

that the Legislature intended that only one component part of the value should be taken into consideration for determining the forum of appeal and not the other.

We accordingly hold that, under section 21 of Act XII of 1887, the appeal in this case lies to this Court and not to the District Judge, and we direct that the appeal of the petitioners be registered accordingly. No costs of the rule.

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 MOHINI
 MOHAN DAS
 v.
 SATTIS
 CHANDEA
 ROY.

Rule made absolute.

C. D. P.

Before Mr. Justice Tottenham and Mr. Justice Ameer Ali.

KRISHNA PROSAD NAG AND OTHERS (DEFENDANTS) v. MAIZUDDIN
 BISWAS AND ANOTHER (PLAINTIFFS).

1880

 March 25.

Small Cause Court, Mofussil—Provincial Small Cause Court Act (IX of 1887)—Jurisdiction—Suit for damages for the forcible cutting and carrying away of grass.

Act IX of 1887 does not exclude from the jurisdiction of the Small Cause Court a suit for damages for the forcible cutting and carrying away of grass.

Sungram Singh v. Juggun Singh (1); Daur Sinha v. Rughmunden Sinha (2); Darma Ayyan v. Rájapa Ayyan (3); and Mánappa Mudali v. McCarthy (4), referred to.

This was a rule under section 25 of the Provincial Small Cause Court Act of 1887.

Maizuddin Biswas and another instituted a suit for damages in the Court of Small Causes at Furreedpore against Krishna Prosad Nag and others (among whom were the petitioners), making their co-sharers *pro forma* defendants. The plaintiffs alleged that they and their co-sharers were the lessees of a plot of re-formed chur land called Chur Madhubdia in pergunnah Pas Pashur, and that in the month of Bhadro 1293 (August–September 1886) the principal defendants had trespassed on their land and forcibly cut and carried away the grass growing on 50 bighas thereof. The plaintiffs claimed from the principal defendants the sum of Rs. 250 as damages in respect of their share of the grass that

Civil Rule No. 1615 of 1889 against the decree of Baboo Trailokhya Nath Mitter, Judge of the Court of Small Causes, Furreedpore, dated the 29th of August 1889.

(1) 2 N. W., H. C., 18.

(3) I. L. R., 2 Mad., 161.

(2) 3 N. W., H. C., 101.

(4) I. L. R., 3 Mad., 192.

1890 had been cut and carried away. The principal defendants pleaded, *inter alia*, want of jurisdiction of the Court, and also denied the plaintiffs' title.

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The Judge found as a fact that the principal defendants had no right or interest in the land, that they were trespassers and had wrongfully cut and carried away the grass growing on the land. Accordingly, on 29th August 1889, the Judge gave the plaintiffs a decree for Rs. 240 with costs against the principal defendants except three of them.

Thereupon, these defendants moved the High Court under section 25 of Act IX of 1887, and obtained a rule calling on the plaintiffs to show cause why the decree of the 29th August should not be set aside.

On the rule coming up for argument—

Baboo *Srinath Das* and Baboo *Grija Sunker Mozundar* for the petitioners.

Dr. *Rash Behari Ghose* and Baboo *Harendra Nath Mookerjee* for the opposite party.

The contentions of the parties appear from the judgment of the High Court (TOTTENHAM and AMBER ALI, JJ.), which was as follows:—

The question involved in this rule is whether, having regard to the provisions of Article 31 of the second Schedule to the Provincial Small Cause Court Act (Act IX of 1887), a suit for damages for the forcible cutting and carrying away of grass is cognizable by the Court of Small Causes. The plaintiffs instituted this suit in the Small Cause Court of Furreedpore upon the allegation that they were the lessees of a piece of land, and that the defendants had wrongfully trespassed on the same and cut and carried away the grass growing thereon.

