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[1057] CIVIL RULE.

Before Mr. Justice Brett and Mr. Justice Mookerjee.

DULAL CHANDRA DEB v. RAM NARAIN DEB.*

[16th August, 1904.]

Jurisdiction—Provincial Small Cause Courts Act (IX of 1887), s. 35—Munsifs, jurisdiction of—Munsif exercising Small Cause Court powers—Civil Procedure Code, (Act XIV of 1882), s. 25—Civil Courts Act (XII of 1887), s. 17—Appeal Transfer.

When a Munsif vested with the powers of a Court of Small Causes is transferred and is succeeded in office by a Munsif not vested with such powers, and the Court of Small Causes is in consequence abolished, the successor has jurisdiction, under s. 35 of the Provincial Small Cause Courts Act and s. 17 of the Civil Courts Act (XII of 1887), to try in his ordinary Civil jurisdiction all the suits pending on the files, whether they be suits falling within the ordinary civil jurisdiction of the Court of his predecessor, or within its jurisdiction as the Court of Small Causes which has been abolished.

No order of transfer under s. 25 of the Code of Civil Procedure is necessary to enable the successor to try the suits; and any order, purporting to fall under that section, if made, has not the effect of giving to the successors jurisdiction to try as a Court of Small Causes the suits which had been pending in the abolished Court of Small Causes. The successor can try such suits only in his ordinary civil jurisdiction and his decision in such case is open to appeal.

Mangal Sen v. Rup Chand (1) dissented from.

[Diss. 37 I. C. 809=15 A. L. J. 69; 44 I. C. 681=27 C. L. J. 461; 13 I. C. 542; 38 Mad. 25; Ref. 37 All. 450. Foll. 13 A. L. J. 689.]

RULE granted to the plaintiff-petitioner, Dulal Chandra Deb.

The petitioner brought a suit upon a note of hand against the defendant Ram Narain Deb in the first Court of the Munsif at Maulvi Bazar. The learned Munsif, Babu Jadav Chandra Bhattacharyya, who was vested with the powers of a Small Cause Court Judge, decreed the suit *ex parte*. The said Munsif having been transferred, a rehearing of the case was granted by his successor, Babu Sarada Kinkar Mookerjee, who was also vested with the powers of a Small Cause Court Judge. Babu Sarada Kinkar Mookerjee having transferred the said suit, under an order of the District Judge of Sylhet, it was tried by Babu Jamini Kanta Mookerjee, Officiating Munsif of the 1st Court [1058] Maulvi Bazar, and was again decreed in favour of the petitioner on the 27th April 1903. An appeal was preferred against the judgment and decree, and on the 2nd February 1904, the Subordinate Judge of Sylhet decreed the appeal and dismissed the plaintiff's suit. The judgment was written by the Subordinate Judge Babu Kali Prosanna Bose Chowdhry, who died before pronouncing it. The judgment was pronounced on the 2nd February 1904 by his successor in office. An application for review was subsequently made by the petitioner, which was rejected. The petitioner then moved the High Court and obtained this Rule.

Babu Upendra Narain Mukherjee, in support of the Rule. The District Judge's order to the Munsif to proceed with the case as an ordinary civil suit could only have been passed under s. 25 of the Civil Procedure Code; and as the Court which subsequently tried the suit should be deemed to be a Court of Small Causes, no appeal lay from its

* Civil Rule No. 1763 of 1904.

(1) (1891) I. L. R. 13 All. 324.

decree to the Subordinate Judge. Although the Munsif who was vested with the powers of a Small Cause Court Judge was transferred, the suit remained on the register of the Court as a Court of Small Causes: *Kauleshar v. Dost Muhammad Khan* (1). Under the provisions of s. 35, clause (1), of the Provincial Small Cause Courts Act (X of 1887), the proceedings in the suit subsequent to the order of the District Judge would still continue to be Small Cause Court proceedings, and the Court should be treated as a Court of Small Causes having jurisdiction to hear the suit: *Mangal Sen v. Rup Chand* (2). The Bombay High Court in *Ram Chandra v. Ganesh* (3) has held that the expression "Court of Small Causes" in s. 25 of the Civil Procedure Code means a Court properly and strictly so called and does not include a Court invested with the jurisdiction of a Court of Small Causes. I respectfully submit that that case has not been rightly decided. Under s. 35 of the Provincial Small Cause Courts Act the same Court invested with the jurisdiction of a Court of Small Causes and with respect to the exercise of its jurisdiction in suits of a civil nature is to be treated as two different Courts, and under s. 32 in all important matters of procedure the Act has been made applicable to Courts invested with the [1059] jurisdiction of Courts of Small Causes. In the Civil Procedure Code the two Courts are mentioned in s. 5 only, to place them on the same footing as regards the provisions of the Civil Procedure Code, which by the second schedule are made equally applicable to Courts constituted under the Provincial Small Cause Courts Act, and Courts invested with the jurisdiction of a Court of Small Causes. Compare section 203 of the Code.

