

its appearing, that the property does not exceed Rs. 500 in value, to be permitted to treat the case as if the summons had been sued out under Section 25 of that Act, and to proceed with the case, although the defendant may claim against him the fee adversely. We are not prepared to differ from that view. If, however, it appears to the Court of Small Causes that the Clerk of the Court, and not the plaintiff, is, as very probably may be, the person responsible for the mistaken form in which the summons has been issued, it would, we think, be fair to permit the plaintiff to amend his summons so as to render it conformable with a claim under Section 25 of Act XXVI. of 1864, provided the Court be satisfied that the room sued for does not exceed Rs. 1,000 in value, and that the plaintiff is, as he avers, in possession of the residue of the house, and that this suit, though ostensibly for a room, is not really brought to try the title to the house. In cases under Rs. 1,000 in value the Court of Small Causes may, under the 25th Section of Act IX. of 1850, combined with Section 2 of Act XXVI. of 1864, hear such legal or equitable defence as the defendant may have.

If the Court of Small Causes be of opinion that there are not in this case such circumstances, as above indicated, which would justify an amendment, we think that the Judge would be right in dismissing the cause for want of jurisdiction, on the ground that a defence resting upon an adverse title to the fee takes the case out of Section 91 of Act IX. of 1850.

The Court of Small Causes will dispose of the costs of this reference as may be just. There was not any appearance here by or for either party.

Case remanded.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knight, Chief Justice, and Mr. Justice Nanábhái Haridás.

SATRA KUMA'JI (PLAINTIFF AND APPELLANT) v. VISRA'M
HASGA'VDA' (DEFENDANT AND RESPONDENT).*

January 17.

Deed of assignment of mortgage—Consideration—Registration.

A deed of assignment for a consideration of less than Rs. 100, of a mortgage for a consideration of Rs. 100, or upwards, does not need registration.

* Special Appeal No. 328 of 1876.

1877.

SATRA
KUMAJI
v.
VISRAM HAS-
GA'YDA.

Vásudev v. Rámá (11 Bom. H. C. Rep. 149) and *Rohinee Debia v. Sháb Chunder Chatterjee* (15 Calc. W. R. 558 Civ. Rul.) followed.

THIS was a special appeal from the decision of W. M. Coghlan, District Judge at Tháná, affirming the decree of Báláji Raghunáth, 2nd Class Subordinate Judge at Alibág.

The plaintiff, as assignee of a mortgage for Rs. 100, sued to recover from the defendant personally, or from the mortgaged property, the sum of Rs. 157-8-0, due under the mortgage for principal and interest.

The deed of assignment to the plaintiff purported to have been executed in consideration of the sum of Rs. 57, paid by the plaintiff to the original mortgagee, and was unregistered. Both the Lower Courts held that as the deed of assignment conveyed an interest in immoveable property, which was valued at Rs. 100 in the mortgage deed, the deed of assignment ought to have been registered, and rejected the plaintiff's claim, as it was based upon such unregistered deed. The original mortgage was registered.

Bhairavnáth Mangesh, for the appellant, contended that both the Lower Courts were wrong in holding that registration of the deed of assignment was necessary, and relied on *Vásudev v. Rámá*.⁽¹⁾

Máhdádev Chimmnáji for the respondent.

WESTROPP, C. J. :—The Court, following its own decision in *Vasudev Moreswar Gunpule v. Rámá Bábáji Dange*⁽²⁾ and the Calcutta decision—*Rohinee Debia v. Shib Chunder Chatterjee*,⁽³⁾ holds that the deed of assignment (Exhibit No. 4), being for a consideration less than Rs. 100, did not require registration. It may be that the parties to the original mortgage, (Exhibit No. 3,) valued the security and the solvency of the parties at Rs. 100 or upwards, but it does not thence follow that either or both were deemed of that value at the date of the assignment, and it was for the parties to that latter transaction, for the purposes of registration, to fix the value of the interest thereby assigned. This Court, therefore, reverses the decree of the District Judge and remands this cause for a new trial on the merits.

Decree reversed.

⁽¹⁾ 11 Bom. H. C. Rep. 149.

⁽²⁾ 11 Bom. H. C. Rep. 149.

⁽³⁾ 15 Calc. W. R. 558, Civ. Rul.