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having an appeal open to him in the event of an unfavourable decision. Were the law clear and explicit, and so expressed as to deprive the person likely to be injuriously affected of these advantages, we should have to apply it; but where a rule is defective, as in this case, we should assume a reasonable and consistent line of thought in the Legislature rather than the contrary in our endeavours to give full effect to its meaning.

For these reasons we set aside the order of the Subordinate Judge, and direct that the award be not filed or be deemed not to have been filed. Costs to be paid by the opponent.

Order set aside.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

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December 3.

KALIA'N-DAYA'L AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* KALIA'N NARER AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Small Cause Court suit—Jurisdiction—Suit for declaration of right to moveable property wrongfully taken—Small Cause Court suit instituted in an ordinary Court, effect of—Second appeal—Civil Procedure Code (Act XIV of 1882), Sec. 586.

Where a suit is brought for property wrongfully taken by the defendant praying for restoration of such property either to the plaintiff directly or to some other person wholly or partly as agent for the plaintiff, it is a "suit for property" within the meaning of the Small Cause Court Act (XI of 1865); and if the property is moveable and of less than Rs. 500 in value, the suit is then a Small Cause.

Accordingly where the plaintiffs, who were co-members with the defendants of a division of a caste, and, as such, tenants-in-common with them of certain cooking vessels of less than rupees five hundred in value, were excluded by the defendants from possession and common use of the vessels, and sought for a declaration that the plaintiffs and the defendants were equally entitled to the use of the said vessels, and for restoration of the same to some third person, who should hold them to the use of the plaintiffs and defendants,

Held that the suit was not a suit for a declaratory decree, but for the recovery of property within the meaning of the Small Cause Court Act (XI of 1865), and, as such, was exclusively triable by a Small Cause Court.

It was contended for the plaintiffs that, though actually a Small Cause, the suit having been instituted and dealt with in the ordinary Civil Court, a second appeal to the High Court would lie.

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Held that no second appeal would lie. A Small Cause is such wherever it is instituted, and the nature of the cause not being variable in any way according to the Court in which it is brought, the circumstance that it has been instituted in an ordinary Civil Court and dealt with there, would not for that reason admit of a second appeal which in such a case is expressly excluded by section 586 of the Code of Civil Procedure (Act XIV of 1882).

The proceedings of the lower Courts were pronounced null, and the plaint directed to be returned for presentation in the proper Court.

THIS was a second appeal from the decision of C. E. G. Crawford, Acting Senior Assistant Judge at Broach, confirming the decree of the Second Class Subordinate Judge at the same place.

The plaintiffs and the defendants were members of the Catchia caste. Some years previous to this suit a dispute arose among the members of the caste, which was in consequence divided into two factions, one of which was called the large division and the other the small division.

Subsequently the members of the large division disagreed, and formed themselves into two sub-divisions. The plaintiffs represented one sub-division and the defendants the other sub-division. This large division was possessed of certain cooking vessels worth about four hundred rupees in value. The plaintiffs now sued the defendants for a declaration that they, as co-members along with the defendants of the large division, were entitled to the use of these cooking vessels. The plaintiffs alleged that, prior to the disagreement, they and the defendants as members of the large division had entered into a written agreement on 11th September, 1876, stipulating that the said vessels should be kept in the custody of the caste priest Jaishanker; that any one who wished to give a caste-dinner should have the use of them, and should return them to the priest; and that any one who should secede from the large division of the caste and join the smaller division should lose all right to the use of the vessels. They alleged that the defendants had separated from the division, and that one of them, having obtained the greater part of the vessels for a caste dinner detained them instead of returning them to the priest, and would not allow the plaintiffs to use them, and that the defendants, since the disagreement, held communication with the smaller division of the caste. The plaintiffs now sought to have it declared that they and the defendants were equally entitled to

the use of the vessels; that, if the defendants joined the other division, they would thereupon lose all right to the vessels; that the vessels should be returned to Jaishanker (the priest), or to another priest Ganpatrám, or to whomsoever the Court might order; that any of the parties requiring the vessels should have them on condition of returning them; and, lastly, that should the defendant, who had detained them, be unable to return them, new vessels to the value of the old vessels, should be ordered to be made at the defendants' cost.