As to the question whether the judgment pronounced by the Subordinate Judge, which was written by his predecessor in office and found in the Court box, was valid in law, I submit that there is nothing to show that it was meant to be the final judgment, and that if the Judge had lived he would not have made any additions and alterations before or at the time of pronouncing it.

Moulvi *Mahomed Habibullah*, for the opposite party, was not called upon.

Cur. adv. vult.

BRETT AND MOOKERJEE, JJ. The petitioner instituted a suit for the recovery of money due on a note of hand in the Court of Babu Jadav Chandra Bhattacharyya, Munsif of the 1st Court, Maulvi Bazar. That officer was invested with the powers of a Court of Small Causes for the trial of suits cognizable by a Court of that description of values exceeding the value of the suit instituted by the petitioner. The suit was tried *ex parte* by the Munsif under his powers as a Court of Small Causes, and was decreed. That officer was then transferred. His successor in office, Babu Sarada Kinkar Mookerjee, who was invested with similar powers as a Court of Small Causes, granted an application which was made to him by the defendant for a rehearing of the suit, but he left the district on transfer before rehearing it.

Babu Jamini Kanta Mookerjee, a Munsif of the 4th or probationary grade, succeeded him as Munsif of the 1st Court, Maulvi Bazar, and in due course proceeded to try the cases pending in that Court, over which by his appointment he had been given jurisdiction. Not having been invested with the powers of a Court of Small Causes, he was unable to exercise the jurisdiction of such a Court in respect of the cases of the

(1) (1889) I. L. R. 5 All. 274.

(3) (1898) I. L. R. 23 Bom. 392.

(2) (1891) I. L. R. 13 All. 324.

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Small Cause Court class which had been instituted before or were pending in the Court of [1060] his predecessor as a Court vested with a limited jurisdiction as a Court of Small Causes. Apparently he reported to the District Judge the fact that these cases were on the file of the Court to which he had succeeded on appointment, and requested the order of the Judge as to the manner in which he was to deal with them. From the order sheet of the present suit it appears that the District Judge ordered the Munsif to try the case under his ordinary powers as a Munsif.

Thereupon the Munsif tried the suit as an ordinary civil suit, and gave the plaintiff a decree on the 27th April 1903. An appeal was preferred against his judgment and decree, and, on the 2nd February 1904 the Subordinate Judge, 2nd Court, Sylhet, decreed the appeal and dismissed the plaintiff's suit. The judgment was written by Babu Kali Prasanna Bose Chowdhry, Subordinate Judge, who died before pronouncing it. The judgment was pronounced on the 2nd February 1904 by his successor in office under the provisions of section 199 of the Code of Civil Procedure. The latter officer subsequently refused an application for review, and the petitioner applied to this Court and obtained a Rule on the 9th May 1904.

The Rule was on the opposite party to show cause why the judgment of the Appellate Court of the 2nd February 1904 should not be set aside and such other order passed as to this Court might seem fit, on the ground that the suit against which the appeal was preferred having originally been instituted in a Court of Small Causes, and thence transferred under the provisions of section 25 of the Civil Procedure Code to a Munsif not vested with the powers of a Small Cause Court Judge, such suit must be held to have continued to be a suit of the Small Cause Court class and therefore no appeal lay against the decision of the Munsif.

In support of the Rule it has been argued that after the suit had once been instituted in a Court vested with the powers of a Court of Small Causes it could not have been disposed of by the Munsif who was not vested with such powers until it had been transferred to his Court by an order of the District Judge passed under section 25 of the Code of Civil Procedure, and, that being the case, the last provision of section 25 of the Code of Civil [1061] Procedure applied, and the Munsif to whom the suit had been transferred for trial must be deemed to have been a Court of Small Causes. Consequently no appeal lay against his judgment and decree.

In support of this contention the decision of the Allahabad High Court in the case of *Kauleshar Rai v. Dost Muhammad Khan* (1) and of *Mangal Sen v. Rup Chand* (2) are relied on, and it is urged that whether the transfer be held to have been made under the provisions of section 25 of the Code of Civil Procedure or under section 35 of the Provincial Small Cause Court Act, 1887, it must be held that the Court which tried the suit exercised the jurisdiction of a Court of Small Causes, and that the decree passed in the suit was therefore final.

The rulings relied on certainly support the contention which has been pressed before us. The Bombay High Court has, however, taken the opposite view in the case of *Ram Chandra v. Ganesh* (3), in which it was held that the Court of Small Causes referred to in section 25 of the Civil

(1) (1889) I. L. R. 5 All. 274.
(2) (1891) I. L. R. 13 All. 324.

