

[APPELLATE CIVIL JURISDICTION.]

*Referred Case.*1873.
March 4.RATANSHANKAR REVA'SHANKAR *Plaintiff.*GULA'BHANKAR LA'LSHANKAR *Defendant.*

Small Cause Court—Jurisdiction—Implied contract—Varshásan—Claim to recover share in Varshásan received by Defendant—Act XI. of 1865, Sec. 6.

Suit to recover a share in a *varshásan* payable by the Gaekwad's Government and received by the defendant as the eldest member of the original grantee's family, is cognizable by a Court of Small Causes in the Mofussil, the claim being one on an implied contract, viz., a contract, by the defendant, to pay to the plaintiff money received by the defendant to the use of the plaintiff.

Sunkur Lall Pattuck Gyawal v. Mussamut Rám Kalee (18 Calc. W. Rep. Civ. R. 104) followed.

Keshav Bhat v. Bhágirthi Báí (3 Bom. H. C. Rep. A. C. J. 75) overruled.

THIS case was referred to the High Court by Syud Hussein El Medini, Judge of the Small Cause Court at Surat, with the following observations :—

“The plaintiff brings this action to recover the above sum to which, he alleges, he is entitled as a sixth sharer in a *varshásan* originally granted by the Gaekwad to their ancestor, which the defendant, being now the eldest member of the family, draws from the Nowsaree Treasury and distributes among the several sharers.

“The plaintiff had before filed a suit in the Munsif's Court at Surat to recover the money which then had accrued due. The Munsif gave a decree in his favour, but the then Judge of Surat reversed the decree on the ground ‘that the action was virtually to try the right to the *hak* in question, a right which a foreign court is not competent to adjudicate on.’ The High Court, however, in Special Appeal No. 539 of 1867, set aside this ruling and remanded the case to the Judge who then confirmed the decree of the Munsif.

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“The present action is to recover the plaintiff's share of the money which the defendant has since received from the Gaekwad's Treasury.”

The Judge then referred to *Keshav Bhat & Bhágirthi Bái* (a), a suit brought by a widow to recover a sum of money which she claimed as her share in a *varshásan*, or annual allowance, paid from the Government Treasury to the defendant, which suit the High Court (TUCKER and GIBBS, JJ.) held to be not cognizable by a Court of Small Causes, TUCKER, J., there saying :—“It does not appear to us that the words used by the Legislature in Section 6, Act XI. of 1865, which define the jurisdiction of Courts of Small Causes, include a claim of this description. It has been argued that the debt, if due at all, is due on account of an implied contract between the parties; but this proposition, we think, cannot be maintained, as the plaintiff's alleged right to share in the allowance is not founded upon any contract, express or implied.”

On the other hand, the Judge referred to the judgment of the High Court (COUCH, C.J., and NEWTON, J.) delivered by COUCH, C.J., on 20th November 1867, in the special appeal case between the parties to this plaint referred to above, in which it was said :—

“The question to be determined was whether money, which had been received by the defendant, had been received partly on the plaintiff's account; there was jurisdiction to try this, and if it became necessary incidentally to try the question of title to the money, it would not deprive the Court of jurisdiction. The Judge was wrong in holding that the Munsif had no jurisdiction, and as this is a question of jurisdiction, the Court thinks, although no special appeal lies, it should exercise its extraordinary powers and correct the error.” The Judge also mentioned *Ramchandra Dixit v. Sávitribai* (b).

(a) 3 Bom. H. C. R. 75, A. C. J.

(b) 4 Bom. H. C. R. 73, A. C. J.

