

(1923) 07 AHC CK 0054
In the Allahabad High Court

Sital Prasad and Others

APPELLANT

Vs

Dukkhi Lal and Others

RESPONDENT

Date of Decision : 17-07-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102

Citation : 80 Ind. Cas. 409

Hon'ble Judges : Sulaiman, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sulaiman, J.—This is a second appeal arising out of a suit for recovery of possession of certain ornaments and jewellery which were valued at Rs. 280. The Courts below have decreed the claim.

2. Defendants Nos. 1, 2 and 4 have come up in second appeal and on their behalf the main point that is taken is that the suit was instituted in the wrong Court. It is their contention that the suit was of a nature cognisable by a Court of Small Causes and that, therefore, the Munsif in whose Court the suit was instituted had no jurisdiction to try it. If this contention were to prevail there would be the initial difficulty in the way of the appellants that no second appeal would lie. u/s 102 of the CPC no second appeal lies in any suit of the nature cognisable by Courts of Small Causes when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees. Therefore on the appellant's own showing no second appeal would lie and this appeal must be dismissed.

3. The learned Vakil for the appellants has, therefore, been forced to ask this Court to convert this second appeal into an application in revision and to exercise its powers on the revisional side. If a clear case of the absence of jurisdiction had been made out, I would have willingly treated this as a revision. The present, however, is not such a case.

4. The plaintiffs claimed to be the heirs of one Musammat Lalti deceased. Their case was that after her death she left certain ornaments belonging to her about which the defendants Nos. 1 and 2 raised some disputes before the police. The police handed over these ornaments to defendant No. 3 who held them as a stakeholder, The plaintiffs served a notice on defendant No. 3 and as remarked by the learned Judge of the lower Appellate Court the defendant No. 3 replied saying that he was willing to deliver the ornaments to the rightful owner and that the plaintiffs should satisfy him that they were the rightful owners. On this the plaintiffs instituted the suit out of which those proceedings have arisen. In their written statement the defendants did not deny the genealogical tree set up by the plaintiffs, but disputed that the ornaments and jewels belonged to the deceased. They pleaded *jus tertii* and said that one Musammat Kunwar was the real owner of these ornaments which had only been lent to Musammat Lalti deceased. On this plea having been raised Musammat Kunwar was made a pro forma defendant. It is true that the plaint was not further amended and no express relief for a declaration was added.

5. The learned Munsif overruled the objection of the defendants as to want of jurisdiction, being of opinion that the suit was in essence a suit of a declaratory nature and was, therefore, cognisable by a Civil Court on the regular side. On the merits he found that the ornaments had, in fact, belonged to the deceased and the plaintiffs were entitled to recover them. The learned Judge of the lower Appellate Court on appeal has confirmed the findings of the first Court. The reasons for holding that the Munsif had jurisdiction to try the case given by him are slightly different. He was of opinion that the case fell under Clause 28 of the Second Schedule to the Provincial Small Cause Courts Act. On the merits he agreed with the first Court holding that the ornaments were proved to have belonged to Musammat Lalti Bibi and that the plaintiffs were entitled to recover them.

6. On the pleadings it is clear that defendants Nos. 1, 2 and 4 who are the applicants before me were mere pro forma defendants. They were not in actual possession of the ornaments in question and were obviously impleaded in the suit with a view to make the decree binding on them. Although no relief for a declaration against them is sought it is obvious that the chief reason for impleading them was to have it declared as against them that the property belongs to the plaintiffs, so that no further dispute might arise in future. It is also quite apparent that the defendants Nos. 1, 2 and 4 could not possibly have been impleaded in a suit brought in the Court of Small Causes. Those persons, if impleaded, would very naturally have contended that the plaint disclosed no cause of action as no relief was claimed against them. If I were to interfere now and set aside the decrees of the Courts below and direct the plaint to be returned in order that it may be filed in the Court of Small Causes the result would be that the suit as against defendants Nos. 1, 2 and 4 would not be maintainable there at all. I must, therefore, consider whether the plaint, as it stood, having impleaded all the defendants in the suit, was one which could properly be filed in

the Court of Small Causes. In my opinion this was not so. I agree with the Munsif that the suit must be deemed to be one of a declaratory nature which is expressly exempted under Clause 19 of the Second Schedule.

7. I must, however, point out that the reason given by the Judge of the Court below for holding that the Munsif had jurisdiction is not correct. His view was as I have said that Clause 28 of the Second Schedule was applicable. That clause exempts a suit for the whole or a share of the property of an intestate. It has been held in a number of cases that that clause contemplates a suit between rival claimants when the relief claimed is to recover a share of the estate and not only an item of the estate as against a third party, This was the view accepted in the cases of Chedi v. Gulabo 2 A.J.L. 388 : A.W.N. (1905) 134 : 27 A. 622 and Tika Shahu v. Chirkat Shahu 27 Ind. Cas. 773 : 19 C.W.N. 614, Clause 28, therefore, was not applicable. But in view of the opinion expressed by me above the Munsif had jurisdiction to try it.

8. Furthermore there is this additional difficulty in the way of the defendants. They have not presented a proper application for revision before me and the jurisdiction to interfere u/s 115 of the CPC is after all only discretionary. The case has been fought out on the merits and both the Courts below have come to a concurrent finding against the defendants. It is an accident that the appeal was actually heard by the Judge of the Small Cause Court in whose Court the suit ought to have been filed as contended by the defendants. He on the merits too has agreed with the finding of the first-Court. Under all these circumstances therefore I decline to interfere even on the revision side. The result therefore is that this appeal fails and is hereby dismissed with costs including in this Court fees on the higher scale.