

APPELLATE CIVIL.

Before Mr. Justice Pigot and Mr. Justice Stevens.

BHATTOO SINGH (DEFENDANT) v. RAMMO MAHTON AND ANOTHER
(PLAINTIFFS.)²

1895
August 6.

Contribution, Suit for—Provincial Small Cause Court Act (IX of 1887), Schedule II, Clause 41—Jurisdiction—Contract Act (IX of 1872), sections 69 and 70.

Clause 41, Schedule II of the Provincial Small Cause Courts Act (IX of 1887) excludes a suit for contribution from the jurisdiction of the Small Cause Court, and restores the law laid down in *Rambux Chittangeo v. Modhoosoodun Paul Chowdhry* (1).

IN this case there were four sets of defendants. The third set of defendants were *mokuravidars* in a revenue-paying estate. They obtained an *ex parte* decree for Rs. 408 6 annas 10 pic on the 24th July 1891 for arrears of rent for the years 1295—1298 (1888—1891), in respect of a *dur-mokurari* tenure in that estate, against their recorded tenants the plaintiffs and the second set of defendants. The fourth set of defendants held a decree against the third set of defendants, in execution of which they attached the rent decree against the *dur-mokuravidars* and advertised for sale a two annas share of the *dur-mokurari* tenure. In order to stay the sale the plaintiffs satisfied the decree and brought a suit to recover from the first defendant in the Small Cause Court side of the Court of the Munsif at Jamui, District Bhagulpore, three-fourths of the decretal amount, on the ground that he held a 12 annas share of the *dur-mokurari* holding. Various defences were set up by the first defendant which are immaterial for the purpose of this report, the only question being whether or not the suit was one which a Small Cause Court had jurisdiction to entertain.

²Appeal from Appellate Decree No. 1624 of 1894, against the decree of F. W. Badcock, Esq., District Judge of Bhagulpore, dated the 23rd August 1894, affirming the decree of Babu Uma Churn Kur, Munsif of Jamui, dated the 5th April 1894.

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The Munsif decreed the suit against the first defendant, and on appeal the District Judge affirmed that decision.

The first defendant appealed to the High Court.

Mr. Caspersz and Babu Jogesh Chunder Dey for the appellant.

Babu Umakali Mookerji, for the respondents, took the objection that the suit was one cognizable by a Small Cause Court and therefore no second appeal would lie. He referred to the Full Bench case of *Krishno Kamini Chowdhurani v. Gopi Mohun Ghose Hazra* (1).

The judgment of the Court (PIGOT and STEVENS, JJ.), (so far as it was material to the decision of this objection), was as follows :—

In this case the plaintiffs claim from the defendant a sum of money, being what they say is the proportion of the rent claimed in a suit in which an *ex parte* decree was obtained, an amount which is proportionate to the interest which the defendant had in the tenure, a *dur-mokurari* tenure, in which it is difficult to suppose that the defendant had not some, and indeed a considerable, interest. The plaintiffs had a four annas interest in this tenure, and they allege that the defendant had a twelve annas interest in it, although he was not the recorded tenant, but the person from whom he had purchased so far back as 1290 still had his name recorded as tenant. As we have said, there was an *ex parte* decree for rent due ; it was for rent due for the years 1295 to 1298, and execution being taken out by the person who was the holder of the decree against two annas out of the plaintiffs' four annas share in the tenure, the plaintiffs paid the entire amount of the decree ; they now claim from the defendant twelve annas of that sum, alleging that the defendant is the owner, although not the recorded owner, of twelve annas of the tenure.

The defendant set up several defences, amongst them, that the decree was obtained by collusion, but no evidence was adduced in support of any of the defences, in short, he appears to have left the case to be worked out by the plaintiffs.

[After finding on the merits of the case that the plaintiffs had

not sufficiently proved the defendant's interest in the *dur-mokurari* holding, and remanding the case to enable him to give such evidence, the learned Judges continued].

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It was argued that the appeal would not lie under the Full Bench case of *Krishno Kamini Chowdhurani v. Gopi Mohun Ghose Hazra* (1). We are disposed to think that clause 41 of the second Schedule of the Small Cause Court Act of 1887 so modifies the law held by that Full Bench to be the result of the old Small Cause Court Act coupled with the Contract Act as to exclude such a suit as is contemplated by clause 41 of that Schedule from the jurisdiction of the Small Cause Court. At any rate we should not reject the appeal on that ground, entertaining as we do rather the opinion that the Act of 1887 restores the law laid down by Sir Barnes Peacock in the well-known Full Bench case of *Rambux Chittangeo v. Modhoosoodun Paul Chowdhry* (2) before the Contract Act was passed, and that such a suit will not lie in the Small Cause Court.

F. K. D.

Case remanded.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

BURNA MOYI DASSEE (PLAINTIFF) v. BURMA MOYI CHOWDHURANI
AND ANOTHER (DEFENDANTS.) *

1895
August 27.

Limitation—Bengal Tenancy Act (VIII of 1885), section 184, and Schedule III, Art. 2 (b)—Suit for arrears of rent—Regulation VIII of 1819.

A landlord, to recover arrears of rent for the year 1297 B.S. from the *putni-dar*, filed a petition on the 1st Bysack 1298 (13th April 1891) in the Court of the Collector, under the provisions of Regulation VIII of 1819, praying for the sale of the *putni taluk*. The *taluk* was sold and was purchased by the landlord on the 1st Jeyt 1298 (14th May 1891). The whole of the arrears not being realized by the sale proceeds, the landlord brought an action on the 14th May 1894, for the balance of the *putni* rent to the end of 1297 B.S. (12th April 1891). The defence was that the suit was barred by limitation. *Held*, that the suit was governed by the provisions of the Bengal Tenancy Act, section 184, and Schedule III, Art. 2 (b); the period of limitation in a suit for rent provided by

* Appeal from Original Decree No. 288 of 1894, against the decree of Babu Krishna Nath Roy, Offg. Subordinate Judge of Khulna, dated the 2nd of July 1894.