In their written statements the defendants contended that the suit of the plaintiffs was not maintainable under the provisions of Regulation II of 1827. They *(inter alia)* alleged that the Civil Courts had no authority to take away the vessels from the possession of the caste-people; that the plaintiffs had broken the rules of the caste and formed a separate division; that the plaintiffs for that reason were in fault, and, therefore, had no right to the vessels; that the plaintiffs were in possession of Rs. 691 belonging to the caste, of which they failed to give any account; and that there were more members in their sub-division than in that of the plaintiff's, which fact entitled the defendants to retain the vessels. The defendants altogether denied the alleged agreement of 1876, and said that the paper, produced by the plaintiffs containing the signatures of members of the caste affixed to the agreement on stamped paper, was a fabrication.

The Subordinate Judge of Broach dismissed the claim of the plaintiffs with the following remarks:—

"Now it cannot be doubted that the cooking vessels in dispute originally belonged to the members of the large division as it existed before its subdivision into the plaintiffs' and the defendants' factions. The plaintiffs, having been members of that division at one time, might be entitled to a proportionate share of them; but that is not their claim in the present suit. The pots were the property of the large division of the caste, and whoever continues to be in the large division of the caste is entitled to them. If the large division had excommunicated one of the members of the division, the member so excommunicated would cease to have any claim to the property of that division of the caste. The pots being the property of the large division, they continue to be the

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property of the persons who continue to be its members. I must, therefore, first determine who are the members of that division now. The plaintiffs allege that they are the members of that division, while the defendants contend that they are not. Now it does not appear that any regular proceedings were held by the caste at the time of its separation into the plaintiffs' and the defendants' factions. Whoever offended against the rules of the caste have ceased to be its members. I must, therefore, determine what the rules of the caste were, and see the validity of the rules. I must next find out what the guilt of the offending party was, and determine whether the offence was such as to disentitle the transgressing party to the use of the pots. These questions are decidedly caste questions, and I do not think that a Civil Court can try them.

"But the plaintiffs themselves produce an agreement dated 11th September, 1876. The defendants profess to be ignorant of the agreement aforesaid. Considering the evidence adduced in this case, and the vagueness of the defendants' answer, as well as the nature of the agreement, I come to the conclusion that the agreement is proved. This agreement lays down that the pots of the caste are intended for the use of the caste; that whoever secedes from the large division loses all rights to the pots. In order, therefore, to determine whether the plaintiffs are entitled to the vessels in dispute, I must determine whether the plaintiffs have or have not seceded from the caste, and whether they had sufficient reason for so seceding, if they have at all so seceded. It is the caste itself which can say who are its members. But I do not think that a Civil Court can decide such questions.

"Regulation II of 1827, section 21, lays down that 'no interference on the part of the Court in caste questions is warranted beyond the admission and trial of any suit instituted for recovery of damages on account of an alleged injury to the caste and character of the plaintiffs arising from some illegal act or unjustifiable conduct of the other party.' This portion of the regulation is unrepealed, and section 11 of the Civil Procedure Code, Act X of 1877, provides that the Civil Courts shall try all suits of a civil nature, except suits of which their cognizance is barred by any enactment for the time being in force. The explanation to that

section, no doubt, provides that a suit, in which the right to property or to an office is contested, is 'a suit of a civil nature notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies;' but this provision does not directly or indirectly repeal the section of the regulation prohibiting the Civil Court from trying caste questions. * * *

"But, supposing this is not a caste question (though I am of opinion it is), still the plaintiffs ought to have sought the whole relief they were entitled to, and not a part of it (see Specific Relief Act, sec. 42). While seeking for a declaration of title to the pots they ought to have prayed the recovery of the whole, or a portion of the pots, but they have omitted to do so. I, therefore, think that the plaintiffs cannot obtain the relief.

"The plaintiffs next pray that the defendants may be compelled to return the cooking vessels to the caste priest Jaishankar, or to Ganpatrám, or any other person the Court should select. I think the priest was the proper person to sue for such relief. He was in possession of the pots, and he lost them. It was, therefore, his duty to recover them back. He is willing to bring a suit for their recovery, but it is asserted he declined to do so; if he did so, the plaintiffs had their remedy against him; but I do not know what means the Court could have to determine whether Jaishankar, Ganpatram, or any person would be the best and the most desirable man to be entrusted with the religious property of the caste. It would be the duty of the caste to select such person, and not of a Civil Court. On the whole, I am of opinion that the plaintiffs' claim involves a caste question with the determination of which a Civil Court cannot interfere."

