

as they have shown, should not, I think, be a rejection of the plaint when they are now, as they say, in a position to fully carry out the order of the Court. The Judge's summons, therefore, must be made absolute, but as it has been necessitated by the default of the plaintiffs, and the defendants are not in any way in the wrong, the plaintiffs must pay the defendant's costs of the summons, and I must certify for counsel.

Attorneys for plaintiffs:—Messrs. *Roughton and Byrne*.

Attorneys for the defendants:—Messrs. *Ardesir, Hormasji and Dinsha*.

1891.

BHAGWAN-
DAS
BAGLA
v.
HA'JI ABU
AHMED.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Parsons.

BHAGVANTRA'O, (ORIGINAL PLAINTIFF), APPLICANT, v. GANPATRA'O
(ORIGINAL DEFENDANT), OPPONENT.*

1891.

June 19.

Jurisdiction—Small Cause Court (Provincial)—Act IX of 1887, Cl. 38, Sch. II—Suit for arrears of maintenance due under a bond or agreement—Maintenance.

A suit for arrears of maintenance due under a bond or agreement is not cognizable by a Provincial Court of Small Causes under clause 38 of Schedule II of Act IX of 1887.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The applicant was a Hindu widow. She sued to recover Rs. 80 from defendant on account of arrears of maintenance due under an agreement executed by the defendant in her favour on 16th June, 1887. The defendant being a sardár, the suit was filed in the Agent's Court for Sardárs in the Deccan.

The Agent returned the plaint for presentation to the proper Court, holding that he had no jurisdiction to take cognizance of the suit.

Thereupon the plaint was filed in the Court of Small Causes at Poona. That Court held that under clause 38 of Schedule II of Act IX of 1887 a suit for maintenance would not lie in a Mofussil Court of Small Causes. The plaint was, therefore, returned.

*Application under Extraordinary Jurisdiction, No. 216 of 1890.

1891.

BHAGVANT-
RÁO
v.
GANPATRÁO.

Against this order the plaintiff applied to the High Court under its Revisional Jurisdiction.

A rule *nisi* was issued to the defendant, calling upon him to show cause why the Court of Small Causes should not be directed to entertain the suit.

Shivráo v. Bhandárkar for applicant.

N. G. Chandávarkar for opponent.

JARDINE, J. :—It appears to me that the Legislature being aware of the distinctions drawn by the High Courts as to what suits relating to maintenance might or might not have been brought in a Court of Small Causes under Act XI of 1865—see *Siddlingápa v. Sidáva* ⁽¹⁾, *Nurbibi v. Husen Lál* ⁽²⁾, *Amritomoye Dasia v. Bhogiruth Chundra* — has in clause 38 of the Second Schedule of Act IX of 1887 used language wide enough to exclude from the jurisdiction of Courts of Small Causes any suit relating to maintenance, including the present suit. I would, therefore, set aside the order of the Agent for Sardárs in the Deccan and direct him to receive the plaint. Costs to be costs in the cause.

PARSONS, J. :—I concur. The intention of the Legislature was to exclude from the jurisdiction of Courts of Small Causes suits for maintenance claimed on a special bond or other contract, which suits were cognizable by a Court of Small Causes at the time at which the Bill was introduced. (See paragraph 11 of the Statement of Objects and Reasons published at page 9 of Part V of the *Gazette of India* of the 2nd January, 1886). The language of the Act fully carries out this intention. The reference in the head note of the case of *Komu v. Krishna* ⁽³⁾ is misleading. That case was decided under the law in force before Act IX of 1887, as is clear from the date of the suit given in the report, and is, therefore no authority on the point.

Rule made absolute.

(1) I. L. R., 2 Bom., 624.

(2) I. L. R., 7 Bom., 537.

(3) I. L. R., 15 Cal., 164.

(4) I. L. R., 11 Mad., p. 134.