The defendants had, among other pleas, raised an objection to the jurisdiction of the Court, and also denied plaintiffs' title to the land. The Judge, however, found as a fact that the defendants had no sort of connection with the land in question, and that they had wrongfully taken the grass as alleged in the plaint, and accordingly decreed the plaintiffs' claim. The defendants, thereupon, obtained a rule from a Division Bench of this Court under section 25 of the Provincial Small Cause Court

Act, calling upon the plaintiffs to show cause why the decree of the Judge should not be set aside. Upon the hearing of the rule it was contended on behalf of the defendants that in view of the last clause of the article already mentioned, the Small Cause Court had no jurisdiction to entertain the suit. It is said that the words "profits of immoveable property . . . wrongfully removed by the defendant" include crops or produce of land forcibly carried away. We are of opinion that article 31 does not except from the jurisdiction of the Court of Small Causes suits for damages for trespass and for the forcible appropriation of crops or the produce of land. A reference to the words of articles 30 and 31 will render this perfectly clear. Article 30 excludes from the cognizance of the Small Cause Courts a suit for an account of property and for its due administration under decree, and article 31 declares "any other suit for an account, including a suit by a mortgagor after the mortgage has been satisfied to recover surplus collections received by the mortgagee, and a suit for the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant," to be likewise beyond the jurisdiction of Courts of Small Causes. From the collocation of the articles it is manifest that the suits referred to in the last clause of article 31 are of the same nature, *ejusdem generis*, as those previously described. That clause, in our opinion, applies to cases where a person under some claim of title has received the profits of immoveable property and the rightful owner, on the establishment of his title, seeks to recover the same. The article clearly means to treat such a suit as one for an account. An examination of section 6 of Act XI of 1865 and of some of the cases decided thereunder would show that suits for damages for trespass on land were never intended to be excepted from the jurisdiction of the Small Cause Court. Section 6 of Act XI of 1865 provided that "claims for money due on bond or other contract, or for rent, or for personal property, or for the value of such property, or for damages" with certain limitations not necessary to mention here, should be cognizable by the Courts of Small Causes.

In the case of *Sungram Singh v. Juggun Singh* (1), no doubt it was held that a suit for assessed mesne profits within the pecuniary limit prescribed in the section, "being a suit for damages,"

(1) 2 N. W. H. C., 18.

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was cognizable by the Small Cause Court, but that case has never been followed. It would seem that the Legislature, in order to remove all doubts on the point, expressly exempted suits for mesne profits from the cognizance of the Courts of Small Causes. It may be remarked also that the language of the last clause of article 31 is uniform with that of article 109 of the Limitation Act, which relates to suits for mesne profits; and this fact, too, would indicate that the Legislature, in article 31 of the 2nd schedule of the Small Cause Court Act, was providing for the same class of suits. Under section 6 of the old Act a suit for the wrongful reaping and carrying off the produce of lands was held to be cognizable by a Court of Small Causes—*Daur Sinha v. Raghunandan Sinha* (1). In the case of *Durma Ayyar v. Rajappa Ayyar* (2) it was alleged by the plaintiff that he and the first defendant were in joint possession of a parcel of land, and that his share of the produce for the year 1887 was carried away by the first defendant with the aid of the second defendant. He accordingly claimed Rs. 187 as the value of his share of the produce. The defendants pleaded that the plaintiff had no right to the possession of the land. In the face of this objection the High Court held that the Small Cause Court had jurisdiction to entertain the suit. In another case, *Mamappa Mudali v. McCarthy* (3), decided by a Full Court consisting of Turner, C.J., Innes, Korman, and Ayyar, JJ., it was conceded that a suit for damages for the wrongful cutting and carrying away of bamboos or any other produce of land was cognizable by the Small Cause Court, and the only question discussed was whether an objection as to the title of the plaintiff to the land would oust the jurisdiction. It was held that the jurisdiction is not ousted when the objection is raised incidentally.

We hold that the present Act has altered in no way the cognizability by Small Cause Courts of suits for trespass on land and the wrongful appropriation of produce, and that the present suit was properly maintainable in the Court of Small Causes.

The other objections taken in the petition have not been pressed, nor have they any force. The rule accordingly is discharged with costs.

C. D. P.

Rule discharged.

(1) 3 N. W. H. C., 101.

(2) I. L. R., 2 Mad., 181.

(3) I. L. R., 3 Mad., p. 192.