The plaintiffs appealed, and the Senior Assistant Judge confirmed the decree of the Court of first instance.

The plaintiffs preferred a second appeal.

Goculdás Káhándás for the appellants.—This is a suit rather on the agreement entered into by the plaintiffs and the defendants than for settlement of a caste dispute. This suit is not a small cause suit, in so far as it does not seek to recover possession of moveable property. It is for a declaration of right to property

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and for an injunction. A suit to obtain a declaration is not cognizable by a Small Cause Court—*Ilahi Baksh* v. *Sita*[1]; *Akbár Alí* v. *Jezuddin*[2]. Where the suit is for declaration of right, as here, to moveable property, the suit is not to be treated as cognizable by a Small Cause Court; where it is for mere possession of moveable property, it is a small cause suit proper—*Jethábhái* v. *Bái Lakhu*[3]; *Rám Gopál Sháh* v. *Rám Gopál Sháh*[4]; *Rám Dhun Biswas* v. *Kefal Biswas*[5]; *Shiboo Núráin Singh* v. *Mudden Ally*[6]. The suit having been brought in the ordinary Court, though there was a Small Cause Court at Broach, a second appeal does lie—*Dyebukee Nundun* v. *Mudhoo Mutty*[7].

Nágindás Tulsidás for the respondents.—A second appeal does not lie. The suit is not for declaration of right to moveable property, but is substantially for recovery of possession of moveable property. The case of *Nathu Ganesh* v. *Kálidás Umed*[8] is in point here. The Calcutta cases cited for the appellants go upon the principle that where the object of the suit is a declaration of right to moveable property of third persons other than the parties to the suit, the suit is not a small cause suit. The circumstance that the suit was brought in a wrong Court, does not change its nature—*Musa Miya* v. *Sayad Gulám*[9].

WEST, J.—The position of the plaintiffs in this case, expressed in terms of the English law, appears to be that they, as co-members of a division of a caste along with the defendants, and, as such, tenants in common with them of certain cooking vessels, are excluded by the defendants from a co-possession and common use of those vessels. They seek, therefore, to have the vessels given over by the defendants to a person who should hold them to the use of the plaintiffs as well as of the defendants. As auxiliary to this aim of their suit, the plaintiffs no doubt seek to establish their title against the exclusive user assumed, as they say, by the defendants, and on this it has been contended that the suit is one for a declaratory decree, or for that coupled

(1) I. L. R., 5 All., 462.
(2) I. L. R., 8 Calc., 399.
(3) 6 Bom. H. C. Rep., A. C. J., 27.
(4) 9 Calc. W. R., 136.
(5) 10 Calc. W. R., 141.
(6) I. L. R., 7 Calc., 608.
(7) I. L. R., 1 Calc., 123.
(8) I. L. R., 2 Bom., 365.
(9) Printed Judgments for 1882, p. 240.

with an injunction. It is not more a suit for a declaration, however, than every suit is one as asserting a right which the Court has to recognize and declare as a basis for the relief claimed in virtue of an alleged infringement of the right. Where possession has been wrongfully taken, and the suit is for restoration, either to the plaintiff directly, or to some one wholly or partly as agent for him, it is a suit for property within the meaning of the Small Cause Court Act. If the property is moveable and of less than Rs. 500 in value, the suit is then a small cause, and such, we think, is the character of the suit in this case.

It was urged, on the authority of *Dyebukee Nundun Sen* v. *Mudhoo Mutty Goopta*(1), that though actually a "small cause" the present suit having been instituted and dealth with in the ordinary Court, that circumstance involved the consequence that a second appeal would lie. But the case in this Court—*Musa Miya Sáheb* v. *Sayad Gulám Husein Mahamad*(2)—ruled that the nature of the cause is not variable in any way according to the Court in which it is brought. A small cause is such wherever instituted, and a second appeal in such a cause is excluded by section 586, Code of Civil Procedure. No second appeal, therefore, lies in this case, and the one before us must be dismissed. But it appears also that as there is a Small Cause Court at Broach, when the suit was instituted, the ordinary Courts had not, in fact, jurisdiction, and we must pronounce their proceedings null throughout. The costs of each party in all the Courts are to be paid by himself.

Plaint to be returned for presentation in Small Cause Court.

Appeal dismissed.

(1) I. L. R., 1 Calc., 123. (2) Printed Judgments for 1882, p. 240.