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were a dhárekari, and has held him liable to pay the rent that an occupaney tenant is liable to pay. It is not within our power to go behind that later decision or to inquire into the validity of the reasons which induced the Collector to exercise his jurisdiction. It is an entry duly made under section 17, and we must accept it as final and conclusive evidence of the liability established thereby.

We reverse the decrees of the lower Courts and award the claim with costs throughout.

*Decree reversed.*

## APPELLATE CIVIL.

*Before Chief Justice Farran and Mr. Justice Parsons.*

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*November 25.*

NA'RA'YAN BHIA'SKAR KHOT (ORIGINAL PLAINTIFF No. 1), APPELLANT,  
v. BA'LA'JI BA'PUJI KHOT (ORIGINAL DEFENDANT), RESPONDENT.\*

*Small Cause Court suit—Second appeal—Civil Procedure Code (Act XIV of 1882), Sec. 586—Suit to recover a certain sum on account of a share in property—Amount to be found due on taking account—Title.*

Plaintiffs sued to recover, on account of their share in the produce of certain *dhára* and *khoti* properties, Rs. 339-14-2 or any other sum which might be found due to them on taking account from the defendant, who was the managing khot. The defendant denied the plaintiffs' right to the produce of some of the properties. The first Court and the Court of appeal found that the amount due to plaintiffs was Rs. 72-14-11. On second appeal,

*Held* that the suit was a Small Cause Court suit, and no second appeal lay. The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature.

SECOND appeal from the decision of T. Walker, Assistant Judge of Ratnágiri, confirming the decree of Ráo Sáheb K. S. Pátankar, Subordinate Judge of Dápoli.

The plaintiffs sued to recover Rs. 339-14-2 as their one-twelfth share in certain *dhára* and *khoti* properties, or any other sum which might be found due to them from the defendant, who was the managing khot, on taking accounts between them.

\* Second Appeal, No. 213 of 1894.

The defendant denied the plaintiffs' claim in respect of some of the properties.

The Subordinate Judge passed a decree for the plaintiffs for Rs. 72-14-11, and on appeal by plaintiff No. 1 the Judge confirmed the decree. Plaintiff No. 1 preferred a second appeal.

*Gokuldás K. Párekh* (with *Gangdrám B. Rele*) for the respondent (defendant) took a preliminary objection:—This is a small cause suit in which no second appeal is allowed—section 586 of the Civil Procedure Code (Act XIV of 1882); *Dámodar Gopál Dikshit v. Chintáman Bálkrishna* <sup>(1)</sup>.

*Dáji A. Khare* for the appellant (plaintiff No. 1).—This is a suit for account. There is a distinct prayer to that effect in the plaint. There are also questions of title in the suit. We claim a share in the profits of immoveable property, and the defendants have denied our title to those properties. Therefore section 23 and article 31 of Schedule II of the Provincial Small Cause Courts Act (IX of 1887) are applicable, and the suit is not a small cause suit. In *Dámodar Gopál Dikshit v. Chintáman Bálkrishna* <sup>(1)</sup> no account was asked for.

*Gokuldás K. Párekh*, in reply:—In a small cause suit the question of title can be incidentally gone into. In calculating profits the Court has to make accounts, but that circumstance would not make section 23 or article 31 of the Provincial Small Cause Courts Act applicable.

FARRAN, C. J.:—The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. That has been determined in a long series of decisions. Section 23 of the Small Cause Courts Act, 1887, does not alter the law upon this subject, but points out a course which a Small Cause Court Judge may adopt when he considers that he cannot conveniently try such a question as is there indicated in his Small Cause Court jurisdiction. See *Muttukuruppan v. Sellan* <sup>(2)</sup>. It can have no application when a case is filed in the Court of a Subordinate Judge not invested with the jurisdiction of a Court of Small Causes.

(1) I. L. R., 17 Bom., 42.

(2) I. L. M., 15 Mad., 98.

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We must, therefore, consider whether this, as a suit for an account, is excepted from the jurisdiction of the Small Causes Court. This question is determined by authority. We cannot distinguish the present case from *Dámodar Gopál Dikshit v. Chintáman Báلكrishna*<sup>(1)</sup>. Here, as there, the profits sought are not alleged to have been wrongfully received. By merely asking, in the alternative, for an account of the profits the plaintiff cannot convert a suit cognizable by a Court of Small Causes into one of a different nature. There is no account within the meaning of article 31, Schedule II, of the Small Cause Courts Act here to be taken. A definite sum only is to be ascertained, *viz.*, the amount of profits received by defendant during the years in question, from which by a simple calculation what the plaintiff's share in those profits amounts to can be ascertained. No second appeal lies under section 586 of the Civil Procedure Code.

We, therefore, reject the appeal with costs.

*Appeal rejectea.*

(1) I. L. R., 17 Bom., 42.

## APPELLATE CIVIL.

*Before Chief Justice Farran and Mr. Justice Parsons.*

1895.  
*November 25.*

THE POONA CITY MUNICIPALITY (ORIGINAL DEFENDANT), APPLICANT,  
v. RA'MJI RAGHUNA'TH (ORIGINAL PLAINTIFF), OPPONENT.\*

*Small Cause Court—Provincial Small Cause Courts Act (IX of 1887), Sec. 25—  
Jurisdiction of the High Court.*

An error of law or procedure in the Small Cause Court confers jurisdiction upon the High Court to exercise the power committed by section 25 of the Provincial Small Cause Courts Act (IX of 1887).

The powers conferred by the section are, however, purely discretionary, and the section does not give a right of appeal in all Small Cause Court cases either on law or on fact. The High Court is to determine in what cases it shall exercise the powers conferred upon it.

It is not the practice of the Bombay High Court to interfere under section 25 of the Act when there are no substantial merits in the case of the applicant. It interferes to remedy injustice. It is slow to interfere where substantial justice has been done by the Subordinate Court, although that Court may technically have erred.

\* Application No. 168 of 1895 under the extraordinary jurisdiction.