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are immoveable property and as the law stands at present, the Small Cause Court has no jurisdiction to try a question of title to such huts as between an attaching creditor and a third person, who alleges that they belong to him and not to the judgment-debtor. It has been found that the law in this respect has been productive of inconvenience and hardship to suitors, claimants to tiled huts which have been attached being forced to bring suits in this Court to establish their title, the value in most cases being exceedingly small; and I believe the attention of the Legislature has been drawn by this Court to the question of the jurisdiction of the Small Cause Court, to entertain claims in execution proceedings to tiled huts with a view to amendment of the law.

The plaintiff in the present case did not file a claim to the tiled hut in question in the execution proceedings and, as he ought to have done, apply for a stay of the proceedings, until he had an opportunity of instituting a suit in this Court to establish his title. But what he has done was to file a suit for damages for trespass. It has been frequently held that the Small Cause Court has jurisdiction to try a question of trespass to immoveable property and that its jurisdiction is not ousted, because a question of title may incidentally arise. But the present is not a mere suit for trespass, as was the case of *Peary Mohun Ghosaul* v. *Harran Chunder Gangooly* (1). The so-called trespass was, so far as appears, **[343]** done under a *bona fide* claim by the petitioner that the tiled hut was the property of the judgment-debtor of the petitioners. The sole object of the plaintiff in filing his suit was manifestly to try the title to the attached hut. To use the words of Melvill, J. in *Jamnadas* v. *Bai Shivkor* (2), the present was not a case in which the real object of the suit was to obtain a remedy which a Small Cause Court might properly give, and on which a question of title to immoveable property only incidentally cropped up for decision.

Under these circumstances I must hold that the order of the Small Cause Court, based, as it was, on the ground that the Small Cause Court had jurisdiction to determine the suit, was itself without jurisdiction. The rule will accordingly be made absolute with costs.

Attorney for the plaintiff: *K. N. Dey.*

Attorney for the defendant: *J. C. Dutt.*

Rule made absolute.

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[344] CIVIL RULE.

Before Mr. Justice Banerjee and Mr. Justice Brett.

RAGHUNATH CHARAN SINGH *v.* SHAMO KOERI.*

[25th November, 1903.]

Appeal—Memorandum of appeal—Civil Procedure Code (Act XIV of 1882), ss. 557, 582, 588, cl. 622—Valuation of suit—Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s. 21, sub-s. 2—Jurisdiction—Suits Valuation Act (VII of 1887) s. 11.

No appeal lies against the order of an Appellate Court returning a memorandum of appeal for presentation to the proper Court.

* Civil Rule No. 2015 of 1903.

(1) (1885) I. L. R. 11 Cal 261. (2) (1881) I. L. R. 5. Bom. 572.

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Kunhikutti v. *Achotti* (1) dissented from.

A brought a suit against B in the Court of a Munsif. B objected to it on the ground that the suit had been undervalued, and if properly valued, it would not lie in that Court. The Munsif overruled the objection, and gave judgment for the plaintiff on the merits. B appealed to the District Judge, who held that the proper value of the suit being over rupees five thousand, he had no jurisdiction to entertain the appeal, and he accordingly returned the memorandum of appeal to the appellant's pleader. A Rule having been obtained against this order:

Held, that the District Judge was bound to hear and dispose of the appeal, having regard to the provisions of section 11 of the Suits Valuation Act (VII of 1887), and to determine, amongst other questions whether the undervaluation of the suit had prejudicially affected the disposal of it on its merits.

[Foll. 17 C. P. L. R. 129.]

RULE granted to the defendant, Raghunath Charan Singh, under s. 622 of the Civil Procedure Code.

On Thakur Uzir Prosad brought three suits, which were tried together in the Court of the Additional Munsif at Sassaram for recovery of possession of certain plots of land on establishment of his title thereto. It was set out in the plaint that the defendant, Raghunath Charan Singh, caused the lands in suit to be recorded in his own name and in the names of other defendants in the *jamabandi* prepared by the Batwara Deputy Collector and subsequently dispossessed the plaintiff of the disputed lands, which were comprised in the ryoti holding of the plaintiff.

[345] The defendant contended that the plaintiff did not properly value his suit, and, if properly valued, it would be beyond the pecuniary jurisdiction of the Munsif's Court, that the Court-fees paid were not sufficient, and that the allegation of possession and dispossession was not true.

The learned Munsif, having overruled the objections of the defendant, decreed the plaintiff's suit. The defendant preferred an appeal to the District Judge of Shahabad, who found, upon the question of valuation, that the suit had been undervalued, and that the proper value of the suit was over five thousand rupees; and having come to that conclusion he held that he had no jurisdiction to entertain the appeal, and he accordingly returned the memorandum of appeal to the appellant's pleader. His order was as follows:—

"Presented by Mangal Charan, pleader, on the 29th September 1902, and returned to him to-day, as it is found that the value of the appeal exceeds five thousand rupees."

