

that the plaintiff is not entitled to interest and to a declaration of lien on the mouza.

We think art. 99 has no application to the case, the plaintiff having paid the money, neither under a decree nor as a joint proprietor of the estate. The plaintiff is undoubtedly entitled to recover the money under s. 9, of Act XI of 1859, and he might also, under that section, have retained his lien on the other mouzas of the estate till his money had been paid. He is equally entitled to recover his money under s. 69 of the Contract Act, and we think that the liability to pay the revenue was not merely a personal liability of the defendant, but was also a liability imposed upon the defendant's estate.—*Mothooranath Chuttopadhya v. Kristo Kumar Ghose* (1).

As regards the period of limitation, we are unable to distinguish the case from *Deo Nandan Ojha v. Musst. Dulhun Bisnath Kooer* (2); and we, therefore, concur in thinking that art. 132 applies. We see no reason why the plaintiff should not recover interest on the money, nor do we object to his obtaining a declaration that the money is recoverable by sale of Mouza Tulsipore, though it would have been better if he had asked for recovery by sale of the entire estate.

The appeal will, therefore, be dismissed with costs.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Field.

RAMTONU ACHARJEE *v.* PEARYMOHUN ACHARJEE.*

1880
Dec. 21.

Suit in Small Cause Court—Accounts—Want of Jurisdiction.

A, B, and C, the joint owners of an estate, sued their tenant in the Munsif's Court for rent; the tenant defeated the suit by proving payment of the entire rent to *B*.

A then brought a suit in the Small Cause Court against *B* for damages equal in amount to the one-third of rent due to him and the costs incurred by

* Rule No. 1044 of 1880, against the order of J. Weston, Esq., Judge of Small Cause Court at Narail, dated the 5th June 1880.

(1) I. L. R., 4 Calc., 369.

(2) Sp. Ap., No. 1913 of 1876, unreported.

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him and awarded against him in the rent-suit in the Munsif's Court. *B* pleaded that he had expended the share of rent due to *A* for the benefit of the joint estate, and that *A* had collected the rents of other mehals belonging to the joint estate, and had not accounted for such rents. *Held*, that the suit being one which involved questions of partnership account between the joint proprietors of an undivided estate, could not be entertained in a Court of Small Causes.

THIS was a rule to set aside a judgment of a Small Cause Court for want of jurisdiction.

The facts of the case were as follows :

One Pearymohun Acharjee, Ramtonu Acharjee, and a third person, being co-proprietors of a certain estate, sued their tenant in the Munsif's Court for rent. The tenant pleaded payment of the entire rent to Ramtonu Acharjee, who at the hearing admitted the same, and the suit was dismissed.

Pearymohun Acharjee then brought a suit in the Small Cause Court against Ramtonu Acharjee, to recover Rs. 14-4-1 as damages, made up from the following items: one-third of the rent due to him, the costs incurred by the plaintiff in the rent-suit, and the costs awarded against the plaintiff in the rent-suit in favor of the tenant-defendant in that suit.

The defendant Ramtonu Acharjee contended, that the Small Cause Court had no jurisdiction to entertain the suit, the suit being one virtually for an account of a partnership proceeding, inasmuch as he had expended sums out of the moneys collected as rent, for the benefit of his co-proprietors; and further that the plaintiff in the present suit had also collected the rents of other mehals belonging to the joint estate, and that he had not adjusted accounts although requested to do so. The Small Cause Court gave the plaintiff a decree for a portion of the amount claimed.

The defendant then applied to the High Court, and obtained a rule, calling upon the plaintiff to show cause why the decree of the Small Cause Court should not be set aside for want of jurisdiction.

Baboo *Bungshi Dhur Sen* in support of the rule.

Baboo *Grija Sunkar Mozoomdar* showed cause.

The judgment of the Court (GARTH, C.J., and FIELD, J.) was delivered by

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GARTH, C. J. — I think that this rule should be made absolute. It was obtained on the ground that the Small Cause Court had no jurisdiction to try the suit.

The facts were these: the plaintiff and defendant and a third person, being co-proprietors of certain lands, the plaintiff brought this suit to recover his share of the rent of a portion of those lands, which the defendant had received from the ryot.

The answer of the defendant was this, that he and the plaintiff and a third person, being co-proprietors of the lands, the defendant had, with the plaintiff's consent, received the rent not only of this particular jote, but of several other jotes; and that he had disbursed that money in various ways for the benefit of the three co-proprietors.

Under these circumstances it was contended, and it seems to me rightly contended, that it was impossible to try the case, so as to do justice to all parties concerned, except by taking an account. The sums which the defendant had disbursed could not properly be set off against the claim in this suit, and it would obviously be unjust to the defendant to allow the plaintiff to recover the share of the rent which he was asking for, and yet not to allow the defendant to set off against the plaintiff's claim the sums which he paid for the benefit of the plaintiff and other proprietors.

The suit was clearly one which involved questions of partnership account between the joint proprietors of an undivided estate; and therefore the Small Cause Court had no jurisdiction to try it.

Our attention has been called to the case of *Ram Coomar Chowdry v. Shama Churn Chowdry* (1), in which the facts were substantially the same as those in the present case; and it was held, for the reason which I have just explained, that the Small Cause Court had no jurisdiction to try the suit. There is also another case, *Kandaree Joardar v. Mannik Joardar* (2), to which our attention has also been called. There it appears

(1) Suth., S. C. C. Ref., 33.

(2) *Id.*, 23.

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that one co-proprietor brought a suit against another co-proprietor for a portion of the produce of certain land which belonged to them both; and the Judges seem to have thought that case distinguishable from the general rule which is laid down in the other case at page 33. I confess I feel some difficulty in recognizing the distinction. It seems to me that, under such circumstances, no suit could, with justice, be disposed of in the Small Cause Court.

I am of opinion, therefore, that this rule should be made absolute with costs.

Rule absolute.

Before Mr. Justice McDonell and Mr. Justice Broughton.

1880
 Dec. 22.

KADUMBINI DABYA (JUDGMENT-DEBTOR) v. KOYLASH CHUNDER
 PAL CHOWDHRY (DECREE-HOLDER).*

Beng. Act VIII of 1869, s. 58—Limitation—Execution of Decree—Delay and Laches—Costs.

In a suit for arrears of rent under Beng. Act VIII of 1869, a decree was obtained, on the 30th June 1876, for a sum which with costs amounted to less than Rs. 500. Application for execution was made, in December 1877, against property other than that for which the rent was due; but was, in the first Court, opposed successfully by the judgment-debtor, on the ground that the undertenure should first be proceeded against, though such undertenure had already been sold away in execution of another decree, and the execution-proceeding was struck off on the 15th March 1878, and the property released from attachment. The judgment-creditor appealed, and was successful both in the lower Appellate Court and the High Court, the latter decision being dated 26th February 1879. The costs awarded him in these proceedings, if added to the amount of the decree, would amount to a sum of more than Rs. 500. The next application for execution was made on 19th August 1879.

Held, that the costs of the appeals in the execution-proceedings should not be added to the decree; and, therefore, the decree being for less than Rs. 500, the provisions of s. 58, Beng. Act VIII of 1869, applied to it.

Held also, that the attachment having been removed in March 1878, the execution of the decree was barred under that section.

* Appeal from order, No. 262 of 1880, against the order of P. Dickens, Esq., Judge of Nuddea, dated the 8th July 1880, affirming the order of Baboo Rajendro Coomar Bose, Munsif of Ranaghaut, dated the 15th April 1880.