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plaintiff." In other words, they are facts which, by section 11 of the Evidence Act, are relevant, because they make the existence of a fact in issue highly probable. The same principle requires that the fact of common ownership in other parts of the lane should be treated as relevant to the issue as to the common character of the entire lane. We also think that the District Judge was wrong in entirely discarding the evidence of Exhibit 24 as to the user of the lane. Upon the whole, as we think that the District Judge has altogether omitted to consider important evidence in the case in its bearing on the general character of the lane, we ought not to accept his finding on issue 3, and must, therefore, reverse the decree as regards defendants 2, 3, 4 and 5 and send the case back for a fresh decision with due regard to the above remarks. Costs to abide the result.

Decree reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

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SHIDU (ORIGINAL DEFENDANT), APPELLANT v. GANESH NA'RA'YAN (ORIGINAL PLAINTIFF), RESPONDENT.*

The Dekkhan Agriculturists' Relief Act (XVII of 1879), Sec. 3 (3), *clause (x)—Suit to recover rent—Question of title incidentally decided—Analogy with the decisions under the Small Cause Courts' Acts—Appeal to the District Court—Revision by the Special Judge.*

In a suit to recover a sum of Rs. 30 as rent under section 3 (3), clause (x) of the Dekkhan Agriculturists' Relief Act (XVII of 1879), a Second Class Subordinate Judge incidentally determined the question of the plaintiff's title to the land for which the rent was claimed. The point then arose as to whether the decision of the suit by the Subordinate Judge could be appealed against, or whether it was open to revision by the Special Judge under section 50 of the Act.

Held that although a question of title was incidentally raised and decided in the case, still by analogy with the decisions under the several Small Cause Courts Acts, the suit as brought was one properly falling under clause (x) of section 3 (3) of the Dekkhan Agriculturists' Relief Act (XVII of 1879), and that no appeal lay to the District Court from the decree of the Subordinate Judge who decided the suit.

THIS was a reference made by Ráo Bahádur Jayasatya Bodhráv Tirmalrâv, First Class Subordinate Judge with Appellate

* Civil Reference, No. 6 of 1891.

Powers at Sátára, under section 54 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The plaintiff sought to recover from the defendant Rs. 29 for two years' rent, local cess and interest on account of a certain piece of land. In support of his claim the plaintiff relied upon his title as a mirásdár of the land.

The defendant denied his liability to pay rent and disputed the plaintiff's title as mirásdár to recover it.

The Second Class Subordinate Judge (Ráo Sáheb Dámodar Váman Bhat) allowed the plaintiff's claim.

Against the decree of the Subordinate Judge, the defendant presented an application for revision under section 50 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) to the Special Judge (Ráo Bahádur Máhádeo Govind Ránade), who returned the application, being of opinion that he had no jurisdiction to entertain it as the Subordinate Judge had determined a question of title and that the defendant's remedy was by appeal to the District Court.

The defendant, thereupon, appealed to the District Court (First Class Subordinate Judge with appellate powers) at Sátára, but at the hearing it was contended for the plaintiff that no appeal lay and that the District Court had no jurisdiction to entertain the appeal on the following grounds:—

(1). It was argued that the suit was governed by clause x, section 3 (3) of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

(2). That the amount of the claim being less than Rs. 100, the decision of the Subordinate Judge was final under section 10 of the said Act, and that his decision was only open to revision by the Special Judge under section 50. The mere fact that a question of title was incidentally decided did not oust the jurisdiction of the Special Judge to revise the lower Court's decision.

The First Class Subordinate Judge (A. P.) referred the question to the High Court. He observed:—

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"I consider the respondent's objection in bar of this appeal is a graver one. If the Court trying a case like the present has power to dispose of it finally, it has also power to decide any question of title arising therein incidentally. Authorities for this proposition may be found in the rulings of the Bombay High Court on suits of Small Cause nature which are deemed to be analogous to the cases falling under Chapter II of the Dekkhan Agriculturists' Relief Act (XVII of 1879); *Jamna* v. *Hulia*[1] *Balvant Rámchandra* v. *Bhikáji Jeváji* [2], *Bábáji Bápuji* v. *Dinkar Abáji*[3], *Nemchand* v. *Vakkatchand*[4], *Dáji Pandurang* v. *Jayarám Pándurang*[5], *Raghunáth* v. *Janárdan*[6], *Bápuji Raghunath* v. *Kuvarji Edulji*[7]. In a case where it was found inconvenient to enter into the question of title, the High Court permitted the plaintiff to withdraw the suit with liberty to bring fresh suit for declaration of plaintiff's title to the relief claimed—*Govind A'ba* v. *Som Sávant* [8]. Where the effect of such a decision in a Small Cause case was to affect the parties permanently, the High Court treated the decision as *ultra vires* and exercised its extraordinary jurisdiction to set it aside—*Bái Aval* v. *Narotam*[9]. Where it is an inconvenience to the defendant that the question of title should be raised in successive actions for damages, it is in his power, if he wishes to obtain a binding decision on the question of title, to sue for a declaratory decree in the civil Court—*Raghunáth* v. *Janárdan*[10].

