
(1936) 09 AHC CK 0027
In the Allahabad High Court

(Firm) Puran Lal-Ram Lal

APPELLANT

Vs

(Firm) Damodar Das-Parmanand

RESPONDENT

Date of Decision : 15-09-1936

Acts Referred:

Citation : AIR 1937 All 23 : 166 Ind. Cas. 533

Hon'ble Judges : Collister, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Collister, J.—A preliminary objection is taken by learned Counsel for the defendant-respondent that no second appeal lies inasmuch as the suit was of the nature cognizable by Courts of Small Causes and the value of the subject-matter did not exceed Rs. 500. The plea rests upon Section 102, Civil P.C. Learned Counsel for the plaintiff-appellant, on the other hand, contends that it was a suit for an account within the meaning of Article 31, Schedule 2, Provincial Small Cause Courts Act. The plaintiff-firm alleged that at the request of the defendant-firm, expressed in a letter dated 15th November 1930, it sent on 17th November 1936, 56 maunds and 171/4 seers of gur, the price of which was Rs. 311-6-9, from Tilhar in the Shahjahanpur District to the defendant-firm at Lalitpur. In spite of demands the defendant-firm did not pay the price of the gur, and accordingly the plaintiff-firm claimed a sum of Rs. 347-8-0 being the price of the gur purchased by it, plus interest plus a sum of Rs. 5 which was spent in sending a man to Lalitpur to demand payment.

2. The defendant firm alleged that by a letter, dated 13th November 1930, the plaintiff-firm sent in the rate of gur at Tilhar and that the defendant-firm thereupon ordered 51 maunds to be supplied immediately. It was not however until 24th November 1930, that the railway receipt arrived and the goods themselves were not received until 29th November. The quantity actually supplied was 52 maunds 14 seers and not 56 maunds 171/4 seers as alleged by the plaintiff-firm; and the gur was of inferior quality. Thereupon a number of

letters were exchanged between the plaintiff-firm and the defendant-firm, and ultimately the defendant-firm kept the gur on behalf of the plaintiff-firm. Subsequently, under instructions from the plaintiff-firm the gur was sold. Thereafter the manager of the plaintiff-firm came to Lalitpur and was paid Rs. 213, being the price of the gur after deducting incidental charges, and the account was thus adjusted.

3. The question whether the suit for the (recovery of a specific sum is a "suit for an account" within the meaning of Article 31, Schedule 2, Small Cause Courts Act, will depend upon the nature of the investigation which is required in order to afford relief to the plaintiff; if in order to grant relief to the plaintiff it is necessary to take accounts, the suit will be one for an account; within the meaning of Article 31: vide *Marippa Nadan v. Arunachalam Chetty* AIR 1917 Mad. 476. In the present case it is not suggested¹ that there had ever been any previous dealings between the plaintiff firm and the defendant-firm, and thus there were no credit and debit entries in the accounts of the parties which had to be mutually adjusted against each other. In *Hans Raj v. Ratni* (1904) 27 All 200 the plaintiff had sued as widow of a deceased Brahman priest to recover from the defendant certain books containing lists of the clients of her late husband and also a sum of Rs. 60 on the allegation that the defendant had been entrusted with the books and had realized the money as her agent for the purpose of carrying on the business of her deceased husband, and, contrary to the terms of the agency, had not handed over to her the money which he had obtained from the clients. It was held that this was a suit of the nature cognizable by a Court of Small Causes within the meaning of Section 586 of the then Civil P.C. At p. 202 the learned Judges observed:

The mere fact that accounts may have to be taken for the purpose of ascertaining the amount due to the plaintiff cannot give the suit the character of a suit for an account.

4. In *Indar Mal v. Baldeo Das Parbhu Dial* AIR 1914 All. 108, it was held that a suit for the recovery of a sum of money the precise amount of which cannot be ascertained unless the accounts of the parties, have been examined is a suit cognizable by a Court of Small Causes. Then there is the case in *Malaya Pillai Nadan v. Venganam Chetty* AIR 1914 Mad. 100, in which a suit was brought against an agent for the value of goods received and not accounted for by him. The plaintiffs had sent some dried chillies to the defendant to be sold by him as their agent; but the latter did not fully account for the goods entrusted to him and was thereupon sued for the value of the goods not accounted for. The defendant, while admitting that he had sold a smaller-quantity than was received by him, accounted for the difference by saying that there was a shortage on account of the chillies having dried up. It was held by a learned Judge of the Madras High Court that the suit was not a suit for account and was therefore cognizable by the Small Cause Court. I am clearly of opinion that the present suit was not a suit for an account within the meaning of Article 31, Schedule 2, Small

Cause Courts Act. It was therefore a suit of the nature cognizable by the Small Cause Court and consequently no second appeal lies to this Court. The objection is accordingly allowed and this appeal is dismissed with costs. Permission to file a Letters Patent appeal is refused.