

**Atul Chandra Seal Vs. Sheikh Kobadali and anr.**

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**Court :** Kolkata

**Decided On :** Feb-25-1921

**Reported in :** 64Ind.Cas.436

**Judge :** Newbould, J.

**Appellant :** Atul Chandra Seal

**Respondent :** Sheikh Kobadali and anr.

**Judgement :**

Newbould, J.

1. This Rule is directed against an appellate order remanding a suit for re-trial by the Munsif of the first Court of Amta. The suit in question was one for compensation for use and occupation, the amount claimed being Rs. 26 and odd. The main question in this Rule is whether any appeal lay from the Munsif's decision. The plaintiff filed his claim in the first Court of the Munsif at Amta and the Court was so described in the plaint. At that time and during the trial, the presiding officer of that Court had also powers of a Small Cause Court Judge to try suits valued upto Rs. 100. But in this case, the suit was tried by him in the exercise of his jurisdiction as a Munsif and not in the exercise of his jurisdiction as a Small Cause Court Judge. The contention on behalf of the petitioner finds some support from the decision of a Bench of this Court in *Indra Chandra v. Srish Chandra* 21 Ind. Cas. 120 : 40 C. 537. But the present case is distinguishable from that case. The suit in that case was one which was filed in the Small Cause Court and could only be tried in that Court. The present case, however, having regard to the defence raised, was one which, if it had been filed in the Small Cause Court, could have been and properly would have been, returned under Section 23 of the Provincial Small Cause Courts Act to be presented to the Court having jurisdiction to determine the question of the title raised by the defendants. Had this been done, the plaint, after being returned by the Munsif in his capacity of a Small Cause Court Judge, had to be presented to the same Munsif in his capacity as a Munsif and then it would have been heard by him in the manner in which it has been heard. In the absence of any indication to the contrary, I cannot help thinking that that is what the Munsif intended to do. Taking this view, I must hold that though there was some irregularity in the form of the proceedings, there was none in substance affecting jurisdiction and consequently an appeal lay to the District Judge.

2. It is further contended that the Subordinate Judge who heard the appeal acted without jurisdiction in remanding the suit for re hearing under Order XLI, Rule 23, Code of Civil Procedure, and that the proper order would have been a remand under Rule 25 of that Order. That is what he should have done. But, having regard to the decision of this Court as to the inherent power of the Court to make a remand, I

cannot hold that he has acted without jurisdiction in making this order so as to justify my interference in revision. The result is that the Sale is discharged with costs, hearing fee one gold mohur.

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