

## CIVIL REFERENCE.

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*Before Mr. Justice Brett and Mr. Justice Doss.*

AKSHAY KUMAR SHAHA

v.

HIRA RAM DOSAD.\*

1908

March 3.

*Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. 8 and ss. 15(1), 32—Suit for recovery of rent of homestead land—Jurisdiction of Judges of Courts invested with Small Cause Court Powers.*

Clause (1) of section 15 of the Provincial Small Cause Courts Act should be read with clause 8 of the Second Schedule of the Act.

So read, the expression “the Judge of the Court of Small Causes” in clause 8 of the Second Schedule must be taken to apply either to a Court of Small Causes constituted under the Act or to a Court invested with the jurisdiction of a Court of Small Causes.

### CIVIL REFERENCE.

Akshay Kumar Shaha instituted a suit in the Second Court of the Munsif of Sealdah against Hira Lal Dosad for the recovery of arrears of rent of homestead land situated within the local limits of the Munsif’s jurisdiction.

By a notification in the Calcutta Gazette, dated 21st June 1904, Munsifs of Sealdah and Alipur were generally invested by the Local Government, under clause 8 of the Second Schedule of the Provincial Small Cause Courts Act, with powers to exercise jurisdiction in suits for the recovery of homestead lands up to the value of Rs. 50 within the local limits of the jurisdiction of such Munsifs.

Babu Kunja Behari Gupta, before whom the rent suit was instituted, was appointed the Second Munsif of Sealdah on the 27th June 1904, and was invested with Small Cause Court powers within the local limits of the Munsifi in suits up to the value of Rs. 100.

The Munsif tried this suit as a Small Cause Court Judge and dismissed it on the merits. The plaintiff preferred an appeal against this decision and also prayed for a reference to the High

\* Civil Reference No. 3A. of 1907 by C. P. Beachcroft Esqr., District Judge, 24 P. Pergs., dated 3rd October, 1907.

1903  
 ANSHAY  
 KUMAR  
 SHAHA  
 v.  
 HIRA RAM  
 DOSAD.

Court under section 646B, on the question as to the jurisdiction of the Munsif to try the suit. The District Judge was of opinion that no appeal lay to him and made the following order of reference:—

This is an appeal in a case tried under Small Cause Court procedure by the Munsif, 2nd Court of Sealdah, with an alternative prayer for a reference to the High Court under section 646B of the Code of Civil Procedure, as an important question of jurisdiction was involved. Before registering the appeal, I have heard both sides on the question of jurisdiction.

These notifications in the Calcutta Gazette bear on the present question. All appear in the issue of the 29th June 1904, at pages 946 and 949 of Part I. By notification No. 1778J.D., the Munsifs of Alipur and Sealdah were vested under clause (8) of the Second Schedule of the Provincial Small Cause Courts Act, IX of 1887, with power to try under S. C. C. procedure suits for the recovery of rent of homestead land, when the value did not exceed Rs. 50. By notification 1776J.D., the Munsif of the 2nd Court, Sealdah, was appointed to be Registrar of the Court of Small Causes of Sealdah under section 12 of Act IX of 1887 and was vested with power to try suits of the S. C. C. class up to Rs. 20 within the local limits of the Court of Small Causes at Sealdah. By notification No. 2174A.D., Babu Kunja Behari Gupta, who decided the present suit, was appointed to be a Munsif at Sealdah, and was vested with S. C. C. powers up to Rs. 100, with respect to that portion of the Munsifi lying outside the limits of the jurisdiction of the Small Cause Court proper. The position therefore was that by these notifications the officer in question had S. C. C. powers up to Rs. 20 as Registrar within the limits of the Small Cause Court proper and up to Rs. 100 outside those limits and within the Munsifi and with special powers in respect of the rent of homestead lands up to Rs. 50 within the Munsifi.

The appellant's argument is that the notification giving special power in respect of the rent of homestead lands is *ultra vires*, that Act IX of 1887 makes a distinction between Courts of Small Causes and Courts invested with the jurisdiction of Courts of Small Causes and that it is only Courts of the former class that can be invested with special powers under clause 8 of the Second Schedule.