Against this order the defendant moved the High Court and obtained this rule.

Babu *Saligram Singh* (Babu *Makhan Lal* with him) for the petitioner. The learned District Judge had jurisdiction to entertain the appeal, and he ought not to have returned the memorandum of appeal.

Babu *Umakali Mookerjee* (Babu *Raghunandan Prosad* and Babu *Raghunath Singh* with him) for the opposite party. The order returning the memorandum of appeal was an appealable order, therefore the other side ought to have appealed against that order. It is only where there is no appeal, this Court has jurisdiction to interfere under s. 622 of the Civil Procedure Code. The following cases were cited in the course of the argument:—*Wahidullah* v. *Kanhaya Lal* (1), *Kunhikutti* v. *Achotti* (2), *Chinnasami Pillai* v. *Karuppa Udayan* (3). *Pachaoni Awasthi*

(1) (1902) I. L. R. 25 All. 174.
(2) (1891) I. L. R. 14 Mad. 462.
(3) (1896) I. L. R. 21 Mad. 234.

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v. *Ilahi Bakhsh* (1) and *Goor Bux Sahoo* v. *Birj Lal Benka* (2). In the present case, an appeal did not lie to the District Judge, as the **[346]** value of the original suit exceeded five thousand rupees: see s. 21 of Bengal, N.-W.P., and Assam Civil Courts Act (XII of 1877).

[BANERJEE, J. Under s. 11, cl. (*b*) of the Suits-Valuation Act (VII of 1877), it is for the Appellate Court to say for reasons recorded in writing that the overvaluation or undervaluation prejudicially affected the disposal of the suit or appeal on its merits.]

BANERJEE AND BRETT, JJ. This is a Rule calling upon the opposite party to show cause why the order of the District Judge returning the petition of appeal should not be set aside and the case sent back to him for a proper decree being made, or why the decree pronounced by the Munsif should not be set aside upon the ground that he had no pecuniary jurisdiction to entertain the suit, or why such other order as to this Court may seem fit and proper should not be made.

The facts of the case are shortly these:—A suit was brought in the Court of the Munsif of Sassaram, it being valued at less than one thousand rupees. Amongst other objections the defendant, the petitioner before us, urged that the suit had been undervalued and, if properly valued, it would lie not in the Munsif's Court, but in the Court of the Subordinate Judge. The Munsif disallowed this objection and disposed of the suit on the merits, giving the plaintiff a decree. Against that decree the defendant preferred an appeal to the District Judge. The District Judge found upon the question of valuation that the suit had been undervalued and that the proper value of the suit was over five thousand rupees; and having come to that conclusion he held that he had no jurisdiction to entertain the appeal, and he accordingly returned the memorandum of appeal to the appellant's pleader, evidently on the ground that he had no jurisdiction to entertain the appeal and that the petition of appeal should be presented to the High Court; the exact terms of the District Judge's order being these:—"Presented by Mangal Charan, pleader, on the 29th September 1902 and returned to him to-day, as it is found that the value of the appeal exceeds five thousand."

Against this order the petitioner, the defendant in the first Court, moved this Court and obtained the Rule that is now before **[347]** us. A question was raised at the hearing of the Rule as to whether an appeal lay from the order of the District Judge just referred to, and whether section 622 of the Code of Civil Procedure, under which our interference is asked for in this Rule, was therefore inapplicable to the case.

The only ground upon which it could be said that an appeal lay against the order would be by reading section 57 with section 582 of the Code, and construing clause (6) of section 588 to include the case of the returning of memorandum of appeal for presentation to the proper Court; and the case of *Kunhikutti* v. *Achotti* (3), might be referred to as supporting that view. We are however unable to accept as correct the view that an appeal lies under clause (6) of section 588 of the Code against the order of an Appellate Court returning a memorandum of appeal for presentation to the proper Court. The terms of section 588

(1) (1882) I. L. R. 4 All. 478.
(2) (1899) I. L. R. 26 Cal 275.
(3) (1891) I. L. R. 14 Mad. 462.

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do not cover such a case ; nor can the reading of section 57 with section 582 justify the interpellation of the words " memorandum of appeal " after the word " plaints " in clause (6) of section 588. Although section 582 authorizes an Appellate Court to order the plaint in the suit to be returned for presentation to the proper Court and although, when such an order is made by an Appellate Court, an appeal from it may lie under clause (6) of section 588, we do not think that the reading of section 582 with section 57 would warrant our holding, that clause (6) of section 588 would bear the extension of meaning contended for. With all respect for the learned Judges, who decided the case of *Kunhikutti* v. *Achotti* (1), we must therefore say we are unable to assent to the view expressed by them. The other cases that might be cited upon the point, namely, *Chinnasami Pillai* v. *Karuppa Udayan* (2), *Pachaoni Awasthi* v. *Ilahi Bakhsh* (3) and *Goor Bux Sahoo* v. *Brij Lal Benka* (4) are cases of orders by an Appellate Court returning plaints for presentation to the proper Court, orders which, as we have pointad out above, would be appealable under clause (6) of section 588 by reason of the provisions of section 382 authorizing the Appellate Court to pass such orders at the hearing of the appeal.

