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RADHABAI v. CHIMNAJI BIN RAMAJI SALI.

the idol Madowha, a part of whose *davesthan* is the subject-matter of this suit. The plaintiff Radhabai being the wife of the defendant Chimnaji, who is admitted to be a devotee of the same idol, would necessarily also be a worshipper of it. These circumstances alone, and independently of any Act of the Legislature, were, when this suit was instituted, sufficient to entitle the plaintiffs to bring a suit complaining of a breach of trust with reference to the finds or property belonging to the idol, or appendant to its temple. The suit having been brought before the new Civil Procedure Code came into force, cannot be governed by s. 539 of that Act (X of 1877), and it might be a question whether, even of this suit had been brought since that Act came into force, s. 539 could, in speaking of "public charitable purposes," be held applicable to the *devasthan* of an idol or temple dedicated merely to the purposes of such idol or temple. On that question we do not now express any opinion. We reverse the decrees of the Courts below, and remand this cause to the Court of the Subordinate Judge for trial on the merits. Costs of both appeals must be costs in the cause.

Decrees reversed.

APPELLATE CRIMINAL.

(10)

Before Mr. Justice West and Mr. Justice Pinhey.

August 29.

NARU PIRA (ORIGINAL PLAINTIFF), APPELLANT, *v.* NARO SHIDHESHVAR (ORIGINAL DEFENDANT), RESPONDENT.*

Baluta—Jurisdiction—Small Cause Court.

A suit to recover *baluta* (1) leviable on the crops of village lands is not a suit for an interest in land, but for a share of produce severed from land, and it cognizable by a Mufassal Court of Small Causes.

THIS was a second appeal from the decision of N. Daniell, Judge of Ahmednagar, reversing the decree of the Subordinate Judge of Kaḍe.

The plaintiff, a Mahar of the village of Pisar Khand, in the Shrigonda Taluka of the Ahmednagar Collectorate, sued the defendant, a holder of eleven fields in that village, to recover out

* Second Appeal, No. 218 of 1878.

(1) The share of crops in kind, or its equivalent in money, recoverable by a village servant from village lands.

of the produce of those fields his *baluta hak* or share due to him as a village servant. He prayed that the said share might be given to him in kind or in money.

The defendant answered that the Subordinate Judge had no jurisdiction to try the suit, as it was one cognizable by a Court of Small Causes.

The Subordinate Judge held that he had jurisdiction, and, finding the plaintiff's claim proved on the merits, made a decree in his favour. The District Judge allowed the defendant's objection, and, therefore, reversed that decree.

The plaintiff appealed.

Ganesh Hari Patvardhan for the appellant.—The District Judge is wrong on the question of jurisdiction. The suit is one essentially relating to an interest in land. The liablity to pay *baluta* rests on the occupancy of land, and cannot be severed from it. The right of village servents to recover *baluta* is co-extensive and correlative with the holder's occupancy of the village hands, and not with their right to own the crops after they are severed. [PINHEY, J.—In the unreported case of *Hanmantrav Sadashiv* v. *Keru Bhavnak*,(1) West and Nanabhai Haridas, JJ., held that a suit to recover *rabta* (*i.e.*, cash in lieu of service) from village Mahars was a Small Cause Court suit. Their judgment says: "The objection has been taken, aftea the appeal in this case had been heard on its merits that it is a case in which a special appeal cannot be entertained. The preeedents cited to us establish, we think, that it is of the nature of the cause cognizable by a Small Cause Court." It does not appear from the judgment what those precedents were, but the ruling is clear, and I can perceive no difference between a suit for *rabta* and a suit for *baluta*. A right to recover *baluta* does not arise till the crops are severed from the ground.] The right to recover has pre-existed, although the proper time to collect what that right allows, arrives on severance of the crops. The right to recover *rabta* was a personal right, having no relation whatever to the village lands.

Ghanasham Nilkanth Nadkarni, for the respondent, was not called upon.

The judgment of the Court was delivered by

(1) Extraordinary Application, No, 71 of 1875, decided on 27th September 1878.

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WEST, J.—The argument for the appellant is that as the claim relates to land, by relating to the produce of land, it does not constitute a suit of the nature of these cognizable by a Small Cause Court. The claim has, no doubt, some relation to land, but so in a similar remote sense have many others that are still regarded as constituting small causes. It is not for an interest in land, but for a share in produce severed from the land; and such a suit, according to the judgment in *Hanmantrav Sadashiv* v. *Keru Bhavnak*(1) and the cases there relied on, is cognizable by a court of Small Causes.

We must, therefore, in the absense of any authorities to the contrary, dismiss the second appeal with costs.

Appeal dismissed.

(1) See Printed Judgments for 1875, p. 291.

APPELLATE CIVIL.

(11)

Before Mr. Justice West and Mr. Justice Pinhey.

September 4. GOPI WASUDEV BHAT (ORIGINAL DEFENDANT), APPELLANT. *v.* MARKANDE NARAYAN BHAT (ORIGINAL PLAINTIFF), RESPONDENT.*

Mortgage—Sham Decree—Innocent Purchaser.

In 1861, J mortgaged certain lands to the defendant, who in 1864 sued upon the mortgage, and obtained a decree for sale. The decree remained unexecuted by the defendant. In 1869 the lands were sold in execution of a money decree against J, and the plaintiff became the purchaser. Thereupon the defendant attached the land in execution of the decree obtained by him in 1864. The Court found that the mortgage of 1861 was not a *bonâ fide* mortgage. In a suit for possession, *held* that the plaintiff was entitled. The decree obtained in 1864, being based upon a colourable mortgage, gave the defendant no claim as against a subsequent *bonâ fide* purchaser for value. What was purchased by the plaintiff at the execution sale in 1869, was the real interest of J in the lands in question, not has interest as diminished by a fictitious derogation arising out of a sham transaction.

THIS was an appeal from the decision of A. L. Spens, Judge of Kanara, by which he affirmed the decree of the Subordinate Judge of Kumta.

One Janu, the owner, executed a mortgage of certain lands to the defendant Gopi on the 28th of June 1861. On the 3rd of September 1864, Gopi obtained a decree, directing a sale of the lands and payment of the proceeds towards satisfaction of the debt

* Second Appeal, No. 210 of 1878.