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strict and that in case of contest they have generally been held valid. There is observable a general tendency among sonless *Sayads* to leave their property to daughters instead of collaterals, and as daughters are excluded from succession by custom, sonless proprietors make wills or gifts in their favour. We therefore are of opinion that the concurrent finding of the Courts below on the question of custom is correct and we dismiss the appeal with costs.

C. H. O.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Zafar Ali.

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Nov. 11.

BHONDU MAL (PLAINTIFF), Appellant

versus

MUHAMMAD AHMAD-MUSHITAQ AHMAD
(DEFENDANTS), Respondents.

Civil Appeal No. 2764 of 1925.

Civil Procedure Code, Act V of 1908, Order XXXVII, rule 1, clause (e) (added by the Lahore High Court)—Suit on negotiable instruments—Summary procedure in—extension of, to District Judge and Sub-Judges, 1st class, of the Delhi Province—Validity of clause—Sections 122, 128—Consistent with “body” of the Code—meaning of.

The Senior Subordinate Judge at Delhi, in dealing with two suits upon *Hundis* instituted in his Court, applied the summary procedure laid down in Order XXXVII of the Civil Procedure Code. He held that he had jurisdiction to do so under clause (e), added to rule 1 of the Order by the Lahore High Court, which clause is to the effect that the Courts of the District Judge and Subordinate Judges of the 1st class of the Delhi Province shall have these powers. It was contended that inasmuch as the Lahore High Court was not mentioned in rule 1 of Order XXXVII, the addition thereto of sub-clause (e) by the Lahore High Court amounted to a

delegation by that High Court of powers which it did not itself possess and was *ultra vires*. This contention was accepted by the District Judge on appeal who thereupon dismissed the plaintiff's suits.

Held, that sub-clause (e), having been added to Order XXXVII, rule 1 in accordance with the procedure laid down in section 122 of the Civil Procedure Code, and not being inconsistent with the provisions contained in the "body" (*i.e.*, in sections 1—158) of the Code, was *intra vires*.

Held also, that even if the procedure of the first Court had been *ultra vires* the District Judge should not have dismissed the plaintiff's suits but should have remanded them to the lower Court for trial by the ordinary procedure for the trial of suits.

Second appeal from the decree of D. Johnstone, Esquire, District Judge, Delhi, dated the 27th July 1925, reversing that of Bhagat Jagun Nath, Senior Subordinate Judge, Delhi, dated the 25th February 1925, and dismissing the claim.

SHAMAIR CHAND, for Appellant.

Nemo, for Respondents.

JUDGMENT.

BROADWAY J.—This and the connected appeal No. 2765 of 1925 have arisen out of two suits instituted by Bhondu Mal against Muhammad Ahmad-Mushtaq Ahmad, both parties being of Delhi. The first suit was for a sum of Rs. 600-13-6 and the second suit for Rs. 1,002-13-6. They were both based on *Hundis* and both the suits were instituted in the Court of the Senior Subordinate Judge at Delhi whose powers are unlimited as to his pecuniary jurisdiction. The defendants, while admitting the execution of the *Hundis*, pleaded an oral agreement to the effect that the parties had arranged that on the due dates only a certain portion of the monies would be paid up, fresh *Hundis* being executed for the balances remaining.

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The learned Senior Subordinate Judge acting under notification No. 225-G., dated the 5th July 1923, by virtue of which clause (e) was added to Order XXXVII, rule 1, proposed to deal with both these cases under Order XXXVII which prescribes a summary procedure for the disposal of suits of this nature. Objection to this was taken by the defendants in both cases. A reference was made by the learned Senior Subordinate Judge to this Court purporting to be under section 113 of the Code of Civil Procedure. This reference was returned by this Court under an order passed by Mr. Justice Harrison who held that it was incompetent. The learned Senior Subordinate Judge thereupon proceeded to examine the question and holding that he was authorised to act under Order XXXVII dealt with both the suits in accordance with the procedure provided by that order. He decided both the suits on the merits against the defendants and decreed the plaintiff's claim in each instance. The defendants thereupon preferred appeals against the decrees in the Court of the learned District Judge before whom all other grounds of appeal were abandoned, the only one pressed being the one attacking the jurisdiction of the learned Senior Subordinate Judge to hear the suits under Order XXXVII. It was contended that despite the fact that the addition referred to above to Order XXXVII, rule 1, had been made by this Court with the sanction of the Governor-General in Council the action of this Court was *ultra vires* inasmuch as it offended against the provisions of sections 122-128 of the Civil Procedure Code. It was urged that inasmuch as this Court had not been mentioned in rule 1 of Order XXXVII as one of the Courts entitled to have resort to that order it was not possible for this

Court to pass a rule which amounted to delegating powers that it did not possess to Courts subordinate to it. These contentions were given effect to by the learned District Judge and both the suits were dismissed.