(3) (1898) I. L. R. 23 Bom. 352.

Procedure Code must be held to be a Court of Small Causes constituted under the Provincial Small Cause Courts Act, 1887, and not to include a Court vested with the powers of a Court of Small Causes under another Act. The learned Judges expressed their dissent in that decision from the view taken by the Judges of the Allahabad High Court in the case of *Mangal Sen v. Rupa Chand* (1).

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The question has not come before this Court previously for judicial decision, though we may observe that the general practice followed throughout this Province has been opposed to the view taken by the Allahabad High Court.

We have considered the various sections of the Acts with some care and we are unable to agree with the decisions of the learned Judges of the Allahabad High Court. It may be observed that in the two cases of the Allahabad High Court, which have been mentioned, the Court, to which each case came for trial owing to the temporary or permanent transfer of the Subordinate Judge exercising the powers of a Small Cause Court, was the Court of a Subordinate Judge, and the Judge who tried the suit had without doubt exercised the powers of a Small Cause Court before [1062] and was on that account not unfit to exercise such jurisdiction. In the case before us the suit came on finally for trial under the orders of the District Judge before a very junior Munsif who had never exercised the powers of a Court of Small Causes, and who on account of his inexperience had apparently not been deemed fit to be entrusted with final jurisdiction in the case of such suits. The learned Judges in those cases had not therefore brought so prominently before them, as we have had in the present case, the ultimate result of the view which they took. The result in the case before us would be that a simple order of transfer passed by the District Judge under section 25 of the Code of Criminal Procedure (supposing for the purpose of argument that such an order was in this case necessary or was passed) would have the effect of vesting the Munsif with a jurisdiction which under the law could only be conferred by an order of the Local Government, duly notified in the Gazette, under section 25 of the Bengal North-Western Provinces and Assam Civil Courts Act (XII of 1887). If this were possible, it would in our opinion be nothing less than disastrous. In our opinion, however, this is not the intention of the law.

The jurisdiction of a Court must depend on the powers with which the presiding officer has been invested by the Government under the law, and cannot depend in a particular case on an order transferring that case to him for trial. In the case before us the Munsif had never been invested with the summary powers of a Court of Small Causes, and the mere fact of a suit which was placed before him for trial had been instituted originally in a Court which had such powers could not in our opinion have the effect of conferring those powers on him: The summary powers given to selected Magistrates for the trial of certain criminal cases is somewhat analogous to the summary jurisdiction of a Court of Small Causes conferred on selected Judges of Civil Courts for the trial of a certain class of civil suits. It has, however, never been suggested that the transfer of a case instituted before a Magistrate with summary powers to another who has not such powers would confer on the latter summary jurisdiction to try the case.

We are inclined therefore to agree with the view taken by the

(1) (1891) I. L. R. 13 All. 324.

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Judges of the Bombay High Court of the meaning of the term [1063] "Court of Small Causes," in the last paragraph of section 25 of the Code of Civil Procedure. It is not, however, necessary for the purposes of this Rule for us to decide this point, as we hold that for other reasons the Rule must be discharged.

In our opinion no order under section 25 of the Code of Civil Procedure was necessary in the present case to enable the Munsif to try the suit. This was an instance in which a Court vested with the jurisdiction of a Court of Small Causes had ceased to have jurisdiction owing to the transfer of the presiding officer and the appointment in his place of a Munsif who was not invested with the powers of a Court of Small Causes. The suits of the Small Cause Court class pending in that Court had all arisen within the local jurisdiction of the Munsif's Court, and the successor in his ordinary civil jurisdiction would have had power to try them. On the departure of the former officer the whole business of the Court was transferred to his successor. Under the provisions of section 35 of the Provincial Small Cause Courts Act and section 17 of the Civil Courts Act XII of 1887 the successor would have jurisdiction to dispose of all the suits which had been pending on the files of the Court either in its ordinary civil jurisdiction or as an abolished Court invested with the jurisdiction of a Court of Small Causes. The only question is whether he would dispose of the latter as a Court of the Small Causes or as an ordinary Civil Court. As we read the provisions of section 35 of Act IX of 1887, we are of opinion that the Court would have power only to dispose of them under its ordinary civil jurisdiction. The section no doubt provides that the succeeding Court may pass orders in the case which the Court invested with the powers of a Court of Small Causes might have passed, but it nowhere provides that the succeeding Court would thereby be invested with the jurisdiction of a Court of Small Causes so that its decree would be final and not open to appeal. If the intention of the section had been to vest the succeeding Court with the powers of a Court of Small Causes, similar to those of the abolished Court in respect of the cases pending in that Court at the time of its abolition, we think it would have said so in simple and plain words. As we read the section it means that after the abolition of the Court invested with the jurisdiction of a Court of Small Causes the Court which [1064] succeeds it, so far as the pecuniary and local jurisdiction is concerned, has power to dispose in its ordinary civil jurisdiction of the cases pending before the abolished Court at the time of its abolition. We are unable to agree with the decision of the learned Judges of the Allahabad High Court in the case of *Mangal Sen v. Rup Chand* (1), or to hold that section 35 of the Provincial Small Cause Courts Act and section 25 of the Code of Civil Procedure have the same meaning. In our opinion no order of transfer under section 25, Civil Procedure Code, by the District Judge is necessary when one Court succeeds another and takes over the ordinary civil business of that Court, and also by its constitution exercises ordinary civil jurisdiction in cases in which an abolished Court invested with the powers of a Small Cause Court previously exercised jurisdiction. The jurisdiction is given by section 17 of the Civil Courts Act and by section 35 of the Provincial Small Cause Courts Act, and in the case before us the direction of the District Judge to the Munsif to try the suits in his ordinary civil jurisdiction cannot be held to have

