

1883

KACHAR  
BHOJ VAJJA  
v.  
BAI  
RATHORE.

against the defendant, who alone has appeared by vakil on this appeal. It would probably be sufficient to say that the suit so restricted would not, as admitted by the plaintiffs themselves, be within the ordinary jurisdiction of the Subordinate Judge. We think, however, that the plaintiffs are entitled to no indulgence; for, in the first place, the objection on the ground of misjoinder of causes of action was taken by the defendant's written statement, and the plaintiffs still insisted on the issue being tried, and it has been found against them; and, secondly, this is an attempt to give the Subordinate Judge his special jurisdiction by combining causes of action contrary to the provisions of the Code of Civil Procedure. We must, therefore, confirm the decree on the ground that there is a misjoinder of causes of action. Appellants to pay respondents their costs.

*Decree confirmed.*

### APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Manabhai Haridas.*

MAHADEV NARSINH (ORIGINAL DEFENDANT), APPELLANT, v. RAGHO KESHAV AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

*Practice—Right of second appeal—Suits cognizable by Courts of Small Causes—Remand order—Act X of 1877, Secs. 562, 586, 588, 589.*

The right of appeal given by sections 588 and 589 of Act X of 1877 from an order of remand, as contemplated by section 562, is not taken away by section 586.

*Chomdhry Ranjit Singh v. Jafar Ali Khan* (1) followed.

THIS was an appeal from an order of M. H. Scott, Judge of the District Court of Khandesh, reversing the decree of Govind Jaganath, Second Class Subordinate Judge of Bhusaval, and remanding the case back for trial.

The plaintiffs Ragho and his brother sued the defendant Mahadev for Rs. 150 on account of their share of the emoluments of certain *kulkarni vatans* for three years, due to them under an agreement dated the 23rd September, 1873. Both the parties

\* Second Appeal, No. 14 of 1881, from order.

(1) I. L. R., 3 All. 18.

were *vatandars*. The Subordinate Judge rejected the claim, holding that he had no jurisdiction under the Bombay *Vatandar's* Act No. III of 1874.

In appeal, Mr. Scott held that the Act did not bar the jurisdiction of the Civil Court in a case of the nature of the plaintiffs' suit. He, accordingly, reversed the decree of the first Court, and remanded the case for trial on the merits.

The defendant appealed to the High Court against the order of remand.

*Shantaram Narayan*, appeared for the appellant.

*G. R. Kirloskar*, for the respondent, took a preliminary objection that, under section 586 of Act X of 1877, no second appeal lay in the case, as the suit was one cognizable by a Court of Small Causes.

*Shantaram Narayan*, *contra*, relied on *Chaudhri Ranjit Singh v. Jafar Ali Khan*(1) in support of the right of second appeal.

SARGENT, C. J.—We think, following *Chaudhri Ranjit Singh v. Jafar Ali Khan*(1), that the right of appeal given by sections 588 and 589 of the Code of Civil Procedure from an order of remand contemplated by section 562 is not taken away by section 586.

The Court then heard the appeal on the merits, and confirmed the remand order of the District Judge, with costs.

*Order confirmed.*

(1) I. L. R., 3 All., 18.

## APPELLATE CIVIL.

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

KRISHNAJI RAGHUNATH KOTHAVLE, DECEASED, BY HIS SON AND HEIR  
RAMGHANDRA KRISHNA (ORIGINAL APPLICANT), APPELLANT, *v.* ANAN-  
DRAV BALLAL KOLHALKAR (ORIGINAL OPPONENT), RESPONDENT.\*

1883

*February 28.*

*Execution of decree—Fictitious attachment of property—Subsequent application for arrest—More than three years from decree—Application barred—Limitation Act XV of 1877, Sched. II, Art. 179.*

In 1874 the appellant attached certain immoveable property of his judgment-debtor, the respondent. The attachment was disputed, and ultimately, on the 16th July, 1875, was raised. In the same year the appellant brought a suit for a

\* First Appeal, No. 30 of 1882.