Section 5 of the Act provides for the establishment of Courts of Small Causes. They may be established by the Local Government, with the previous consent of the Governor-General in Council. Section 25 of Act XII of 1887, the Bengal, North-Western Provinces and Assam Civil Courts Act, empowers the Local Government to confer upon Subordinate Judges and Munsifs the jurisdiction of Judges of Courts of Small Causes. This no doubt contemplates the special powers being given to officers personally and not by reason of their holding certain posts. Section 32 of Act IX of 1887 makes provisions in the case of officers so appointed: it puts them on the same footing as Judges of Courts of Small Causes so far as regards the exercise of jurisdiction. Section 15 of the same Act prohibits a Court of Small Causes from taking cognizance of suits specified in the Second Schedule. Among these suits are suits for the recovery of rent, other than house rent, but clause 8 of the Second Schedule empowers the Local Government to

expressly invest a Judge of a Court of Small Causes with authority to exercise jurisdiction with respect to suits for rent. If the words "Judge of the Court of Small Causes" include an officer vested under the Civil Courts Act with Small Cause Court powers, then the Munsif in the present case had jurisdiction; if they do not the notification 1778J.D., was *ultra vires* and the Munsif had no jurisdiction to try the suit under S. C. C. powers.

1908  
 AKSHAY  
 KUMAR  
 SHARMA  
 &  
 HIRA RAM  
 DOSAD.

Section 4 of Act IX of 1887 defines a Court of Small Causes. It means a Court of Small Causes constituted under the Act and includes any person exercising jurisdiction under the Act in any such Court. The only Courts constituted under the Act are those established under section 5 with the previous consent of the Governor-General in Council. The concluding words of section 4 will not extend the meaning to officers, who have been vested with jurisdiction under the Civil Courts Act, for they refer only to officers exercising jurisdiction "in any such Court," *i.e.*, a Court constituted under Act IX of 1887. The concluding words simply mean that the phrase "Court of Small Causes" includes the Judge presiding in the Court. The distinction between the two classes of Court is observed in section 5 of the Civil Procedure Code. The respondent's pleader argues that the Munsif had jurisdiction, because he had been appointed Registrar of the Court of Small Causes and had under section 12(3) been given power to try Small Cause Court suits up to Rs. 20. He argues that, because the Munsif had judicial powers as Registrar, he was a Judge within the definition in section 2 of the Civil Procedure Code, and, therefore, he was a Judge of a Court of Small Causes and therefore his case comes within the terms of clause 8 of Schedule II. As a Registrar with judicial power he is no doubt a Judge within the meaning of section 2 of the Civil Procedure Code, but that only makes him a Judge of a Court of Small Causes so far as his jurisdiction as Registrar extends, *i.e.*, within the limits of the Court of Small Causes proper. It cannot by a double interpretation make him a Judge of a Court of Small Causes without those limits, and it would be an anomaly that, while the Act limits his jurisdiction as Registrar to suits the value of which does not exceed Rs. 20, he should by reason of the fact that he happens to be Registrar within the limits of the Small Cause Court proper, be deemed to have jurisdiction outside those limits in a class of suits, which the Act provides shall not ordinarily be tried even by the Judge of a Court of Small Causes under Small Cause Court procedure. Further I am of opinion that, even if a Registrar of a Court of Small Causes is a Judge of a Court of Small Causes within the meaning of clause 8 of the Second Schedule, he could not be empowered to try suits under that clause, the value of which exceeds Rs. 20, seeing that section 12 of the Act limits his jurisdiction to that amount: much less then can he as a Munsif, merely because he happens also to be Registrar, be vested under that clause with jurisdiction to try suits under Small Cause Court procedure up to Rs. 50. But, as I have said, I think the powers which may be given under clause 8 are restricted to Judges of Courts of Small Causes proper, and cannot be extended to officers, who have been given Small Cause Court powers under the Civil Court Act. I am therefore of opinion that Notification No. 1778J.D., was *ultra vires* and that the Munsif had no jurisdiction to try this case under Small Cause Court procedure.

