

Referred Case.

RATANSHANKAR REVÁSHANKAR... .. *Plaintiff.*
GULÁSHANKAR LÁLHANKAR... .. *Defendant.*

Small Cause Court—Jurisdiction—Implied contract—Varshásan—Claim to recover share in Varshásan received by Defendant—Act XI. of 1865, Sec. 6.

Suit to recover a share in a *varshasan* payable by the Gaekwad's Government and received by the defendant as the eldest member of the original grantee's family, is cognizable by a Court of Small Causes in the Mofussil, the claim being one on an implied contract, viz., a contract, by the defendant, to pay to the plaintiff money received by the defendant to the use of the plaintiff.

Sunkur Lall Pattuck Gyawal v. Mussamut Ram Kalle (18 Calc. W. Rep. Civ. R. 104) followed.

Keshav Bhat v. Bhagirathi Bai (3 Bom. H. C. Rep. A. C. J. 75) over ruled.

THIS case was referred to the High Court by Syud Hussein El. Medini, Judge of the Small Cause Court at Surat, with the following observations:—

“The plaintiff brings this action to recover the above sum to which, he alleges, he is entitled as a sixth sharer in a *varshasan* originally granted by the Gaekwad to their ancestor which the defendant, being now the eldest member of the family, draws from the Nowsaree Treasury and distributes among the several sharers.

“The plaintiff had before filed a suit in the Munsif's Court at Surat to recover the money which then had accrued due. The Munsif gave a decree in his favour, but the than Judge of Surat reversed the decree on the ground that the action was virtually to try the right to the *hak* in question, a right which a foreign court is not competent to adjudicate on. The High Court, however, in Special Appeal No 539 of 1867, set aside this ruling and remanded the case to the Judge who then confirmed the decree of the Munsif.

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was under an implied contract to pay it over. These instances shew that "contract" in Section 6 was intended to have a very extensive meaning, for there are no other words in the section which would include such cases. They would not come within the term damages. It has been held by this Court, in a case which is reported in the special (Small Cause Court) number of the Weekly Reporter, page 23, and is quoted in Mr. Broughton's note to Section 6, that a Small Cause Court has jurisdiction in a suit brought by one of several joint owners of property against his co-sharer for his share of the profits."

The Judge, finding the authorities in conflict, referred to the High Court the question whether the plaint in the present case was cognizable by the Small Cause Court, and he expressed his own opinion to be in favour of the affirmation.

The reference was considered by WESTROPP, C.J., and MELVILL, J., on the 3rd March 1873. The following judgment was given on the 4th March by—

WESTROPP, C.J.—The question for determination here is whether the plaintiff, who is entitled to a $\frac{1}{4}$ share in a *varshasan* payable by the Gaekwad's Government, and which has been received by the defendant, who is the eldest member of the family of the original grantee, may sue in the Court of Small Causes at Surat for that share. It is money received by the defendant to the use of the plaintiff—a state of circumstances involving an obligation, which has hitherto been known to English lawyers as amounting to an implied contract on the part of the recipient to pay over the money so received to the person on whose behalf it was received.

We concur in the decision of Couch, C.J., and Ainslie, J., in *Sunker Lall Pattuck Gyawal v. Mussamut Ram Kalee Dhamin (d)*, and in the reasons given for it, viz., that two of the specially excepted cases of contracts mentioned in Section 6 of Act XI. of 1865 show that the Legislature

intended under the words "other contract" contained in the first part of that section, defining the suits cognizable by Courts of Small Causes, to include implied contracts, and, consequently, that moneys due on implied contracts, not falling within the exceptions, are recoverable by suits in the Small Cause Court. In *Dullabh Shivalal v. Hope (e)*, the Court yielded to the objection that no special appeal would lie in the suit there brought, it being of the nature cognizable by a Court of Small Causes. It was for money which the plaintiff had been wrongfully compelled to pay in respect of Municipal Taxes to the Municipality of Surat, and which he sought to recover from it, as received by the Municipality to his use, *i.e.*, due upon an implied contract. That decision proceeded on the same principle as that of Couch, C.J., and Ainslie J. in the Bengal case already mentioned. We are unable to concur in the decision in *Keshavbhat v. Bhagirathi Bai (f)*

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The decision in *Charookhan v. Doorga Monee (g)*, notwithstanding what is said in the brief judgment as there reported, that the suit was substantially one for a breach of contract for the sale of land, would, in our opinion, have been more properly based upon the ground that the purchase money was recoverable on an implied promise to repay it, the consideration for it having failed. See Chitty on Contracts 561 (7th Edition).

We do not think that the jurisdiction of Small Cause Courts is in anywise affected by the Indian Contract Act (IX.) of 1872.

We concur with the Judge of the Court of Small Causes in thinking that the plaint in this cause was cognizable in his Court.

(e) 9 Bom. H. C. Rep. A. C. J. 213.

(f) 3 Bom. H. C. Rep. A. C. J. 75.

(g) 9 Calc. W. Rep. Civ. R., 493.