

(1913) 09 BOM CK 0002
In the Bombay High Court
Case No : Civil Application No. 142 of 1913

Hari Balu Gaekwad

APPELLANT

Vs

Ganpatrao Sakhuji Rao Gaekwad

RESPONDENT

Date of Decision : 26-09-1913

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 23

Citation : AIR 1914 Bom 302(1) : (1913) 15 BOMLR 1036

Hon'ble Judges : Basil Scott, J; Balchelor, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—The only question in this case is whether the lower appellate Court rightly entertained the appeal. The suit was originally filed as a Small Cause Court suit in the Court of a Judge having both Small Cause Court and regular jurisdiction. Finding that the right of the plaintiff and the relief claimed by him depended upon proof or disproof of a title to Immovable property which the Small Cause Court could not finally determine, the Judge acting under the power contained in Section of the Provincial Small Cause Courts Act caused the suit to be transferred to his file as an ordinary Judge at a very early stage after the plaintiff had been examined. There was no substantial irregularity in this. He could hardly return the plaint to be presented to another Judge, because he himself was the Judge having jurisdiction to determine the question of title; and no point is made of the fact that the evidence of the plaintiff recorded before him as a Small Cause Court Judge was used in the regular suit. We think that it must be taken that the powers conferred by Section 23 were put in force in a regular manner. He then passed a decree deciding the question of title. It was a decree which could not be passed by a Court of Small Causes ; it was not a decree falling within the terms of Section 27 of the Small Cause Courts Act, and was, therefore, not final. It was, therefore, appealable and the lower appellate Court rightly entertained, the appeal. In support of the argument that the decree was not appealable reference has been made to Kali Krishna Taggre v. Izzata Nissa Khatun ILR (1897) Cal. 557. In that case the question was whether a suit

was cognizable by a Court of Small Causes within the meaning of Section 586 of the old Code of Civil Procedure, so as to bar a second appeal, and the learned Judges came to the conclusion that the suit, although it might fall within the class of suits contemplated by Section 23, would nevertheless be a suit cognizable by a Court of Small Causes. That, however, is not the point before us. The question is whether the decree which was actually passed by a Court to which the suit originally so cognizable was transferred was a final decree under the Small Cause Courts Act. For the reasons above stated we are of opinion that it was not. Therefore, we cannot interfere under our extraordinary jurisdiction. We discharge the Rule with costs.