

1869
Jan'y. 9,

Before Mr. Justice Bayley and Mr. Justice Hobhouse.

SIB SAHAYA SUKUL (PLAINTIFF), *v.* BIR CHANDRA JUBARAJ
GOSWAMI (DEFENDANT,)*

*Appeal—Small Cause Courts—Act XI. of 1865, s. 6—Act XXIII. of
1861, s. 27.*

In a suit for recovery of a sum of money less than Rs. 500, as money paid in excess of rent due, *Held*, that the suit being cognizable by the Court of Small Causes under section 6, Act XI. of 1865, no special appeal lay to the High Court.

This was a suit to recover Rs. 249-14, as money paid by the plaintiff to the defendant in excess of the amount due by plaintiff to the defendant on account of rent of an Izara Mehal.

The defence was, that no sum had been paid in excess of the rent due, and that the defendant, having obtained a decree in a suit in the Collector's Court against the plaintiff for arrears of rent due, on account of the Izara Mehal, could not now claim a refund of any amount paid in excess of the rent due for the period prior to the institution of that suit.

The Principal Sudder Ameen gave a decree for the plaintiff.

On appeal, the Judge held that, as the effect of the decree passed by the Principal Sudder Ameen would be to upset a decree of the Revenue Court, the suit was not cognizable by the Civil Court. He, accordingly, dismissed the suit.

The plaintiff appealed to the High Court.

For the respondent it was objected that under section 27 of Act XXIII. of 1861, no special appeal lay, the amount claimed being less than Rs. 500, and under section 6, Act XI. of 1865, cognizable by the Small Cause Court.

Baboo *Anand Ohandra Ghosal* for the appellant.

Baboo *Kali Mohan Das* for the respondent.

* Special Appeal, No. 907 of 1868, from a decree of the Judge of Tirupperah, dated 23rd January 1868, reversing a decree of the Principal Sudder Ameen of that District, dated 30th November 1867. 367.

BAYLEY, J.—On this special appeal coming on for hearing, the special respondent took an objection under section 348, Act VIII. of 1859, that the suit being one for damages of an amount below 500 rupees, and, therefore, cognizable by the Small Cause Court, no special appeal would, under section 27, Act XXIII. of 1861, lie to this Court.

I am of opinion that this objection is sound and valid. It is quite clear from the judgment of both the lower Courts that the whole contention was, whether or not the plaintiff was entitled to recover, from the Maharaja defendant, the sum which he alleged he had paid over and above what was due from him to the Maharaja on account of rent. In fact, whether, plaintiff having paid it in excess, and it not having been refunded by defendant, there arose a damage to him (plaintiff) or not. This is not a case of contribution for shares of rent as against co-parceners, which has been held by the Full Bench as not coming within the jurisdiction of the Small Cause Court with reference to section 6 of Act XI. of 1865. Although the transaction originally may have been connectd with payment of rent for co-parceners, still the present claim of the plaintiff is for a refund of the money over-paid by him to the defendant, landlord, by the non-refund of which he, the plaintiff, has been endamaged.

The special appeal is dismissed with costs.

HOBHOUSE, J.—I agree. I think that the provisions of section 27, Act XXIII. of 1861, bars this special appeal.

Before Mr. Justice Loch and Mr. Justice Glover.

MATI SING AND OTHERS (PLAINTIFFS), v. RAJA LILANAND SING AND OTHERS (DEFENDANTS).*

Limitation—Act XIV of 1859, s. 1, c. 12—Possession.

In a suit to recover possession of immoveable property, the defence was adverse possession for more than 12 years, except for two short periods, during which plaintiffs had been put in possession by a Civil Court; first under a decree of the High Court between the same parties but that they had been dispossessed upon that decree

* Regular Appeal, No. 54 of 1868, from a decree of the Principal Sudder Ameen of Bhagulpore, dated 20th December 1867.

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