

(1927) 11 CAL CK 0016
In the Calcutta High Court

Bani Kanta Mondal and Others

APPELLANT

Vs

Hemanta Kumar Ghose and Others

RESPONDENT

Date of Decision : 29-11-1927

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Article 31

Citation : AIR 1928 Cal 405

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—I am of opinion that to accede to the contention urged on behalf of the petitioners in this Rule would be to hold that all suits for recovery of mesne profits against trespassers are outside the cognizance of the Court of Small Causes. Schedule 2, Article 31, Provincial Small Cause Courts Act, was construed by this Court prior to the introduction of Clause (ii) of Article 35 in the case of *Kunjo Behary Singh v. Madhub Chandra Ghose* (1896) 23 Cal. 884 (F.B.), and a Full Bench of this Court held that suits were cognizable by Courts of Small Causes. To find out whether the introduction of Clause (ii) to Article 35 in the said schedule has effected any change in the law it may not be out of place to refer to what was said in that case by Trevelyan, J. He observed that suits for damages in the nature of mesne profits were cognizable by a Court of Small Causes even under Act 11 of 1865. It would require very strong reasons to suppose that the introduction of Clause (ii) was made in Article 35 with the object of unsettling the practice that has obtained in this country ever since the foundation of Courts of Small Causes, and indeed to those who are familiar with the history of this clause it is well known why and to meet what class of cases this clause was introduced.

2. Turning now to the allegations contained in the plaint upon which the plaintiff's cause of action is founded what is stated in paras. 6 and 7 thereof is this that the plaintiff had obtained as against the defendants delivery of possession through the Court on the 17th November 1924, that thereafter

litigation went on between the plaintiff and the defendants, and that taking advantage of the said litigation the defendants did not give up possession and continuing in such possession took away the paddy that was standing on the land on the said 17th November 1924, and that thereafter they illegally grew paddy on the land in the year 1332 and appropriated the same to their own use and for that the plaintiff sued "for damages for use and occupation." These allegations standing by themselves would hardly make out a case either u/s 379, I.P.C. or u/s 447 thereof. Other elements have got to be proved in order to establish a case of criminal trespass or of theft as against the defendants. It might well be that the defendants acted under a bona fide claim of right, that although the Court had delivered possession of the land to the plaintiff they were not willing to part with their possession in view of such rights as they thought they had in the lands, and that after acting in that belief they did not give up possession but continued to be in occupation of the lands and to grow crops thereon and to take such crops as had actually been grown by them and belonged to them. I do not see how it can be said that the acts committed by the defendants necessarily amounted to theft or criminal trespass. My attention has been drawn to a decision of this Court in the case of Abinash Chandra Sarkar v. Atul Krishna Bose [1918] 28 C.L.J. 120, in support of the position which the petitioners have taken up, namely, that the allegations in the plaint, if established, do constitute a criminal offence. It will be seen however, that there is a broad distinction between that case and the present one. The difference lies in this that in that case the complainant having obtained a decree for possession against a certain person had obtained actual possession of the land in respect of which the decree had been passed actual possession in the sense in which the expression is understood in criminal law. I am of opinion that the damages that have been claimed in the present suit are not for any act which would amount to any criminal offence within the meaning of Chap. 17, I.P.C. We need not in the present case look at the exceptions contained in Chap. 4, I.P.C., for the determination of this question at all. I accordingly hold that the Small Cause Court had jurisdiction to deal with this suit.

3. The Rule is, in my opinion, fit to be discharged and I order accordingly. The opposite party will be entitled to costs. Hearing fee two gold mohurs.