(1) (1891) I. L. R. 13 All. 824.

been an order of transfer under section 25 of the Civil Procedure Code. The District Judge's directions in fact pointed out to the Munsif the power which he had under the law.

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We hold therefore that the Munsif who tried the suit in the present case had not the powers of a Court of Small Causes, and that his decree was not final, and that it was subject to appeal. The result is that the Rule must be discharged.

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In the petition for the Rule a further objection was taken to the appellate judgment on the ground that it was not proved to be the final decision and judgment of the deceased officer. We have, however, seen and read the original judgment. It is true it is not signed by the deceased officer, but this was to be expected, as under the law (section 202, Civil Procedure Code) the judgment is to be signed at the time of pronouncing it. The judgment was found with the record of the case in the Subordinate Judge's Court box, and was clearly the judgment which he intended to deliver in the suit. The objection therefore cannot be sustained.

The result is that the Rule is discharged with costs.

Rule discharged.

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[1065] ORIGINAL CIVIL.

Before Mr. Justice Henderson.

PURNA CHANDRA CHAKRAVARTI v. SAROJINI DEBI.*

[27th April, 1904.]

Hindu Law—Partition of ancestral property—Suit by grandson—Grandmother and Mother, rights of, to a share.

A Hindu governed by the Bengal School of Hindu Law died leaving his widow B, C the widow of his only predeceased son X, D a grandson, son of X, E the widow of Y, a predeceased grandson who was another son of X, and a great-grandson F, son of E. X before his death bequeathed all his property by will to A.

In a suit instituted by D for partition of the property left by A :—

Held, that the grandmother B and the mother C were both entitled to shares in the said property the former getting $\frac{1}{3}$ rd and the latter $\frac{2}{9}$ ths.

Gooro Persaud Bose v. Seeb Chunder Bose (1), *Puddum Mookhee Dossee v. Rayeemonee Dossee* (2), *Badri Roy v. Bhugwat* (3), *Sorolah Dossee v. Bhoobun Mohun Neoghy* (4), *Jeomony Dosses v. Attaram Ghose* (5), *Jugomohan Haldar v. Saradamoyee Dossee* (6), *Torit Bhoosun v. Tara Prosonno* (7), *Kristo Ehabiney Dossee v. Ashutosh Bose Mallik* (8), *Cally Churn Mullick v. Janova Dossee* (9), *Guru Gobind Shaha v. Anand Lal Ghose* (10), *Isree Pershad Singh v. Nasib Kooer* (11) referred to.

Sibbo Soondery Dabia v. Bussomutty Dabia (12), distinguished.

ONE Bholanath Chakravarti, the only son of Netai Chand Chakravarti, predeceased him, having devised all his property by will to his father. Netai Chand died on the 20th of October 1901, leaving him surviving his widow Bissessuree, Bechumonee, widow of his predeceased

* Original Civil Suit No. 400 of 1903.

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| (1) Mac. Cons. Hindu Law p. 29. | (6) (1877) I. L. R. 3 Cal. 149. |
| (2) (1869) 12 W. R. 409; (1870) 13 W. R. 66. | (7) (1879) I. L. R. 4 Cal. 756. |
| (3) (1882) I. L. R. 8 Cal. 649. | (8) (1886) I. L. R. 13 Cal. 39. |
| (4) (1888) I. L. R. 15 Cal. 292. | (9) (1866) 1 Ind. Jur. (N. S.) 284. |
| (5) S. C. Sarkar's Prods. 743; Mac Cons. Hindu Law 64. | (10) (1870) 5 B. L. R. 15. |
| | (11) (1884) I. L. R. 10 Cal. 1017. |
| | (12) (1881) I. L. R. 7 Cal. 191. |