge and it is in respect of the Subordinate Judge's decision that this application in revision has been made.

We are not concerned in this application with the facts of the case, the only point urged being that no appeal from the decision of the trial Court lay and that the Subordinate Judge's decision is therefore without jurisdiction.

It appears that this suit was originally instituted as a Small Cause Court suit before the Subordinate Judge of the Second Court at Patna who had jurisdiction to try it as a Small Cause Court suit. There was, however, a connected case which had been brought by the defendants in this suit against Bhagwan Das and the District Judge directed that the suit with which we are now concerned should be transferred to the Munsif and be tried along with the connected suit. This was done, both suits were tried by the ordinary procedure and this suit was decided in favour of the petitioner. On appeal this decision was reversed.

What is now contended is that the suit having been once instituted in a Court of Small Causes and having been transferred it remains liable to all the incidents of a Small Cause Court suit and no appeal lies from the decision of the court to which it was transferred. I can find no decision of this Court on the point; but the matter has been considered in the

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High Courts of Allahabad, Madras, Bombay and Calcutta, and in all these courts it has now been decided that in such a case no appeal lies. The question was very fully discussed in the case of *Sukha v. Raghunath Das*⁽¹⁾, and I may also refer to the cases of *Madhusudan Gope v. Behari Lal Gope*⁽²⁾, *Sankararama Iyer v. R. Padmanabha Iyer*⁽³⁾, and *Narayan Sitaram Mulay v. Bhagubin Ganga Ghanekar*⁽⁴⁾. The latter case is not directly in point but the principle therein discussed was the same, and the decision in *Ramchandra v. Ganesh*⁽⁵⁾, which expressed a contrary view was expressly dissented from.

The decision of the matter depends on the interpretation of section 24(4) which runs as follows :

“ The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall for the purposes of such suits be deemed to be a Court of Small Causes.”

The contention of the learned Vakil for the opposite party in that “ Court of Small Causes ” in this section refers only to Courts of Small Causes constituted under the provisions of the Provincial Small Cause Courts Act and does not include courts vested with the jurisdiction of a Court of Small Causes. The words themselves in no way support this contention but it is argued that because section 7 makes a distinction between courts constituted under the Provincial Small Cause Courts Act and courts exercising the jurisdiction of Courts of Small Causes, and as it is not expressly stated in section 24(4) that a Court of Small Causes includes a court exercising the jurisdiction of the Court of Small Causes, therefore, the section must refer only to Courts of Small Causes as defined in the Provincial Small Cause Courts Act. I am unable to accept this contention. A court invested with the jurisdiction of a Court of Small Causes and the same Court when exercising its ordinary jurisdiction are to be deemed different courts under section 33 of the Provincial Small

(1) (1917) I. L. R. 39 All. 214.

(2) (1918) 27 Cal. L. J. 461.

(3) (1915) I. L. R. 38 Mad. 25.

(4) (1907) I. L. R. 31 Bom. 314, F.B.

(5) (1899) I. L. R. 23 Bom. 382.

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 Coutts 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.

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