He next cited *Sunkur v. Mussamat (c)*, in which COUCH, C.J., said:—“ We are of opinion that a special appeal does not lie in this case. Section 27, Act XXIII. of 1861, provides that a special appeal shall not lie in a suit of the nature cognizable in the Courts of Small Causes under Act XLII. of 1860, when the debt, damage, or demand, for which the original suit was instituted, does not exceed Rs. 500. The suits which are cognizable by Courts of Small Causes are now defined by Section 6 of Act. XI. of 1865, to which, by Section 50, the Act XXIII. of 1861 is made applicable, and amongst them are claims for money due on bond or other contract. The claim in this suit is to recover money which, the plaintiff says, the defendant has received, and which the plaintiff is entitled to a share of. In fact, *the claim is founded upon this, that the defendant, with regard to a portion of the money which belonged to the plaintiff, received it for and on behalf of the plaintiff and the right to recover it is founded upon what has always been regarded as an implied contract to pay it over to the person for whom it was received.* We think the word ‘contract’ in Section 6 was intended to include such cases. That it was, is apparent from the exceptions in the proviso to the section, one of which is an action on a balance of partnership account, unless the balance shall have been struck by the parties or their agents. A right to recover a balance of a partnership account by one partner against another is founded upon one partner acting as agent to the others, and receiving money as such agent and being bound to pay the others their shares. If the words of Section 6 are large enough to include a claim of the kind, certainly they would include such a claim as the present. Again, it seems to have been supposed that, if it had not been otherwise provided, there would have been a right to recover a share or part of a share under an intestacy; which must be on the ground that the party, who had the share

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1873. was under an implied contract to pay it over. These instances shew that "contract" in Section 6 was intended to have a very extensive meaning, for there are no other words in the section which would include such cases. They would not come within the term damages. It has been held by this Court, in a case which is reported in the special (Small Cause Court) number of the Weekly Reporter, page 23, and is quoted in Mr. Broughton's note to Section 6, that a Small Cause Court has jurisdiction in a suit brought by one of several joint owners of property against his co-sharer for his share of the profits."

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The Judge, finding the authorities in conflict, referred to the High Court the question whether the plaint in the present case was cognizable by the Small Cause Court, and he expressed his own opinion to be in favour of the affirmation.

The reference was considered by WESTROPP, C.J., and MELVILL, J., on the 3rd March 1873. The following judgment was given on the 4th March by—

WESTROPP, C.J.—The question for determination here is whether the plaintiff, who is entitled to a $\frac{1}{6}$ share in a *varshásan* payable by the Gaekwad's Government, and which has been received by the defendant, who is the eldest member of the family of the original grantee, may sue in the Court of Small Causes at Surat for that share. It is money received by the defendant to the use of the plaintiff—a state of circumstances involving an obligation, which has hitherto been known to English lawyers as amounting to an implied contract on the part of the recipient to pay over the money so received to the person on whose behalf it was received.

We concur in the decision of Couch, C.J., and Ainslie, J., in *Sunker Lall Pattuck Gyawal v. Mussamut Ram Kalee Dhamin (d)*, and in the reasons given for it, viz., that two of the specially excepted cases of contracts mentioned in Section 6 of Act XI. of 1865 show that the Legislature
(d) 18 Calc. W. Rep. 101.

intended under the words "other contract" contained in the first part of that section, defining the suits cognizable by Courts of Small Causes, to include implied contracts, and, consequently, that moneys due on implied contracts, not falling within the exceptions, are recoverable by suits in the Small Cause Court. In *Dullabh Shivrall v. Hope* (e), the Court yielded to the objection that no special appeal would lie in the suit there brought, it being of the nature cognizable by a Court of Small Causes. It was for money which the plaintiff had been wrongfully compelled to pay in respect of Municipal Taxes to the Municipality of Surat, and which he sought to recover from it, as received by the Municipality to his use, *i.e.*, due upon an implied contract. That decision proceeded on the same principle as that of Couch, C.J., and Ainslie J. in the Bengal case already mentioned. We are unable to concur in the decision in *Keshavbhat v. Bhágirathi Bái* (f)

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The decision in *Charookhan v. Doorga Monee* (g), notwithstanding what is said in the brief judgment as there reported, that the suit was substantially one for a breach of contract for the sale of land, would, in our opinion, have been more properly based upon the ground that the purchase money was recoverable on an implied promise to repay it, the consideration for it having failed. See Chitty on Contracts 561 (7th Edition).

We do not think that the jurisdiction of Small Cause Courts is in anywise affected by the Indian Contract Act (IX.) of 1872.

We concur with the Judge of the Court of Small Causes in thinking that the plaint in this cause was cognizable in his Court.

(e) 8 Bom. H. C. Rep. A. C. J. 213.

(f) 3 Bom. H. C. Rep. A. C. J. 75.

(g) 9 Calc. W. Rep. Civ. R. 493.