

(1875) 12 CAL CK 0004
In the Calcutta High Court

Mudhoo Mutty Goopta and Another	Vs	APPELLANT
Dyebukee Nundun Sen and Another		RESPONDENT

Date of Decision : 02-12-1875

Acts Referred:

Citation : (1876) ILR (Cal) 123

Hon'ble Judges : Morris, J; Macpherson, J

Bench : Division Bench

Judgement

Macpherson, J.—We think that in this case the Munsif was right in holding that the proceedings throughout have been without jurisdiction, because the suit is of a class cognizable by the Small Cause Court of Rampore Beaulah, and is therefore one which, u/s 12, Act XI of 1865, could not be heard or "determined in any other Court having jurisdiction within the local limits of the jurisdiction" of that Small Cause Court.

2. The suit is for a balance claimed to be due on account of rents of the plaintiffs' zemindaris collected by the father of the defendants. It is a suit in which money is claimed as due on a contract within the meaning of Section 6 of Act XI of 1865; and therefore is a suit cognizable by the Small Cause Court, as the amount claimed did not exceed Rs. 500; and it is none the less cognizable by the Small Cause Court, because it may have been necessary to go into the accounts of both parties to see whether the amount claimed is really due or not. Section 6 contemplates the possibility of having to examine accounts between parties, for it says: "The following are the suits which shall be cognizable by Courts of Small Causes, namely, claims for money due on bond or other contract or for damages, when the debt, damage, or demand does not exceed in amount or value the sum of Rs. 500, whether on balance of account or otherwise." The only balance of account excepted being "a balance of partnership account, unless the balance shall have been struck by the parties or their agents."

3. In thus deciding, we are in accord with the decision of a Division Court in the case of Joogul Kis'hore Roy v. Biujhoo Nauth Seal. 1 An order made by another

Division Court, in the case of Krishna Kinkur Roy v. Madhub Chundur Chuckerbutty, may perhaps appear to decide the same question differently. But the Judges in the latter case merely concurred in the opinion of the Judge of the Small Cause Court, who made the reference to this Court. The opinion was that the suit (which involved intricate accounts) should be tried by the ordinary Civil Court, and not by the Court of Small Causes. The technical question of jurisdiction was not raised either by the Judge of the Small Cause Court or by this Court; and the whole matter seems to have been treated more as one of convenience than of strict law (The case was accordingly not reported in the Bengal Law Reports). Moreover, no one appeared to argue the case in the High Court.

4. It is said that, as the present case has been tried by the Civil Court, we have no right to meddle with its decision, because Section 27, Act XXIII of 1861, says: "No special appeal which shall lie from any decision or order shall be passed on regular appeal by any Court subordinate to the High Court, in any suit of the nature cognizable in Courts of Small Causes, when the debt, damage, or demand for which the original suit shall be instituted shall not exceed Rs. 500, but every such order or decision shall be final." But Section 27 of Act XXIII of 1861 applies only to a suit which is properly brought in a Civil Court, because there is no Small Cause Court having jurisdiction to entertain it. Where a Small Cause Court has been constituted, that Court alone has jurisdiction in a certain class of cases. But where no Small Cause Court has been constituted, that same class of cases must be brought in the ordinary Courts. If they are properly brought in the ordinary Courts by reason of there being no Small Cause Court having jurisdiction, then (and then only) Section 27 of Act XXIII of 1861 is applicable. That section is not to be construed as meaning that, if a suit is improperly brought in a Civil Court which has no jurisdiction to entertain it, instead of in a Small Cause Court which has jurisdiction, the parties cannot come up in special appeal to have the matter set right See *Tarini Gharan Mookerjee v. Raja Puma Chundra Roy* 6 B.L.R. 717 where, however, the order setting aside the decree was made under the 15th section of the High Courts' Act. We have no doubt that a special appeal does lie in such cases.

5. We set aside the decree of the Subordinate Judge. The appeal is allowed, and the plaintiffs' suit dismissed, on the ground that it ought to have been brought in the Small Cause Court of Rampore Bealeah, and that the Munsif had no jurisdiction. The plaintiff must pay the costs of this appeal and of the proceedings out of which this appeal arises, that is to say, of the last hearing before the Subordinate Judge.

1. Special Appeal, No. 757 of 1872, heard before Jackson and Mitter, JJ., on the 24th April 1873.--This was a suit to recover Rs. 428, balance of account due from the defendant, who had been employed by the plaintiff as an agent to look after his law suits, and receive and disburse money connected with such suits, the defendant receiving a monthly salary. It was held that it was a suit within the

meaning of Section 6, Act XI of 1865, and therefore no special appeal would be. See also *Prosunno Chunder Roy v. Sreenath Sreemanee* 7 W.R. 422 (Jackson and Markby, JJ.)