

Before Mr. Justice Bayley and Mr. Justice Paul.

RAJKUMAR MOOKERJEE (PLAINTIFF) v. PRANNATH MOOKERJEE
(DEFENDANT).*

1871
May 9

Small Cause Court—Moveable Property—Jurisdiction—Suit to recover a Thatch.

Suit to recover a thatch of a value less than Rs. 500 must be brought in the Small Cause Court. A thatch, especially when severed from the house, is moveable property

Báboo Mahendra Nath Mitter for the appellant.

THE facts of this case sufficiently appear in the judgment of the Court, which was delivered by

PAUL, J.—In this case the Subordinate Judge has, it seems to us, rightly held that the suit was cognizable by the Small Cause Court, and he has therefore dismissed the plaintiff's suit on the ground that the Moonsiff had no jurisdiction.

The suit was brought to recover the price of a thatched ijnadi joint house laid at Rs. 5. Now the thatch of a house is moveable property; more especially when such thatch, as in the present case, was severed from the house. A suit, therefore, brought to recover the price of such thatch, not exceeding Rs. 500, must be brought in the Small Cause Court. The decision of the Subordinate Judge is, therefore, quite right, and this appeal must be dismissed.

The pleader for the appellant, however, informs us that he originally brought his suit in the Small Cause Court, but that the Judge of the Small Cause Court declined to entertain the suit, on the ground that he could not adjudicate upon a question of title to the land, and referred him to the Civil Court. Now it has been held by the late Chief Justice (1) that matters incidental to the determination of a suit of this description, although involving a question of title to land, may be brought and tried in the Small Cause Court, to enable it to adjudicate such subject-matters, as may be within its jurisdiction. The plaintiff in the present case seems to be unfortunate in being thrown out in both the Courts. It is quite clear that his suit was originally rightly brought in the Small Cause Court; and we hope that, after this expression of our opinion, the Judge of the Small Cause Court will put matters right by allowing the plaintiff to bring a fresh suit in his Court. In determining that suit, the Small Cause Court Judge will be entitled to adjudicate upon a question of title incidental thereto; and as to the question whether limitation will bar such suit or not, we think that the course which the plaintiff has taken, owing to the original order of the Small Cause Court Judge will probably give him a good and sufficient cause to claim exemption.

* Special Appeal, No. 2302 of 1870, from a decree of the Subordinate Judge of Nuddea dated the 29th July 1870, reversing a decree of the Moonsiff of that district, dated the 31st December 1869.

(1) See *Raghu Ram Biswas v. Ram Chundra Dobay*, B. L. R., Supp. Vol., 34.