

1885.
 RAGHUNÁTH
 GOPÁL
 v.
 NILU
 NÁTHÁJI.

of careful consideration ; and as the District Judge has rested satisfied with declaring the appeal to be barred without giving any reasons, we think we ought to discharge his order, and direct him to make a fresh order with due regard to the above remarks. The costs of this appeal to abide the result.

Order discharged.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Nánabhái Haridás.

SUNDARDA'S JAGJIVANDA'S, PLAINTIFF, v. MOHANDA'S
 TICUMDA'S, DEPENDANT.*

1885.
 April 9.

*Jurisdiction—Small Cause Court Act XI of 1865, Secs. 12 and 8—Act III of 1859
 —Cantonment Magistrate, jurisdiction of.*

A plaintiff may sue in the Court of the Cantonment Magistrate, although he is not carrying on business, or resident within the limits of the military cantonment.

If a defendant is amenable to the articles of war contemplated by section 4 of Act III of 1839 he can only be sued in the Court of the Cantonment Magistrate ; but in all other cases a defendant may also be sued in the Court of the Subordinate Judge, provided the cause of action arose within his jurisdiction.

THIS was a reference by Ráv Bahádúr Jaysatyabodhráv Trimalráv, First Class Subordinate Judge of Belgaum, under section 619 of the Civil Procedure Code Act XIV of 1882.

The plaintiff Sundardás instituted Suit No. 794 of 1884 in the Court of the First Class Subordinate Judge, with Small Cause Court powers, at Belgaum, to recover from the defendant Mohandás the sum of Rs. 145, upon an acknowledgment, said to have been signed by him, of a debt due by the firm known by the name of his father Ticumdás, deceased. Among the objections raised by the defendant one was to the effect that the Court could not entertain the suit under section 1 of Act III of 1859, inasmuch as the amount claimed did not exceed Rs. 200, and he resided and carried on trade within the limits of the Belgaum Cantonment. The plaintiff did not reside or carry on trade within those limits, nor had his name been registered as a military bázárman, as required by section 6 of the sa Act.

*Civil Reference, No. 3 of 1885.

The question referred for decision was—whether the Court had jurisdiction to entertain the suit or not; and, if not, where the suit would lie?

1885.

SUNDARDÁS
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v.
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TICUMDÁS.

The opinion of the First Class Subordinate Judge, with Small Cause Court powers, at Belgaum was that, under section 1 of Act III of 1859, the defendant was not subject to the jurisdiction of the Civil Court; and that, under section 6, the plaintiff was precluded from suing in the Court of the Cantonment Magistrate.

There was no appearance for the parties.

SARGENT, C. J.—The fact that the plaintiff is not carrying on business or resident within the limits of the military cantonment does not prevent his suing in the Court of the Cantonment Magistrate. The only persons precluded from doing so are those mentioned in section 6, who are carrying on or have carried on trade or business within the military cantonment, and who were not registered as military bázármen at the time the debt was contracted. Again, unless the defendant is amenable to the articles of war as contemplated by section 4 of Act III of 1859, in which case he can only be sued in the Court of the Cantonment Magistrate, he may also be sued in the Court of the Subordinate Judge, provided the cause of action arose within his jurisdiction, as to which this reference is silent.

The Small Cause Court Act, XI of 1865, sec. 12⁽¹⁾, saves the jurisdiction of the Cantonment Magistrate, but does not take away the jurisdiction conferred by section 8 on the Small Cause Court.

The Subordinate Judge must, therefore, be guided by these remarks, and act accordingly.

(1) Section 12.—Wherever a Court of Small Causes is constituted under this Act, no suit cognizable by such Court shall be heard or determined in any other Court having jurisdiction within the local limits of the jurisdiction of such Court of Small Causes: Provided that nothing in this Act shall be held to take away the jurisdiction which a Magistrate, or a person exercising the powers of a Magistrate, or an Assistant or Deputy Magistrate can now exercise in regard to debts or other claims of a civil nature, or the jurisdiction which can be exercised by * * * * * or by Cantonment Joint Magistrates invested with civil jurisdiction under Act III of 1859. * * *