

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.\**

1903.  
November 17.

SAMBHU DHANAJI (ORIGINAL DEFENDANT), APPELLANT, *v.* RAM  
VITHU SARANG (ORIGINAL PLAINTIFF), OPPONENT.\*

*Provincial Small Cause Courts' Act (IX of 1887), section 32 (2)—Small  
Cause Suit—Jurisdiction extended pending suit—Appeal.*

A suit to recover Rs. 81-4 was filed in the Court of a Subordinate Judge who was at the time invested with the jurisdiction of a Court of Small Causes to the extent of Rs. 50. Later the jurisdiction of the Subordinate Judge as a Court of Small Causes was raised to Rs. 100 and subsequently to this the suit was decided by him as a regular suit and the claim was allowed. On appeal by the defendant the District Judge held that no appeal lay on the ground that the suit was triable and must be taken to have been tried by the Subordinate Judge in the extended jurisdiction vested in him as a Judge of the Court of Small Causes :—

*Held*, on an application by the defendant under section 622 of the Civil Procedure Code (Act XIV of 1882) that the appeal lay to the District Judge. Under section 32 (2) of the Provincial Small Cause Courts' Act (IX of 1887), it was necessary that the Judge should before the institution of the suit be invested with a Small Cause Court jurisdiction entitling him to hear the particular suit.

*Hari Kanayya v. Hari Venkayya*<sup>(1)</sup> followed. *Balchand v. Balaram*<sup>(2)</sup> explained.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of H. Page, Acting District Judge of Ratnágiri, dismissing an appeal against the decree of N. B. Mujumdar, Subordinate Judge of Devgad.

The plaintiff, on the 13th August 1901, sued to recover from the defendant Rs. 81-4 due upon a bond. The defendant contended that the bond was forged and denied his liability to pay the debt. The Subordinate Judge found that the bond was proved and allowed the claim on the 18th March 1902.

On appeal by the defendant, the plaintiff raised a preliminary objection urging that the decree of the Subordinate Judge was not appealable on the ground that the suit was one in the nature of a Small Cause Court suit. Though the Subordinate Judge was, when the suit was filed, invested with small cause jurisdiction

\* Application No. 159 of 1903 under the Extraordinary Jurisdiction.

(1) (1903) 26 Mad. 212.

(2) (1903) 5 Bom. L. R. 398.

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to the extent of Rs. 50, still as his small cause jurisdiction was extended to Rs. 100 in October 1901, that is, before the decree, and the suit being for the recovery of Rs. 81-4 only, it fell within the small cause jurisdiction of the Subordinate Judge notwithstanding that it was tried as a regular suit. The defendant answered that though the suit was in the nature of a small cause suit, still regard must be had to the pecuniary jurisdiction of the Judge at the time when the suit was filed. The Subordinate Judge was, at the time of the filing of the suit, invested with small cause jurisdiction to try claims up to Rs. 50 only, while the claim in the present case being above Rs. 50, the Subordinate Judge tried it as a regular suit and not as small cause one. The decree was, therefore, appealable. The Judge allowed the plaintiff's contention and held that no appeal lay.

The defendant preferred an application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) urging *inter alia* that the Judge erred in holding that the decree of the first Court was not appealable. A *rule nisi* having been issued requiring the plaintiff to show cause why the order of the Judge should not be set aside;

*V. M. Mone* appeared for the applicant (defendant) in support of the rule:—The first Court was not invested with small cause jurisdiction up to Rs. 100 when the suit was filed. It was invested with jurisdiction to that extent after the commencement of the proceedings. We, therefore, submit that the provisions of section 32 (2) of the Provincial Small Cause Courts' Act are applicable. The suit was taken up by the Court in the exercise of its ordinary jurisdiction and the nature of the suit did not change simply because the Court's small cause jurisdiction was extended before the date of the decree. The Judge in appeal has not given effect to section 32 (2).

[JENKINS, C. J.:—The ruling in *Hari Kamayya v. Hari Venkayya*<sup>(1)</sup> supports your contention.]

*N. V. Gokhale* appeared for the opponent (plaintiff) to show cause:—Under section 32 (2) of the Provincial Small Cause

(1) (1903) 26 Mad. 212.

