

between the plaintiff and the defendant and the suit brought by the plaintiff on the aforesaid bonds and khata was referred to arbitration without the intervention of the Court and an award was made.

1891.

RÁMCHANDRA
HARI
c.
BÁRU.

The plaintiff and the defendant applied to have the award filed in Court. The Subordinate Judge doubting whether it could be filed without a succession certificate under Act VII of 1889 submitted the following question to the High Court:—

“ Shall the award in this case be filed without a succession certificate under Act VII of 1889 ? ”

The opinion of the Subordinate Judge was that a succession certificate was not necessary.

There was no appearance for the parties in the High Court.

SARGENT, C. J.—There is nothing in Act VII of 1889 to prevent the award in the present case being filed.

Order accordingly.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Parsons.

VA'SUDEV RA'MCHANDRA (ORIGINAL PLAINTIFF), APPELLANT, c.
BHAVAN JIVRA'J (ORIGINAL DEFENDANT), RESPONDENT.*

1891.

May 5.

Appeal—Appeal on the question of costs—Costs—Practice—Procedure.

The plaintiff sued for possession of certain land in the Court of a Subordinate Judge of the second class. The Subordinate Judge returned the plaint for want of jurisdiction and ordered the plaintiff to pay a separate set of costs to each of the defendants. The plaintiff appealed to the District Judge on the grounds first, that the Subordinate Judge had jurisdiction to entertain the plaint; and secondly, that the order as to costs was improper. At the hearing of the appeal the plaintiff's pleader abandoned the point of jurisdiction. Thereupon the District Judge held that the appeal would not lie simply on the question of costs. He therefore confirmed the Subordinate Judge's order.

Held that the District Judge had jurisdiction to hear the appeal on the question of costs.

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

The applicant filed a suit in the Court of the Second Class Subordinate Judge at Bhivdi to recover possession of certain property mortgaged to him. The property was valued in the plaint

* Application under Extraordinary Jurisdiction, No. 30 of 1891.

1891.

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RÁJ.

at Rs. 4,994-9-1. After the settlement of the issues the plaintiff's pleader admitted that the property was worth Rs. 5,019-9-1.

Thereupon the Subordinate Judge held that he had no jurisdiction to try the suit, and returned the plaint for presentation to the proper Court. He ordered the plaintiff to pay a separate and full set of costs to each of the defendants.

The plaintiff appealed to the District Judge on two grounds: (1) that the Subordinate Judge was wrong in returning the plaint, and (2) that the order for costs was improper.

At the hearing of the appeal the plaintiff's pleader abandoned the first ground of the appeal. Thereupon the defendants objected to the appeal being heard on the question of costs alone. The District Judge allowed this objection, and dismissed the appeal.

Against this decision the plaintiff applied to the High Court under its revisional jurisdiction. A rule *nisi* was issued, calling upon the defendants to show cause why the District Judge should not be directed to hear the appeal on the merits.

Máncksha Jaháughirsha for the applicant.

Ghanashám Nilkanth for the opponent.

JARDINE, J.—It is admitted that the order of the Subordinate Judge returning the plaint to be presented to the proper Court was appealable under clause 6 of section 588 of the Code of Civil Procedure. The appeal contained two points: one objecting to the legality of the Subordinate Judge's order returning the plaint the other objecting to the manner in which he had allowed costs, The first point being abandoned at the hearing of the appeal, the District Judge held that he had no power to hear the appeal so far as it related to the question of costs. In thus declining jurisdiction, he was, in our opinion, wrong—see *Desaji v. Bharanidas*⁽¹⁾; *Balkissen Dass v. Luchmееput Singh*⁽²⁾; *Bunwari Lall v Chowdhry Drup Nath Singh*⁽³⁾; *Moshingan v. Mozari Sajad*⁽⁴⁾; *Ghirdhari Lal Roy v. Sunder Bibi*⁽⁵⁾. We, therefore, reverse his order and direct him to hear the appeal. Costs to abide the result.

Order reversed and case remanded.

(1) 8 Bom. H. C. Rep., 100, A. C. J.

(2) *Ibid.*, 12 Calc., 179.

(3) I. L. R., 8 Calc., 91

(4) *Ibid.*, 271.

(5) B. L. R., Sup. Vol., F. B., p. 496.