

## APPELLATE CIVIL.

*Before Mr. Justice Baguley.*KO PO SET *v.* MA SAW YIN AND OTHERS.\*

1938

Nov. 24.

*Second appeal—Suits of small cause nature—Unclassed suits—Suit for recovery of agricultural rent—Conditions for second appeal—Burma Courts Act, s. 11—Burma Laws Act, s. 13 (1)—Civil Procedure Code, s. 100.*

An appeal under s. 11 of the Burma Courts Act can only be filed when the lower appellate Court has varied the decree otherwise than as to costs. But no appeal will lie unless the suit, whether of a small cause nature or of the nature of an unclassified suit, is of the value of over Rs. 500, or the suit is one which comes under s. 13 (1) of the Burma Laws Act.

A suit for rent of agricultural land is not cognizable by a Court of Small Causes, and if its value does not exceed Rs. 500 a second appeal can only lie on a point of law under s. 100 of the Civil Procedure Code, whether the decree of the trial Court has been confirmed or varied by the lower appellate Court.

*Maung Po Kyun v. Ma Shwe*, I.L.R. 13 Ran. 63<sup>3</sup>, referred to.

*Tun Tin* for the appellant.

BAGULEY, J.—This appeal was originally filed as an appeal under section 100 of the Civil Procedure Code but in the Office it was pointed out that the appeal should have been under section 11 of the Burma Courts Act, so the learned Advocate also agreed and made his appeal under section 11 of the Burma Courts Act.

As a matter of fact, the learned Advocate was correct in the first instance. This appeal arises out of a suit for rent of agricultural land. A suit of this nature is not cognizable by a Court of Small Causes. As was pointed out in *Maung Po Kyun v. Ma Shwe* (1) a second appeal in a case of this nature lies under section 100 of the Civil Procedure Code. An appeal under section 11 of the Burma Courts Act can only be filed when the lower appellate Court has varied the

\* Special Civil 2nd Appeal No. 322 of 1938 from the judgment of the Assistant District Court of Bassein in Civil Appeal No. 36 of 1938.

(1) (1935) I.L.R. 13 Ran. 633.

decree otherwise than as to costs but it is provided that no appeal will lie unless the suit is, if a small cause, of the value of over Rs. 500, and if an unclassified suit like the present one, unless the value of the suit exceeds Rs. 500, or the suit is one which comes under section 13 (1) of the Burma Laws Act. The present case is not one which comes under section 13 (1) of the Burma Laws Act and it is not of a value more than Rs. 500. Therefore no second appeal under section 11 of the Burma Courts Act lies and this case must be treated as an appeal under section 100 of the Civil Procedure Code.

The learned Advocate is therefore confined to an argument on points of law only.

[The points for decision were what the rent agreed upon was and whether the plaintiff had accepted a certain number of baskets of paddy in full satisfaction. The trial Court found in favour of the plaintiff, but the lower appellate Court reversed it on the ground that the trial Court was not justified in brushing aside the evidence produced by the defendant.

His Lordship held that no point of law was involved in the case and dismissed the appeal summarily.]

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