1908

AKSHAY  
KUMAR  
SHAHHIBA RAM  
DOSAD.

It may be noted that an objection was taken in the Lower Court to the jurisdiction of the Court.

I accordingly refer the case under section 646B., Code of Civil Procedure for the orders of the High Court.

*Babu Jnanendra Nath Basu* in support of the reference. There is a distinction always observed in the Provincial Small Cause Courts Act between a Small Cause Court Judge and one invested with such powers.

[BRETT J. Do not ss. 15 (1) and 32 explain the question fully?]

There is then the definition of a "Judge of a Court of Small Causes".

[BRETT J. The objection is technical. Is Sch. II, cl. (8) excluded from the operation of s. 32?]

Yes, where the clause distinctly excludes certain cases from the jurisdiction of the Judge specially empowered. The notification in the Calcutta Gazette, dated 21st June 1904, was vague and general. Powers must be given by the particular name of the person, invested with special powers.

[BRETT J. That is not a point touched in the reference.]

A distinction is also drawn between the Court of Small Cause and a Court invested with the jurisdiction of a Court of Small Causes in s. 5 of the Civil Procedure Code and s. 33 of the Provincial Small Cause Courts Act. See also *Ramchandra v. Ganesh* (1) and *Dulal Chandra Deb v. Ram Narain Deb* (2).

The notification in the Calcutta Gazette was *ultra vires* and the Munsif had no jurisdiction to try the suit.

*Babu Provash Chandra Mitra* for the opposite party was not called upon to reply.

BRETT AND DOSS JJ. In dealing with this Reference we propose to confine ourselves to the question, which is referred to us by the learned Judge for determination. The question is, whether clause (8) of the Second Schedule of the Provincial Small Cause Courts Act, which provides that "a suit for the recovery of rent, other than house rent, is excluded from the

(1) (1896) I. L. R. 23 Bom. 382. (2) (1904) I. L. R. 31 Calc. 1057, 1061, 1063.

jurisdiction of a Court of Small Causes, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto," is confined to the Judges of Courts of Small Causes constituted under the Provincial Small Cause Courts Act or may be taken to apply to the Judges of Courts invested with the jurisdiction of Courts of Small Causes under any other enactment. The learned District Judge expresses the opinion that the clause of the Schedule is so restricted.

We have carefully considered the circumstances of the case and are of opinion that there are not sufficient grounds to support the view that it was the intention of the Legislature to restrict the clause in the manner suggested. In this case the Munsif, Second Court, Sealdah, was invested with the power to try such suits under clause (8) of the Second Schedule of the Provincial Small Cause Courts Act by notification in the Calcutta Gazette of the 21st June 1904. Section 32 of the Provincial Small Cause Courts Act provides that so much of Chapters III and IV as relates to the nature of suits cognizable by Courts of Small Causes, applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes, so far as regards the exercise of that jurisdiction by those Courts; and we think that in order to determine the question before us it is necessary that we should read clause (1) of section 15 with clause (8) of the Second Schedule of the Provincial Small Cause Courts Act. So read, the section and clause will run as follows:—  
 "A Court of Small Causes or a Court invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes shall not take cognizance of a suit for the recovery of rent, other than house rent, unless the Judge of the Court of Small Causes has been expressly invested by the Local Government with authority to exercise jurisdiction with respect thereto." So read, the expression, "the Judge of the Court of Small Causes" in clause (8) of the Second Schedule must be taken to apply, either to a Court of Small Causes constituted under the Act or to a Court invested with the jurisdiction of a Court of Small Causes. In the case before us the Munsif, who tried the suit, was a Court invested with the jurisdiction of a Court of

1908

AKSHAY  
KUMAR  
SHAHv.  
HIRA RAM  
DOSAD.

1908  
AKSHAY  
KUMAR  
SHARMA  
v.  
HIRA RAM  
DOSAD.

Small Causes and we therefore hold that, under the provisions of clause (8) of the Second Schedule of the Act read with sections 15 and 32 of the Act, he had power to try the suit for recovery of the rent of homestead lands.

The opposite party is in our opinion entitled to the costs of this hearing.

S. M.