

(1896) 08 CAL CK 0003
In the Calcutta High Court

Dewan Roy

APPELLANT

Vs

Sundar Tewary and Others

RESPONDENT

Date of Decision : 18-08-1896

Acts Referred:

Citation : (1897) ILR (Cal) 163

Hon'ble Judges : Trevelyan, J;Beverley, J

Bench : Division Bench

Judgement

Trevelyan and Beverley, JJ.—These are appeals from decrees passed in a series of suits brought by different plaintiffs against the same defendants. The suits were all tried together in the first Court, and the appeals were tried together in the Lower Appellate Court.

2. The plaintiffs claimed to recover money paid by them to get back their crops which had been distrained by the defendants for rents alleged to be due by persons other than the plaintiffs. The plaintiffs also claimed damages on account of the distraint.

3. It has been contended before us that no second appeal lies, as the suits are of a nature cognizable by Courts of Small Causes, and the value of the subject-matter of the suits does not in any case exceed Rs. 500. There can be no doubt, we think, that so far as the suits were for the purpose of recovering the monies which the plaintiffs paid under decrees, the suits were cognizable by a Court of Small Causes.

4. Article 35 (i) of the second schedule of Act IX of 1887 is intended, in our opinion, to apply only to suits for damages for illegal, improper, or excessive distress, and not to apply to these suits so far as they seek to recover back the money paid.

5. A suit for money paid to redeem a distress is not on a different footing from a suit for other money which can be recovered as being paid under distress of person or of goods or by abuse of legal process. It is on the same footing as any

other suits where the defendant has received money, which in justice and equity belongs to the plaintiff, and there is nothing to exclude the jurisdiction of the Small Cause Court with regard to it. The claim to damages is, however, on a different footing. The learned Vakil for the respondents contends that it does not come under article 35 (i) because there was no relationship of landlord and tenant between the plaintiff's and defendants, and that the suit is really a suit for damages for trespass of property. We are unable to agree with that contention. The article, we think, applies generally to acts done under colour of distress. The relationship between the parties, whether it was in question or not, could not alter the jurisdiction of the Court. The suit as constituted was therefore not entirely of the nature of a Small Cause Court suit. In the first Court the claim to damages was disallowed. The claim was one of substance and not inserted for the purpose of giving the Court jurisdiction. In our opinion a second appeal lies.

6. We think, however, that the findings of fact by the lower Appellate Court preclude the plaintiffs' success in the appeals. Before the plaintiffs can succeed they must show that the crops distrained upon, or at any rate a portion of such crops, belong to them. We read the finding of the Lower Appellate Court to be that the plaintiffs have not made out their case. The Judge says: " There is nothing in the evidence as to title which renders it improbable that the disputed crops should have been sown by the defendants." He points out that the witnesses could answer no questions as to details, and that the plaintiffs could have given definite evidence about their own fields separately if those fields really were sown by them, but they have chosen not to take that course. He says the plaintiffs have chosen to rest their cases " on general assertions of possession to the whole disputed land, and as those assertions are in all probability false as regards part, and not certainly true as regards any other part of the area in dispute, I see no alternative but to reject their claims for compensation."

7. It may be that the trial of the suits together was the cause of the plaintiffs giving their evidence in this way, but we must take the evidence as it has been given. The finding of the lower Appellate Court compels us to dismiss these appeals with costs.