

1913.

VEDU
SHIVLAL
v.
KALU
UKHARDU.

In this view of the case no allegations of any improper intention on the part of defendants 1 and 2 in making a default in paying the land revenue nor any allegation of misrepresentation by defendants 1 and 2 to the Collector could affect the result, particularly, when the plaintiff was given an opportunity to pay the arrears.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Beaman.

1913.

July 3.

BHIKAJI HARI CHAVBAL KULKARNI (ORIGINAL DEFENDANT), APPELLANT, v. RADHABAI KOM SITARAM GANESH KULKARNI (ORIGINAL PLAINTIFF), RESPONDENT.*

Suit to recover a share in the profits of vatan—Suit for money had and received—Amount of the claim under Rs. 500—Small Cause Court nature—No second appeal.

A suit for the recovery of a share in the profits of a Kulkarni vatan is a suit for money had and received by the defendant for the use of the plaintiff, and the claim being under Rs. 500 it was of a Small Cause nature in respect of which no second appeal lay.

SECOND appeal against the decision of C. E. Palmer, District Judge of Thana, modifying the decree of V. B. Halbhavi, Subordinate Judge of Alibag.

The plaintiff sued to recover from the defendant Rs. 80 on account of her share for three years prior to the suit in the Kulkarni vatan of Bamangav.

The defendant admitted the plaintiff's right to a share in the vatan, but disputed the amount of the claim.

The Subordinate Judge passed a decree for the plaintiff for Rs. 18-12-8.

* Second Appeal No. 151 of 1911.

On appeal by the plaintiff the District Judge modified the decree by awarding to the plaintiff Rs. 80 and costs throughout.

The defendant preferred a second appeal.

R. W. Desai appeared for the appellant (defendant).

P. D. Bhide appeared for the respondent (plaintiff).

SCOTT, C. J. :—This is a suit by the plaintiff against the defendant alleging that they are both sharers in a Kulkarni Vatan, and that the defendant has received the profits of the office, and has not paid to her her share for a certain number of years. The defendant admits that he has received the profits and admits the plaintiff is a sharer, but only disputes the quantum of her share. The suit is, therefore, a suit for money had and received by the defendant for the use of the plaintiff. See *Harmukhgauri v. Harisukhprasad*⁽¹⁾ and *Damodar Gopal v. Chintaman Balkrishna*⁽²⁾. The claim was, therefore, a claim which could have been tried in a Small Cause Court, assuming there was one having jurisdiction where the suit was instituted, and the claim being under Rs. 500, it is a claim of a Small Cause Court nature in respect of which no second appeal lies. We have been asked by the appellant's pleader to treat it as an application under section 115. But if we were to accede to that request it would not assist his client, because Mr. Halbhavi, who first entertained the suit, had no Small Cause Court jurisdiction. Therefore, the first appeal was entertained by the appellate Court with jurisdiction. We dismiss the appeal with costs.

Appeal dismissed.

G. B. R.

(1) (1883) 7 Bom. 191.

(2) (1892) 17 Bom. 42.

1913.

BIHKAJI
HARI
v.
RADHABAI.

