

(1917) 07 AHC CK 0016
In the Allahabad High Court

Manser Chamar and Another

APPELLANT

Vs

Gajai Singh

RESPONDENT

Date of Decision : 07-07-1917

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : 41 Ind. Cas. 873

Hon'ble Judges : Piggott, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Piggott, J.—This is in application by two defendants against the decree of a Court of Small Causes, by which the Plaintiff was awarded a sum of Rs. 30 out of Rs. 80 claimed by him. The decree moreover allows the plaintiff his full costs. The suit was a somewhat peculiar one. The plaintiff describes himself as one of the proprietors of two villages, while the defendants are Chamars, residing in one of the said villages. The plaintiff alleges that at a certain time there was an epidemic of cattle disease in that village, in consequence of which sixteen head cattle belonging to the plaintiff died. He then offered the defendants the hides of these animals on a charge of Rs. 5 each. The defendants accepted this offer and removed the hides of the carcasses; but they subsequently declined to fulfil their contract of payment to the plaintiff. The defendants replied, first, by denying all the allegations of fact made in the plaint. They said that the plaintiff never owned as many as sixteen head of cattle, that there had been no epidemic of cattle disease in their village at or about the time stated, that no carcasses of cattle belonging to the plaintiff, had ever been flayed by them, that they had never received any hides from the plaintiff and had never agreed to pay for any. They pleaded, further, that according to village custom, they as resident Chamars had a right to flay any animal dying a natural death within the boundaries of the village and to remove the hides for their own benefit. The services which they render in return for this privilege they suggest to be (1) the disposal of the carcass of the animal and (2) certain customary services rendered

by them at weddings and on similar occasions. They added that the hide of any animal which had died of epidemic disease was absolutely useless for any purpose, and that, even though entitled to do so without payment, they would not take the trouble of Haying any such animal for the sake of its hide. These pleas were obviously put forward with a twofold object:---(1) as arguments against the truth of the allegations made in the plaint; (2) by way of an alternative defence, in the event of the Court's finding upon evidence that they had actually flayed the carcass of some animal or animals belonging to the plaintiff, and had removed the hide or hides thereof. The trial in the Court below was unquestionably unsatisfactory. In the first place a single issue was fixed, namely, what sum, if any, was due from the defendants to the plaintiff, a sort of issue which might be fixed in almost any possible suit brought before a Court of Small Causes. A little evidence was then taken, and that of a somewhat curious nature. The plaintiff, having first given evidence in support of his own case as brought, finished up with a vaguely worded statement, to the effect that he was really entitled to Rs. 3 and not Rs. 5 for each hide. He seems to have amended his plaint accordingly. He never said or suggested that any lesser number of carcasses than sixteen had been made over by him to the defendants, nor was any such suggestion made by the one witness who supported the plaintiff's case. The Court took the trouble to examine the patwari of the village and ascertained from him that there had been no such epidemic of cattle disease as was alleged in the plaint. It is a curious circumstance, and one which suggests a very perfunctory sort of trial, that when the patwari was in the witness-box no question was put to him as to the local custom in the matter of the disposal of the carcasses of cattle. The statement of the defendants was not, so far as my experience goes, at all an extraordinary or unusual one, and the allegations of the defendants on this point had a direct bearing upon the truth or otherwise of the plaintiff's story.

2. On the other side, one of the defendants went into the witness box and one witness was called on their behalf. These gave evidence of a somewhat general character in support of the defendants' case. On this the only finding recorded was that the defendants owed the plaintiff Rs. 30 and there was a decree for this amount with full costs. There was no reason given why the plaintiff was awarded his costs in full, and there is no explanation of the manner in which this sum of Rs. 30 was arrived at. So far as I am personally concerned, I am most anxious to restrict the interference of this Court in revision u/s 25 of the Provincial Small Cause Courts Act within narrow limits. I fully recognize that the enactment in question proceeds upon the very reasonable view that cheap and speedy justice in petty cases, without a right of appeal, is in the main of advantage to the public, even though a certain amount of risk is taken of erroneous decisions. I recognise also that the procedure provided for Courts of Small Causes leaves a great deal to the discretion of the Court, and I am most anxious not to be regarded as imposing upon a Court of Small Causes requirements in the matter of procedure beyond what the Legislature has seen fit to lay down. The revisional

jurisdiction of this Court I have always endeavoured to limit as far as possible to insisting upon such observance of rules of procedure as is necessary to ensure to both parties a fair opportunity of laying their case before the Court, and to protecting the public against the risk of arbitrary decisions. There may be a few cases, to which this Court is bound, to interfere with the decision of a Court of Small Causes on a pure question of law, where it appears to this Court that an error of law has been committed which is likely to prove a matter of general interest and to involve further erroneous decision in other cases, if it is not at once set right. My difficulty in the case now before me is whether I am not bound to treat this decision of the Court below as purely arbitrary. So far as the record shows, it is not based upon any reasoned consideration, either of the pleadings or of the evidence. It does not proceed upon any allegation made by the plaintiff or any witness for the plaintiff, or upon any admission made by the defendants or any witness of the defendants. It looks, therefore, like a purely arbitrary attempt to satisfy the plaintiff while getting rid of a troublesome case. If in making these remarks I am doing injustice to the learned Judge of the Court below, I can only say that it is always open to him to guard himself against the possibility of such injustice by placing on the record just enough materials to make it clear to this Court, in the event of an application for revision, what the grounds really are on which his decision proceeds.

3. I have come to the conclusion that there must be a re-trial of this case, both because the matter is one of some general consequence, as affecting the agricultural community, and also because, so far as I can gather from this record, there has been no real trial of the matter in dispute between the parties. The questions which the Court below has to decide are.

4. (1) Whether the defendants did or did not flay the carcass of any cattle belonging to the plaintiff and appropriate the hides thereof, and if so, what was the number of hides thus appropriated?, (2) Whether the defendants did this under a definite contract to pay anything to the plaintiff, and if so, what the terms of that contract were? In the event of findings in favour of the plaintiff upon both these issues no further enquiry will be necessary; but if there is a finding in favour of the plaintiff on the first issue and against him on the second, the Court will have to consider, further, whether apart from proof of contract the defendants are under any liability to account to the plaintiff for the market price of the hides of any cattle belonging to him which they may have removed. If this question requires to be gone into, the Court should distinctly bear in mind that the question for consideration is not merely the benefit which a Chamar may obtain by disposing of the hide, but the remuneration which he would be entitled to charge for disposing of the carcass and for his labour in flaying it. There can be no doubt that the disposal of the carcasses of animals which had died a natural death is a service to the village community as a whole, and that it is frequently rendered by custom by resident Chamars in return for the right of flaying the carcass and appropriating the hide.

5. Before leaving the ease I desire to add that the impression of arbitrariness about the decision of the Court, below is further intensified by the unexplained order awarding the plaintiff his full costs. I set aside, therefore, the decree of the Court below and remand the case to that Court with orders to re-admit the suit on to its file of pending cases and to dispose of it according to law with due regard to the observations I have found it necessary to make.