"Where, in a case for damages only, the lower Court decided an incidental question of title which arose therein, but where the appellate Court declined to give any finding on the question, the High Court held that the procedure of the lower appellate Court was erroneous—*Yessu* v. *Ganesh* [11], *Bhagavant* v. *Rango*[12]. The result of all these decisions is to establish that the question of title may be gone into in any case, where necessary; but the finding upon that point would not be deemed conclusive where a

(1) P. J., 1873, p. 170.
(2) P. J., 1873, No. 86.
(3) P. J., 1873, No. 91.
(4) P. J., 1873, p. 37.
(5) P. J., 1886, p. 34.
(6) P. J., 1872, No. 173.
(7) I. L. R., 15 Bom., 400.
(8) P. J., 1873, No. 42.
(9) P. J., 1873, No. 90.
(10) P. J., 1872, p. 173.
(11) P. J., 1890, p. 325.
(12) P. J., 1[illegible], p. 30.

decision on title was not sought for by the form of the suit, or where such decisions could not be pronounced by the Court by the character of the procedure resorted to by the parties, or prescribed by the Legislature therefor, or where the decisions would be beyond the power of the Courts trying the cases to pass—*Bápuji Raghunáth* v. *Kuvarji Edulji*[1]. So a Small Cause Court may incidentally go into a question of title, but by so doing its decision in that case does not get the character of a decision passed in a case founded on title and to make it appealable to the District Court. The jurisdiction of the Court of appeal or that of revision depends in my opinion on the form in which the case was originally brought and not upon the determination or non-determination by the lower Court of an incidental question of title. In the present case the suit was brought under clause (*x*) of section 3 (3) and was entertained by the lower Court, and, therefore, no appeal can lie to the District Court, but the decision is only subject to revision by the Special Judge under section 50 of the Act—*Tulsidás* v. *Virbussápa*[2], *Káshirám* v. *Hiránand*[3].

The following question was submitted to the High Court:—

"Where in a suit to recover rent of land, *viz.*, Rs. 30, falling under section 3 (3), clause (*x*), and filed in a Second Class Subordinate Judge's Court, the Subordinate Judge has entered upon and passed a decision upon a question of the plaintiff's title to the land of which rents were claimed, whether an appeal against his decision lay to the District Court or his decision is open to revision under section 50 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) by the Special Judge."

The opinion of the First Class Subordinate Judge was that the decision on the question of title did not make the case appealable to the District Court, but that it was open to revision by the Special Judge.

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

SARGENT, C. J.:—Although a question of title was incidentally raised in this case and decided, we concur with the First Class

(1) I. L. R., 15 Bom., 400. (2) I. L. R., 4 Bom., 624.
(3) I. L. R., 15 Bom., 30.

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Subordinate Judge, A. P., in thinking that, by analogy with the decisions under the several Small Cause Courts' Acts, the suit, as brought, is one properly falling under clause (x) of section 3 (3) of the Dekkhan Agriculturists' Relief Act, 1879, and that no appeal lies to the District Court from the decree of the Subordinate Judge who decided the suit.

Order accordingly.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

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VENKATRA'MA'NA RA'MBHAT AND OTHERS, (PLAINTIFFS) v. TIMAPPA DEVA'PPA, (DEFENDANT).*

Lunacy—Defendant a lunatic but not adjudicated a lunatic—Code of Civil Procedure (Act XIV of 1882), Secs. 443 and 463—Act XXXV of 1858—Practice—Procedure—Appointment of a guardian ad litem by the Court.

Although section 443 of the Code of Civil Procedure (Act XIV of 1882) read with section 463 does not oblige a Court to appoint a guardian *ad litem* for a defendant of unsound mind, except where he has been adjudged to be of unsound mind under Act XXXV of 1858; still upon general principles and in conformity with the practice of the Court of Chancery, the Court should assign a guardian *ad litem* for the defendant if it finds, on inquiry, that he is of unsound mind so as to be unfit to defend the suit.

THIS was a reference made by Ráo Sáheb N. B. Muzumdár, Subordinate Judge of Kumta in the Kánara District, under section 617 of the Code of Civil Procedure (Act XIV of 1882).

The reference was as follows:—

"Original Suit No. 516 of 1887 was dismissed for the plaintiffs' default on 8th October 1889. Miscellaneous application, No. 109 of 1889, was then brought by the plaintiffs under section 103 of the Civil Procedure Code, praying that the suit might be re-admitted to the file. Notice of this application was sent to the defendant and he appeared. But he does not seem to be of sound mind. At any rate he is not able to understand the proceedings. That the man does not feign lunacy, but has been in the same state for some years, appears from the deposition of the Government pleader of this Court.

* Civil Reference, No. 4 of 1881.