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The plaintiff has come up to this Court in second appeal against the dismissal of the two suits through Mr. Shamair Chand and it has been contended, firstly, that the rule in question was *intra vires* and, secondly, that in any event, inasmuch as the Senior Subordinate Judge had jurisdiction to try the suits, the learned District Judge should have remanded the case to that Court to be tried under the ordinary procedure for the trial of suits and not have dismissed the plaintiff's claims. There can be no doubt that there is considerable force in the second contention. The learned Senior Subordinate Judge at Delhi certainly had jurisdiction to try these cases under the ordinary procedure. The mere fact that he tried them under a special procedure would not result in the plaintiff's claims being dismissed as they have been. In my judgment, however, the first contention also is correct, and this Court acted *intra vires* in making the rule in question. Order XXXVII of the Civil Procedure Code prescribes a certain procedure to be adopted for the trial of suits and in rule 1 a provision has been made that this special procedure shall only be followed by certain Courts. As originally enacted the Court of the Senior Subordinate Judge at Delhi was not one of the Courts so empowered. Section 121, Civil Procedure Code, lays down that the rules in the first schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this part, *i.e.*, part X. The body of the Code referred to is ob-

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viously composed of sections 1 to 158. Section 122 empowers the High Courts from time to time, after previous publication, to make rules regulating their own procedure and the procedure of Civil Courts subject to their superintendence and may in the exercise of this power annul, alter or add to all or any of the rules in the first schedule. Section 128 provides that any rules made in the exercise of this power shall not be inconsistent with the provisions in the body of this Code, that is to say, the provisions contained in sections 1 to 158 but, subject thereto, may provide for any matters relating to the procedure of Civil Courts and in particular, any matters relating to summary procedure in suits on contract, *vide* sub-clause (f) of section 128. In the exercise of the powers conferred by section 122 this Court added sub-clause (e) to rule 1 of Order XXXVII which was duly published and received the assent of the proper authority and after that was gazetted in a proper manner. That addition is to the effect that the Courts of the District Judge and Subordinate Judges of the first class of the Delhi Province shall have these powers. As I understand the situation, this empowers the Courts named in the new rule to try cases which are within their pecuniary and territorial jurisdictions in accordance with the procedure prescribed in Order XXXVII, rules 2 to 7. The making of this rule does not confer on any of the Courts any pecuniary or territorial jurisdiction but merely recognises the jurisdiction that they already possess and empowers them to follow a certain definite procedure provided for the expeditious disposal of suits coming within their purview. In these circumstances, in my judgment, the view taken by the District Judge is wrong. I hold that the learned Senior Subordinate Judge was entitled to

adopt the procedure he did and inasmuch as the grounds attacking the decision of the trial Court on the merits were definitely abandoned before the learned District Judge I accept both the appeals and grant the plaintiff a decree in each case in the terms of the decree passed by the trial Court. The plaintiff will be entitled to his costs in this Court in both the appeals, and in the Court of the District Judge.

ZAFAR ALI J.—I agree.

N. F. E.

Appeal accepted.

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MISCELLANEOUS CIVIL.

Before Mr. Justice Harrison and Mr. Justice Addison.

HIS HIGHNESS THE MAHARAJA OF FARIDKOT
(PLAINTIFF) Petitioner

versus

ANANT RAM AND OTHERS (DEFENDANTS)
Respondents.

1926

May 28.

Civil Miscellaneous No. 126 of 1925.
(Civil Appeal No. 1919 of 1920.)

Civil Procedure Code, Act V of 1908, Order XLI, rules 20 and 33—Appellate Court—whether competent to implead a party omitted in lower Court's decree—Sections 151 and 152—Inherent power of Court—Whether applicable, when trial Court not moved to rectify the omission.

In execution proceedings by K. and J. objections filed by R. to the attachment of certain property were dismissed, whereupon R. brought the present suit against K. and J. The trial Court dismissed the suit *in toto*, but both in its judgment and in framing the decree omitted all reference to A. N., one of J.'s sons, who, on the death of J., had been impleaded in the suit. R. appealed from this decree, and on the day fixed for the hearing of the appeal, applied to have A. N. added as a respondent.

Held, that it is for the Court which makes such omission and that Court alone to put it right under section 151 of the Code. To hold that an appellate Court could at this stage