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Courts' Act it is enough if a Court is already invested with the jurisdiction of a Court of small causes at the time of the institution of a suit. The present suit is a suit of small cause nature and it was decided by a Court having the jurisdiction of a Court of small causes when the suit was instituted. The section does not define the extent of jurisdiction. The pecuniary limit may vary but that would not make any change in the jurisdiction. In *Balchand v. Balaram*<sup>(1)</sup> it was held that a counter-claim for Rs. 120 made by a defendant could be entertained by a Subordinate Judge whose small cause jurisdiction had been enlarged from Rs. 50 to Rs. 200 before the date of the decree. A counter-claim or set-off is according to law, like a plaint in a cross-suit and is chargeable with a Court-fee payable on a plaint: *Bai Shri Majirajbai v. Narotam Hargovan* <sup>(2)</sup>. The fact that the question of jurisdiction arose with reference to a counter-claim does not affect our contention. The Full Bench decision of the Madras High Court in *Hari Kamayya v. Hari Venkayya*<sup>(3)</sup> does not give reasons for not construing section 32 (2) as it stands and for importing into it considerations regarding the pecuniary jurisdiction. A party would, no doubt, be deprived of his right of appeal in cases like the present according to our interpretation of the section. But the legislature itself has provided that in certain suits of small cause nature no appeal shall lie, therefore, there is no ground for putting a restricted interpretation on the section.

*Mone*, in reply:—If the plaintiff's contention were correct, then the object of section 32 (2) would be frustrated.

JENKINS, C. J. :—This suit was filed on the 13th of August 1901 in the Court of a Subordinate Judge who was at the time invested with the jurisdiction of a Court of small causes to the extent of Rs. 50. But as the plaintiff's claim was over Rs. 81-4 it did not fall within the Small Cause Court jurisdiction of the Subordinate Judge. Later the jurisdiction of the Judge as a Court of small causes was raised to Rs. 100, and subsequently to this, the suit was decided by him as a regular suit.

(1) (1903) 5 Bom. L. R. 308.

(2) (1889) 13 Bom. 672.

(3) (1903) 26 Mad. 212.

The present petitioner, the defendant in the suit, appealed to the District Judge, who held that no appeal lay on the ground that the suit was triable and must be taken to have been tried in the extended jurisdiction vested in him.

The petitioner now applies to us under section 622 of the Code of Civil Procedure, urging that the District Court failed to exercise the jurisdiction vested in it.

The question thus raised must be determined by reference to the language of section 32 of the Provincial Small Cause Courts' Act (IX of 1887) which provides in sub-section 1 that "so much of Chapters III and IV of the Act as relates to the finality of their decrees and orders applies to Courts invested by or under any enactment for the time being in force, with the jurisdiction of a Court of small causes, so far as regards the exercise of that jurisdiction by those Courts." But in the 2nd sub-section of section 32 it is provided that "nothing in sub-section 1, with respect to Courts invested with the jurisdiction of a Court of small causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction."

The language is not very happily chosen; because, to apply it to the circumstances of this case, we find that the particular Subordinate Judge was invested with the jurisdiction of a Court of small causes before the date on which the suit was instituted, but not with that jurisdiction to an extent which would have entitled him to dispose of this suit. So that there is an ambiguity in the language as to whether the Judge must have been not only invested with the jurisdiction of a Court of small causes, but also with that jurisdiction to an extent in value entitling him to hear and dispose of the particular suit.

The question, however, has come before a Full Bench of the Madras High Court by whom it has been held that the object of the sub-section is to prevent doubts arising as to whether the investment of a Court with small cause jurisdiction acted retrospectively with reference to a suit which had not commenced in that Court before the Court was so invested, and it was there determined that under sub-section 2 it was necessary that the Judge should before the institution of the suit be vested with a

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Small Cause Court jurisdiction entitling him to hear the particular suit: *Hari Kamayya v. Hari Venkayya*<sup>(1)</sup>.

We think that in matters of this kind it is desirable that there should be uniformity of decision through the various Courts in different parts of India, and that we may well follow this decision of the Madras Full Bench Court.

It has been argued that the decision of this Bench in *Balchand v. Balaram*<sup>(2)</sup> requires that we should come to a different conclusion. But we think not: that case turns upon its own very special circumstances, and does not appear to us to be an authority on the facts with which we are at present dealing.

In our opinion, therefore, the rule should be made absolute, and the case should go back in order that the District Court may re-admit and deal with the appeal.

Cost of this rule will be costs in the appeal.

*Rule made absolute.*

(1) (1902) 26 M.A. 212.

(2) (1903) 5 Bom. L. R. 398.

## APPELLATE CIVIL.

*Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.*

GOPAL DAJI SATHE (PLAINTIFF) v. GOPAL BIN  
SONU BAIT (DEFENDANT).\*

*Limitation Act (XV of 1877), section 20—Principal—Surety—Payment of interest by principal—Liability of surety.*

The payment of interest by the debtor within limitation does not give fresh starting point for limitation against the surety under section 20 of the Limitation Act (XV of 1877) even in the absence of a prohibition by the surety against the payment of interest by the debtor on his account.

CIVIL reference made by K. S. Bodas, Subordinate Judge of Chiplun, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The reference was in these terms:—

The plaintiff sues to recover Rs. 30 principal and interest due upon a simple unregistered money bond, dated 22nd October, 1891

\* Civil Reference No. 12 of 1903.