

(1888) 04 CAL CK 0008
In the Calcutta High Court

Krishno Kamini Chowdhbani

APPELLANT

Vs

Gopi Mohun Ghose Hazba

RESPONDENT

Date of Decision : 25-04-1888

Acts Referred:

Contract Act, 1872 — Section 69, 70

Presidency Small Cause Courts Act, 1882 — Section 6

Citation : (1888) ILR (Cal) 653

Hon'ble Judges : W. Comer Petheram, C.J;Tottenham, J;Pigot, J;Macpherson, J;Ghose, J

Bench : Full Bench

Judgement

1. This case is referred upon the question whether or not it was cognizable by the Small Cause Court u/s 6 of the Small Cause Court Act (XI of 1865).
2. The suit is brought by a purchaser in execution of a putni right to recover from the defendant No. 1, one of the former holders of the putni right, a sum of money equal to a portion of what she has been compelled to pay to the zemindar for rent.
3. The rent which she has been compelled to pay accrued due, some of it before and some of it after the month of Srabun 1291. It was in Srabun that the plaintiff became the purchaser, and she claims from the defendant, whose putni right she purchased, payment of a portion of the sum which she has been compelled to pay in respect of the rent which accrued due prior to Srabun, stating that the other defendant, who is a co-sharer in the putni right so sold, and who is made defendant pro forma, had promised to pay his share claimed by the plaintiff on a similar ground, and that the defendant in the present proceedings whilst saying that he would at some time or other pay his share, has never done so; this alleged promise does not appear to have been proved, and does not form part of the case, and the question is, not whether this suit will lie, but assuming that it will lie independent of any express promise, whether the Small Cause Court had jurisdiction to entertain it. If it lies, it lies, in our opinion, u/s 69 of the Contract

Act, the terms of that section being "a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other."

4. The case of *Bambux Chittangeo v. Modhoosoodun Pal Chowdhry* B.L.R. Sup. 675 : 7 W.R. 377 is relied upon as showing that such a suit will not lie in the Small Cause Court u/s 6. That case, however, was before the Indian Contract Act was passed, at a time when the law upon this subject had not been defined by legislation.

5. We think that, having regard to this, we are at liberty to consider this case independently of the considerations which formed the ground of the decision of this Court in the case of *Rambux Chittangeo v. Modhoosoodun Pal Chowdhry*, and to hold, as the High Court of Allahabad held in *Nath Prasad v. Baij Nath* 3 A. 66, that cases falling within the provisions of Sections 69 and 70 of the Indian Contract Act are cognizable by a Small Cause Court under Section. 6 of the Small Cause Court Act.

6. This case was, therefore, not appealable, and the appeal must be dismissed with costs.