

**Khamasa Bewa, Mother and Heir of Late Natu Sheik Vs. Promotho Nath Roy Chowdhury and ors.**

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**Court :** Kolkata

**Decided On :** Feb-24-1919

**Reported in :** AIR1919Cal389,51Ind.Cas.967

**Judge :** N.R. Chatterjea and ;Panton, JJ.

**Appellant :** Khamasa Bewa, Mother and Heir of Late Natu Sheik

**Respondent :** Promotho Nath Roy Chowdhury and ors.

**Judgement :**

1. The plaintiffs-opposite party instituted a suit for recovery of the price of trees out down and appropriated by the defendant. The suit was instituted in the Court of the Munsif of Piugna in the District of Mymensingh. At the time of the institution of the suit, the presiding officer of the Court was not vested with the powers of a Small Cause Court. The suit was registered as an ordinary money suit and proceeded with as such. At the time of the trial the Munsif was transferred and his successor-in office had Small Cause Court powers. He, however, tried the suit under the ordinary procedure. The suit was decreed by the Munsif in favour of the plaintiff No. 2. The plaintiff No. 1 appealed to the District Judge. On appeal the learned District Judge sent the case back for trial on certain issues. When the case came back to the Court of first instance on remand, the Munsif who had tried the suit was transferred and his successor, who had to deal with the issues sent down by the District Judge, had no Small Cause Court powers. On receipt of the findings from the Court of first instance, the learned District Judge held that both the plaintiffs were entitled to a decree. As against that decree, the defendant preferred a second appeal to this Court and also obtained this Rule.

2. We are informed that the second appeal has been dismissed; because there is no second appeal in a case of the nature triable by a Small Cause Court when the value of the suit does not exceed Rs. 500.

3. In this Rule it is contended that the suit being of the nature of small causes, no appeal lay to the District Judge. We are referred to the case of Indra Chandra Mukherjee v. Srish Chandra Banerjee 21 Ind. Cas. 120 ; 40 C. 537 in which it was held following the case of Shankarbhai v. Sumabhai 25 B. 417 ; 3 Bom. L.R. 129 that where a judicial officer invested with Small Cause Court jurisdiction tries a suit which he might have tried under the summary procedure in the ordinary manner, the character of the suit is not thereby altered and the decree is not appealable.

4. It is unnecessary to consider the proposition laid down in those cases, because the present case is distinguishable from them. In the present case, as already stated, the

suit was instituted in a Court the presiding officer of which at the time of the institution of the suit had not Small Cause Court powers, whereas in the case of Indra Chandra Mukherjee v. Srish Chandra Banerjee 21 Ind. Cas. 120 ; 40 C. 537 and the Bombay case the suit appears to have been instituted and tried before a Judge who had Small Cause Court powers.

5. The present case is covered by the decision in Mahima Chandra Sirdar v. Kali Mandol 12 C.W.N. 167. There a suit for recovery of a sum of Rs. 70 was instituted in the Court of a Munsif exercising Small Cause Court powers up to Rs. 50 and subsequently during the pendency of the suit the Munsif was transferred and the substantive Munsif, who succeeded him, had powers of a Small Cause Court up to Rs. 100. It was held by Rampini, C.J., and Sharfuddin, J, that the suit should be tried as if the powers of the Court remained the same as they were when the suit was instituted.

6. A different view appears to have been taken in Narayan Raoji Ranade v. Gangaram Ratanchand 3 Ind. Cas. 816 ; 33 B. 664 ; 11 Bom. L.R. 817.

7. We prefer to follow, however, the case of Muhima Chandra Sirdar v. Kali Mandol 12 C.W.N. 167 decided in our Court.

8. The Rule is accordingly discharged. No order as to costs.

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