

1877  
 KALLY PRO-  
 SONNO HAZRA  
 v.  
 HEERA LAL  
 MUNDLE.

PRINSEP, J.—I am of the same opinion. I would only add that the fact that it has been thought necessary to make a special proviso in art. 169, sch. ii of the Limitation Act, seems to show that the ordinary law was not sufficient in this respect as regards decrees or orders of a High Court in its Ordinary Original Civil Jurisdiction. There is no such special provision for other decrees or orders. We cannot apply s. 20 or 21.

*Appeal dismissed.*

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FULL BENCH.

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*Before Sir Richard Garth, Knight, Chief Justice, Mr. Justice Jackson, Mr. Justice Macpherson, Mr. Justice Markby, and Mr. Justice Ainslie.*

1877  
 July 20.

MOHESH MAHTO AND ANOTHER (DEFENDANTS) v. SHEIK PIRU—  
 (PLAINTIFF).\*

*Special Appeal—Jurisdiction—Small Cause Court—Claim under Rs. 500—  
 Question of Title—Act XXIII of 1861, s. 27—Act XI of 1861, s. 6.*

No special appeal lies to the High Court in a suit cognizable by the Small Cause Court, although a question of title to immoveable property has been raised and tried in the Court below.

THIS was a suit for the recovery of Rs. 476, the price of certain sakhwa trees. A question of title had been raised and determined in the Court below in favour of the respondent. Upon a special appeal from this decision, Markby and Prinsep, JJ., referred the following point to a Full Bench: “Whether, having regard to the provisions of s. 27 of Act XXIII of 1861, a special appeal lies to the High Court in a suit of the nature cognizable by a Court of Small Causes, when a question of title to immoveable property has been raised and tried in the Courts below.”

Baboo *Anandanauth Chatterjee*, for the respondent, took a preliminary objection to the hearing of the appeal, and con-

\* Special Appeal, No. 1385 of 1875, against a decree of H. M. Boddam, Esq., Deputy Commissioner of Zilla Hazaribagh, dated the 18th March, 1876.

tended that no appeal would lie to this Court, inasmuch as the case was one cognizable by the Small Cause Court, being merely a suit for damages. The words of the Act are, "that no special appeal shall lie from any decision or order in any suit of the nature cognizable in Courts of Small Causes.....when the debt, damage or demand for which the original suit shall be instituted shall not exceed five hundred rupees ; but every such order or decision shall be final." It is true that a question of title was raised and tried, but it was simply raised incidentally in order to the determination of damages, and as the suit itself was merely for damages no appeal lies—*Grant v. Modhoosudun Singh* (1) and *Lasmani Debia v. Mahomed Hafezulla* (2).

1877

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 MOHESH  
 MARTO  
 v.  
 SHRIK PIRU.

Baboo *Roopnath Bonerjee* for the appellants.—If the sole question raised and decided in this suit had been the plaintiff's claim to damages, it is clear that no appeal would lie to this Court. But the decree of the Court below was based upon a question of title, which, if it had properly arisen incidentally in a suit brought in the Small Cause Court, would not then have been finally concluded between the parties—*Bhoop Narain Sahoo v. Meer Mahomed Hossein* (3); and as this question of title had to be determined before a decree could be given, the appeal is admissible—*Pachoo Raree v. Gooroo Churn Dass* (4); see also *Dikshit v. Dikshit* (5) and *Ramchandra Ragunath v. Abajibin Rastya* (6).

The opinion of the Full Bench was delivered by

GARTH, C. J.—We are of opinion, that as this was a suit cognizable by the Court of Small Causes, no special appeal lies to this Court, although a question of title may have been incidentally raised in it. The appeal will, therefore, be dismissed.

*Appeal dismissed.*

(1) 10 W. R., 79.

(2) 3 B. L. R., Ap., 96.

(3) 4 W. R., 60.

(4) 15 W. R., 556.

(5) 2 Bom. H. C. Rep., 4.

(6) 6 Bom. H. C. Rep., A. C., 12.