

APPELLATE CIVIL.

Before Sir Charles Sargent, Et., Chief Justice, and Mr. Justice Melvill.

1882
July 26.

MUSA MIYA SAHEB, A MINOR (ORIGINAL DEFENDANT), APPELLANT, v. SAYAD GULAM HUSEIN MAHAMAD (ORIGINAL PLAINTIFF), RESPONDENT.*

*Jurisdiction—Suit cognizable by a Small Cause Court—Act X of 1876, Sec. 15—
Second appeal—Civil Procedure Code (Act X of 1877), Sec. 586.*

The plaintiff sued to recover from the defendant Rs. 71-3-3, alleging that the defendant had illegally levied the money on the plaintiff's land on account of enhanced summary settlement and local fund cess. The defendant being a minor was represented by the Collector as his administrator. The Assistant Judge who tried the suit awarded the plaintiff's claim. The District Judge, in appeal, reduced the amount of the plaintiff's claim to Rs. 38-4-9, but upheld the decree of the first Court in other respects. The defendant thereupon filed a second appeal in the High Court.

Held that under the Civil Procedure Code (Act X of 1877), sec. 586, no second appeal lay, as the suit was one cognizable by a Small Cause Court.

Act X of 1876, sec. 15, removes suits to which the Collector is a party from the jurisdiction of the Small Cause Court; but the nature of the suit remains unaltered.

THIS was a second appeal from the decision of S. H. Phillpotts, Judge of the District Court of Ahmedabad, varying the decree of A. H. Unwin, Acting Assistant Judge at the same place.

The plaintiff, Sayad Gulam Husein, instituted this suit for the recovery of Rs. 71-3-3 from the defendant, alleging that the defendant had illegally levied the money by the attachment of the plaintiff's land, on account of enhanced summary settlement and local fund cess, and that the defendant had no right to enhance the rate of assessment on the plaintiff's land. As the defendant was a minor, he was represented by the Collector of Ahmedabad as his administrator, and the suit was filed in the District Court as required by section 15 of Act X of 1876.

The allegations in the defendant's written statement are not material.

The Assistant Judge who tried the suit held that the defendant had no right to levy the increased summary settlement and local fund cess, and awarded the plaintiff's claim. In appeal, the

* Second Appeal, No. 410 of 1881.

District Judge upheld the decree of the Assistant Judge, but reduced the amount of the plaintiff's claim to Rs. 38-4-9.

The defendant appealed to the High Court.

A preliminary question was raised in the High Court whether a second appeal lay in the case.

Nanabhai Haridas, Government Pleader, appeared for the appellant.

Gokaldas Kahandas appeared for the respondent.

SARGENT, C. J.—We think that no second appeal lies in this case. Act X of 1876, sec. 15, removes suits, in which the Collector is a party, from the jurisdiction of the Small Cause Court; but the nature of the suit, by which must be understood the jural relations between the parties, remains unaltered, and as the present suit is one of the nature cognizable by a Small Cause Court, no second appeal lies, as provided by section 586, Act X of 1877. Appeal dismissed with costs.

Appeal rejected.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.

RAGHO GOVIND PARAJPE (ORIGINAL DEFENDANT), APPELLANT, *v.* BALVANT AMRIT GOLE (ORIGINAL PLAINTIFF), RESPONDENT,*

1882
September 18.

AND

BALVANT AMRIT GOLE (ORIGINAL PLAINTIFF), APPELLANT, *v.* RAGHO GOVIND PARAJPE AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.†

Tacking together of secured and unsecured debts—Voluntary conveyance—Construction—Trustee for creditors—Circuity of actions—Administration suit.

K., who was a relation of the plaintiff, executed a deed of conveyance by which he conveyed all his estate to the plaintiff, in consideration of his undertaking to pay all K.'s debts. The deed stated that it was K.'s desire that the estate should remain in his family. After K.'s death the plaintiff sued for an account and for redemption of some of K.'s land which had been originally mortgaged by K. to the defendant. It was contended in defence that the deed created a trust for the payment of K.'s debts, and that the defendant was entitled to tack on to the mortgage debt a simple contract debt which K. owed to him. It was found that the defendant was the only unpaid creditor, and that the property was more than sufficient to pay the debt.

* Second Appeal, No. 524 of 1880.

† Second Appeal, No. 116 of 1881.