

1898.

KOTRABAS-  
SAPPAYA  
v.  
OHENVIRAP-  
PAYA.

to cancel the *jimmapatra* by reason of the defendant's non-observance of its conditions or for any reason?"

The District Judge to be at liberty, if he considers it necessary, to record fresh evidence. Findings to be certified within two months.

*Issue sent down.*

## APPELLATE CIVIL.

*Before Mr. Justice Parsons and Mr. Justice Ranade.*

RAMCHANDRA (ORIGINAL PLAINTIFF), APPLICANT, v. GANESH  
(ORIGINAL DEFENDANT), OPPONENT.\*

1898.

August 16.

*Civil Procedure Code (Act XIV of 1882), Sec. 25—"Court of Small Causes"—  
Meaning of the expression—A Court invested with Small Cause Court powers not  
a Small Cause Court within the section—Appeal.*

The expression "a Court of Small Causes" in the last clause of section 25 of the Code of Civil Procedure (Act XIV of 1882) means a Court properly and strictly so called, and does not include a Court invested with the jurisdiction of a Court of Small Causes.

*Mangal Sen v. Rup Chand*<sup>(1)</sup> dissented from.

APPLICATION under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The plaintiffs filed a suit to recover Rs. 49-15-11 as their share, for the years 1890-91, of the profits of a khoti village from the defendant, who was the managing khot.

The suit was originally filed in the Court of the First Class Subordinate Judge at Ratnágiri, who was invested with the jurisdiction of a Judge of a Court of Small Causes under section 28 of the Bombay Civil Courts Act (XIV of 1869).

The suit was afterwards transferred to the Court of the Assistant Judge by the District Judge under section 25 of the Civil Procedure Code (Act XIV of 1882).

The Assistant Judge passed a decree for the plaintiff.

On appeal the District Judge reversed the decree and rejected the plaintiff's claim.

\*Application, No. 72 of 1898.

(1) (1891) 13 All., 321.

1898.

RAMOHANDRA

GANESH.

Thereupon the plaintiffs applied to the High Court, under its revisional jurisdiction, to set aside the District Judge's decision, contending that the suit was cognizable by a Court of Small Causes and that it was filed in the Court of a Subordinate Judge invested with Small Cause Court powers, and that although it was transferred to the Court of the Assistant Judge, such transference did not alter its character, and the Court to which it was so transferred should be regarded as a Court of Small Causes, and from the decree of such a Court no appeal lay to the District Judge.

A rule *nisi* was granted calling upon the defendant to show cause why the District Judge's decree should not be set aside as *ultra vires*.

*Mahadev V. Bhat*, in support of the rule:—The decree of the Assistant Judge was final, and no appeal lay to the District Judge. He had, therefore, no jurisdiction to reverse the decree in appeal—*Mangal Sen v. Rup Chand*<sup>(1)</sup>.

PARSONS, J.:—The contention on behalf of the applicant (original plaintiff) is that there was no appeal from the decree passed by the Assistant Judge, since his Court trying this suit must be deemed to have been a Court of Small Causes. There is no appearance on behalf of the defendant.

The facts are these:—The suit, which is said by the applicant to have been (and for present purposes we assume that it was) of a nature cognizable by a Small Cause Court, was filed in the Court of the Subordinate Judge, First Class, who was invested with the jurisdiction of a Judge of a Court of Small Causes up to Rs. 500 under section 28 of the Bombay Civil Courts Act, 1869. The District Judge, under section 25 of the Code of Civil Procedure, transferred the suit to the Court of the Assistant Judge, and the latter tried the suit and passed a decree in favour of the plaintiff. The defendant appealed to the District Court and obtained a reversal of that decree.

The argument that no appeal lay from the decree of the Assistant Judge is based on the last clause of section 25 of the Civil Procedure Code: "The Court trying any suit withdrawn

(1) (1891) 13 All., 324.

1898.

RAMCHANDRA

v.  
GANESHI.

under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes." The answer depends upon whether a Court invested with the jurisdiction of a Court of Small Causes is a Court of Small Causes within the meaning of that section. In our opinion, it is not. A Court of Small Causes is defined in the Provincial Small Cause Courts Act, 1887, to mean a Court of Small Causes constituted under that Act, but the Court of the Subordinate Judge is not such a Court. The Act, moreover, throughout draws a marked distinction between a Court of Small Causes and a Court invested with the jurisdiction of a Court of Small Causes which is totally opposed to the idea that they were intended to be one and the same, and both come under the definition of Court of Small Causes (see for instance section 32 and section 35). There is no definition in the Civil Procedure Code of Courts of Small Causes, but section 5 mentions "Courts of Small Causes constituted under Act XI of 1865," and also "all other Courts exercising the jurisdiction of a Court of Small Causes." If the expression "Courts of Small Causes" were intended, whenever it was used in the Code, to include both, there was no necessity for this separate mention of the two classes of Courts. We construe the expression Courts of Small Causes in section 25 to mean Courts properly and strictly so called, and not to include Courts only invested with the jurisdiction of Courts of Small Causes. This point does not seem to have attracted the attention of the learned Judges who decided the reference in the case of *Mangal Sen v. Rup Chand*<sup>(1)</sup>. As long ago, however, as 1883 it was ruled by this Court that "the Courts of Subordinate Judges invested with the jurisdiction of a Judge of a Small Cause Court under section 28 of Act XIV of 1869, do not thereby become 'Courts of Small Causes constituted under Act XI of 1865.' They merely exercise a similar jurisdiction": see *Bhagvan v. Balu*<sup>(2)</sup>. We discharge the rule.

(1) (1891) 13 All., 324.

(2) (1883) 8 Bom., 230.