

which have taken place in consequence of those orders. The appellant must have his costs in all the three Courts.

O. M.

Appeal allowed.

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 LAKSHMI
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 HALDAR.

APPELLATE CIVIL.

Before Carnduff and Beachcroft JJ.

INDRA CHANDRA MUKHERJEE

v.

SRISH CHANDRA BANERJEE.*

1913
 Jan. 30

Appeal—Small cause case tried as an ordinary suit—Jurisdiction.

Where a Judicial Officer invested with Small Cause Court jurisdiction tries a suit, which he might have tried under the summary procedure, in the ordinary manner, the character of the suit is not thereby altered, and his decree is not appealable.

Shankarbai v. Somabhai (1) followed.

SECOND APPEAL by the defendant, Indra Chandra Mukherjee, Chairman of the Jangipore Municipality.

This appeal arose out of an action brought by the plaintiff to recover a certain sum of money, which he alleged that the defendant illegally realised from him. The allegation of the plaintiff was that the defendant realised arbitrarily Rs. 34-3 from him by distress warrant on the 3rd February, 1909; that no notice of demand nor any bill was ever served or presented to him, and as such the action of the Municipality was wholly illegal. The plaintiff also claimed

* Appeal from Appellate Order, No. 254 of 1911, and Rule No. 3396 of 1911, against the order of B. C. Mitter, District Judge of Murshidabad, dated Feb. 23, 1911, discharging the order of Aparas Prasad Mukherjee, Munsif of Jangipore, dated May 11, 1910.

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compensation for illegal and excessive distress, but the claim for compensation was afterwards deleted.

Defendant denied the liability on various grounds.

The suit was tried by the Munsif of Jangipore, who was also invested with the powers of a Small Cause Court Judge, in the ordinary manner. The Munsif gave the plaintiff a partial decree. On appeal by the plaintiff, the District Judge holding that the suit was triable by the Small Cause Court only, discharged the decree of the regular Court as being made without jurisdiction, and remitted the suit for trial on the Small Cause Court side.

Against this decision the defendant appealed to the High Court; and he also obtained a Rule.

Babu Brajendra Nath Chatterjee, for the appellant. The question is, when a money suit is tried in the ordinary way by a Munsif invested with the powers of a Small Cause Court Judge, whether the nature of the suit is altered. I submit it is not altered. The case of *Shankarbai v. Somabhai* (1) supports my contention. This, being a suit for recovery of money realised by illegal distress, is cognisable by the Small Cause Court, and no appeal lay to the District Judge, and he had no jurisdiction to set aside the order of the learned Munsif.

Babu Bepin Behari Ghose, for the respondent, contended that no second appeal lay, the suit being one cognisable by the Court of Small Causes, and its value being less than Rs. 500. The plaintiff was greatly prejudiced by the fact of the suit being tried in the ordinary way. Had it not been for that, he could have made an application under section 25 of the Provincial Small Cause Courts Act for setting aside the order. The plaintiff could not have sued for

(1) (1900) I. L. R. 25 Bom. 417.

the money as a debt. The suit is in substance one for compensation for illegal distress, and comes under section 35 cl. (j) of the Provincial Small Cause Courts Act. As the case was tried in the ordinary civil side, an appeal lay to the District Judge. The learned Judge ought not to have remitted the case to the Court of first instance, but he should have decreed the appeal.

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CARNDUFF AND BEACHCROFT JJ. This appeal is from an appellate order, and it and the Rule connected therewith arise out of a suit brought by the plaintiff in the Court of the Munsif of Jangipore for the recovery from the local Municipality of a small sum of Rs. 34-3 said to have been illegally recovered from him. As will appear from what we are going to say, there is no second appeal in this case, and the appeal must, therefore, be dismissed as incompetent. We make no order as to costs.

We now proceed to deal with the Rule. The Munsif of Jangipore was vested with the powers of a Small Cause Court Judge. He, however, thought fit to try the case, not in the summary manner provided by the law, but at length as if it had been an ordinary suit, and he gave the plaintiff a modified decree. An appeal was then preferred to the District Judge by the plaintiff, and the District Judge held that the Munsif by following the ordinary procedure and not the summary procedure, had acted without jurisdiction. He accordingly set the decree aside and ordered the case to be retried by the same Munsif in a summary manner.

Such an order has, obviously, nothing to recommend it on the merits, and it could be justified only if the law rendered it unavoidable. In our view, however, it was the District Judge who acted without

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jurisdiction in making it, and there was no defect of jurisdiction in respect of the trial by the Munsif. Under section 15, sub-section (2) of the Provincial Small Cause Courts Act, 1887, all suits of a civil nature of which the value does not exceed Rs. 500, are cognizable by a Court of Small Causes, unless expressly excepted. By section 16 it is enacted that, save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable. And section 27 provides that a decree or order made under the foregoing provisions of the Act by a Court of Small Causes is final. The suit in question could, therefore, be tried by the Munsif only in the capacity of a Small Cause Court Judge; and we are of opinion, following the decision of Mr. Justice Candy and Mr. Justice Whitworth in *Shankarbai v. Somabhai* (1) that, where a judicial officer invested with Small Cause Court jurisdiction tries a suit, which he might have tried under the summary procedure, in the ordinary manner, the character of the suit is not thereby altered and his decree is not appealable. Our conclusion, therefore, is that the District Judge's order was bad and made without jurisdiction.

There remains one more point to be noticed. It is suggested by the learned vakil who has appeared for the opposite party that the suit was really a suit for compensation for illegal distress, and was, therefore, excepted from the jurisdiction of the Small Cause Court by Art. 35, cl. (j), of the second Schedule to the Provincial Small Cause Courts Act, 1887. A reference to the plaint, however, will show that this is not so.

(1) (1900) I. L. R. 25 Bom. 417.

The plaintiff began, no doubt, by seeking to recover not only the actual amount illegally realised from him, but also damages assessed by him at Rs. 17. Before trial, however, he altered his plaint by striking out the claim for damages, which he said he desired to abandon. We cannot accept the ingenious contention that the suit remained, nevertheless, a suit for compensation, the measure of the injury to be compensated being the precise amount illegally recovered, and we agree with the learned District Judge in holding that it was a suit triable exclusively by the Small Cause Court.

The result is that the Rule is made absolute, the order of the District Judge set aside, and the decree of the Munsif restored. In this connection also we make no order as to costs.

S. C. G. *Appeal dismissed. Rule absolute.*

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APPELLATE CIVIL.

Before Holmwood and Chapman JJ.

SRISH CHANDRA PAL CHOWDHRY

v.

TRIGUNA PRASAD PAL CHOWDHRY.*

1913
Jan. 30.

Review, application for—Suit—Res judicata—Compromise decree.

An application for review is not a suit within the meaning of s. 13 of the Code of Civil Procedure, 1882, and a decision of a question arising in an application for review cannot operate as constructive *res judicata*.

* Appeal from Appellate Decree, No 2114 of 1909, against the decree of H. E. Ransom, District Judge of Nadia, dated Aug. 20, 1909, affirming the decree of Pramatha Nath Chatterjee, Subordinate Judge of Nadia, dated Feb. 27, 1909.