

1868.  
Feb. 6.

*Referred Case.*

MULCHAND JETHANHA' ..... *Plaintiff.*  
KIKI' VARDHVA'N ..... *Defendant.*

*Review of Judgment—Small Cause Court—Instalment—Act XI.  
of 1865, Sec. 21.*

*Held* that it is not necessary for a defendant in a Small Cause Court to deposit the amount of the decree in court, when applying for a review of judgment for the purpose of obtaining an order to pay by instalments.

IN this case the Judge of the Small Cause Court at Ahmed-ábád referred, under Sec. 1 of Act X. of 1867, for the decision of the High Court, the following question :—

“ Whether or not the defendant who applies for a review of judgment with the only object of obtaining an order for payment of the debt by instalments, must deposit in court the amount of the decree.”

PER CURIAM (COUCH, C.J., and NEWTON, J.):—In such a case as is stated by the Judge, it is not necessary to deposit in court the amount for which the decree was obtained.

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*Referred Case.*

Feb. 6.

NAVROJI PESTANJI ..... *Plaintiff.*  
MANSUKH JAYACHAND ..... *Defendant.*

*Review of Judgment—Small Cause Court—New Trial—Act XI. of  
1865, Sec. 21.*

If an application for a review of judgment made by a defendant in a Small Cause Court be in the nature of an application for a new trial, the amount of the decree, though made payable by instalments, must be deposited in court, under Sec. 21 of Act XI. of 1865.

QUESTION referred for the decision of the High Court, under Sec. 1 of Act X. of 1867, by Gopálráv Hari Deshmukh, Judge of the Small Cause Court at Ahmedábád :—

“ Whether or not a defendant can apply for a review of judgment without depositing in court the amount of the decree passed against him, when the decree is for money to

be paid by instalments the first of which has not yet become due." The Judge was of opinion that the defendant should not be required at once to pay the amount for which the decree had been passed.

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PER CURIAM (COUCH, C.J., and NEWTON, J.):—The circumstance of the debt having been ordered to be paid by instalments does not except the case from the operation of the proviso in Sec. 21 of Act XI. of 1865; and, if the application for a review of judgment be in the nature of an application for a new trial, the amount of the decree must be deposited.

NOTE.—“In suits tried under this act all decisions and orders of the Court shall be final \*\*\*\*\* Provided also that it shall be competent to the Court, if it shall think fit, in any case not falling within the proviso last aforesaid, to grant a new trial, if notice of the intention to apply for the same at the next sitting of the Court be given to the Court within the period of seven days from the date of the decision, and if the same be applied for at the next sitting of the Court; but no such new trial shall be granted where the party applying for the same is the defendant, or one of the defendants, unless he shall, with his notice of application, deposit in court the amount for which a decree shall have been passed against him, including the costs (if any) of the opposite party.” Act XI. of 1865, Sec. 21.

Special Appeal No. 727 of 1867.

Feb. 10.

BA'BA'SHET bin GOVINDSHET *et al.* ..... Appellants.

JIRSHET bin YESSHET *et al.* ..... Respondents.

*Suit for Partition—Onus Probandi—Khoti estate.*

Where the plaintiffs sued for the partition of a *khoti* estate, alleging that they and the defendants were joint proprietors thereof, and where the defendants admitted that the estate was originally joint, but set up that a partition had taken place more than a hundred and fifty years ago:—

*Held* that the burden of proving that a partition had been made lay on the defendants; and that the mere distribution of lands and tenants, such as is usual in the South Konkan, while a *khoti* estate continues to be held in coparcenary, in no way established a formal partition.

THIS was a Special Appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge of the Konkan at Ratnágiri, in Appeal Suit No. 762 of 1866, confirming the decree of Raghunáth Ganesh, Munsif of Chiplun.

The plaintiffs sued to obtain partition of the *khoti* village