That being so, we think that section 622 of the Code of Civil Procedure applies to the case, and the Rule must therefore be [348] determined on its merits. We need hardly add that the view we take, that no appeal lies from an order of an Appellate Court such as the one complained of in this case, will not be attended with any hardship or difficulty to any party aggrieved by such an order, as there is a remedy under section 622 of the Code.

Now, the order here complained of was made by the District Judge on the ground that he had no jurisdiction to hear the appeal by reason of the proper value of the suit exceeding rupees five thousand. But the suit was brought in the Munsif's Court ; it was decided by that Court ; and the appeal was an appeal against the decision of the Munsif. That being so, the appeal clearly lay to the Judge under section 21, sub-section (2) of the Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), and the learned Judge was bound to determine the appeal according to law. Moreover it was not enough, for the disposal of the appeal, for the Judge to find that the proper valuation of the suit took it out of the Munsif's jurisdiction and that the Munsif's decree was therefore liable to be reversed. The learned Judge was bound to hear the appeal and to dispose of it, having regard to the provisions of section 11 of the Suits Valuation Act (VII of 1887), and to determine this, amongst other questions, namely, whether the undervaluation of the suit has prejudicially affected the disposal of the suit on its merits.

It might be argued for the petitioner that according to the learned Judge's finding the correct valuation of the suit not only took the suit out of the jurisdiction of the Munsif's Court, but also took the appeal from the decision of the first Court, if the suit had been rightly valued and instituted in the proper Court, out of the jurisdiction of the Court of the District Judge, or in other words, that it changed the venue of the appeal ; and if that was so, we should not send the case back to the

(1) (1891) I. L. R. 14 Mad. 462.
(2) (1896) I. L. R. 21 Mad. 234.
(3) (1882) I. L. R. 4 All. 478.
(4) (1899) I. L. R. 26 Cal. 275.

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District Judge for determination of the appeal having regard to the provisions of section 11 of the Suits Valuation Act, but should now ourselves hold that the decree of the Munsif must be set aside, as the undervaluation of the suit has prejudicially affected its disposal on the merits by reason of such undervaluation having changed the venue of the appeal and we should direct the plaint to be returned for presentation to the Court of the Subordinate Judge; [349] because any determination by the District Judge of the question whether the undervaluation has prejudicially affected the disposal of the suit on the merits, will be a determination of the merits of the case by an Appellate Court, which would not have been competent to hear the appeal, if the suit has been rightly valued and instituted in the proper Court, the appellate tribunal in such a case being the High Court.

In our opinion, the simple answer to an objection like this is this, that if the District Judge at the hearing of the appeal before him decides that the undervaluation of the suit has not prejudicially affected the disposal of the suit on the merits, it will be open to the party aggrieved to have the decision of the District Judge examined by this Court on the merits and to have ultimately the decision of this Court upon the question whether the undervaluation has prejudicially affected the disposal of the suit on the merits. It will be time enough for the party aggrieved to have the point determined by the Court, when the occasion properly arises. It would be premature for us now at this stage of the case without going into the merits to pronounce an opinion that as a matter of course the decision of the Munsif has prejudicially affected the disposal of the case on the merits.

At the same time we should observe that it would be for the learned District Judge, when hearing the appeal before him, to consider whether the undervaluation of the suit has not prejudicially affected the disposal of the suit on its merits, regard being had to all the circumstances of the case, one of which would be the grossness of the undervaluation.

The result then is, that the order of the District Judge returning the memorandum of appeal to the appellant must be set aside, and the case sent back to him in order that he may dispose of the appeal before him with reference to the directions given above.

The costs of this Rule the petitioner is entitled to.

The question of refund of any Court-fee will be for the learned Judge to determine, when disposing of the appeal.

Case remanded.

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31 C. 350.

[350] CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Brett.

SURJYA KANTA ROY CHOWDHRY *v.* EMPEROR.*

[8th January, 1904.]

Transfer—Security to keep the peace—Jurisdiction of Magistrates—Criminal Procedure Code (Act V of 1898) ss. 107, 192—Proceedings, initiation of.

A District Magistrate instituting proceedings under s. 107 (2) of the Criminal Procedure Code has power to transfer the inquiry to any subordinate Magistrate competent to inquire into the same.

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* Criminal Revision No. 711 of 1903, against the order of Mohim Chandra Ghose, Sub-divisional Magistrate of Basirhat, dated July 31, 1903.