

Dáji Abáji Khare for the applicant.—The High Court omitted to consider whether the agreement, which formed the subject of the reference by the Subordinate Judge, was valid or not.

[SARGENT, C. J.—Before we go into that question you must show that we have the power to review our judgment. Under what section do you make your application?]

Under section 623, clauses (b) and (c), of the Civil Procedure Code (XIV of 1882).

[SARGENT, C. J.—But clause (c) contemplates a reference from a Court of Small Causes, not from a Subordinate Judge with Small Cause Court powers.]

SARGENT, C. J.—This is an application for a review of a judgment, passed by this Court under section 619 of the Code of Civil Procedure, on a reference from a Subordinate Judge with Small Cause Court powers. A review is expressly given by section 623 in the case of a judgment on a reference from a Court of Small Causes, but not on one from a Subordinate Judge exercising the powers of a Small Cause Court. Nor is the judgment itself, passed by this Court, a decree or order within clause (b) of section 623, but simply a statement of the grounds, in conformity with which the Subordinate Judge is to dispose of the case, as provided by section 619. We are of opinion, therefore, that the case has, probably by an oversight, been omitted from section 617, and that there is no review.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Nánabhái Haridás and Sir William Wedderburn, Bart., Justice.

BA'BURA'V AMRIT PETHE, (ORIGINAL DEFENDANT), APPLICANT, v.
GANPATRA'V DA'MODAR, (ORIGINAL PLAINTIFF), OPPONENT. *

1885.
July 28.

Jurisdiction—Small Cause Court—Suit for interest due on a mortgage.

The plaintiff sued to recover interest due on a mortgage of immoveable property. The defendant pleaded that the plaintiff had received the profits of the mortgaged property, and had got possession of certain materials worth four thousand

* Extraordinary Application, No. 190 of 1884.

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rupees, and that the mortgage debt had been paid off. The suit was tried before a Subordinate Judge in his capacity of a Judge of a Court of Small Causes, who held that he had no jurisdiction to go into the questions raised by the defendant in his defence, and he gave judgment for the plaintiff.

Held, on application to the High Court, that the defence being virtually that the debt had been paid off, and that nothing was due to the plaintiff, the Subordinate Judge had jurisdiction to decide the suit.

THIS was an application for the exercise of the High Court's extraordinary jurisdiction. The plaintiff sued to recover interest on a mortgage of immoveable property. He alleged that the defendant's ancestor had executed to his (the plaintiff's) ancestor a mortgage bond for Rs. 3,000, upon Rs. 1,500 of which interest was to be paid at the rate of 6 per cent. per annum. The remaining Rs. 1,500 was to bear no interest, but the mortgagee was to receive the profits of the mortgaged property. The plaintiff now sued for Rs. 90, being the interest on Rs. 1,500 for a period of one year from the 5th of July, 1883, to the 5th of July, 1884.

The defendant alleged that Rs. 3,690 had already been paid on the bond as principal; that an equal amount had been recovered by the plaintiff as interest from the profits of the mortgaged property; and that materials worth Rs. 4,000 had, moreover, been removed by the plaintiff.

The Subordinate Judge (First Class) of Násik, who tried the suit in his capacity of a Judge of a Court of Small Causes, held that he could not go into the questions raised by the defendant in this suit, and awarded the interest prayed for.

There being no appeal against the decision, the defendant applied to the High Court for a reversal of the Subordinate Judge's decree in the exercise of its extraordinary jurisdiction.

Shivram Vithal Bhandárkar for the applicant.—The defendant pleaded full satisfaction of the bond sued upon, and the Subordinate Judge should not have passed a decree without inquiring into that plea.

Yashvant Vásudev Athlay for the opponent.—The Subordinate Judge having tried this case as a Judge of a Court of Small Causes, could inquire into no other question than that of interest.

NÁNÁBHÁI HARIDÁS, J.—We think that in this case the rule must be made absolute. A Small Cause Court would have jurisdiction to go into the question whether any part of the principal was due to the plaintiff in respect of which interest was claimable—*Rám Shewuk Sahoo v. Futto Roy*⁽¹⁾. The defence here virtually was that nothing was due; that the principal sum of Rs. 1,500, which carried interest, had been more than paid off by the plaintiff having received Rs. 4,000 as the value of materials removed by him. If the defendant previously consented to this removal, or subsequently ratified the removal, he may be presumed to have agreed to the value received being applied to the payment of the debt due to the plaintiff; and if that debt was paid off, no interest would accrue upon it. The Subordinate Judge was, therefore, wrong in declining to inquire into the matter and determine whether the sum upon which interest was claimed, or any part of it, was still due.

We must, therefore, reverse the decision of the Subordinate Judge, and send the case back for a new decision after making such inquiry.

Costs of this application to follow final decision.

Decree reversed and suit remanded.

(1) 12 Cal. W. R., 184, Civ. Rul.

APPELLATE CIVIL.

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

MAHA'LAKSHMIBA'I, (ORIGINAL PLAINTIFF), APPELLANT, v. THE FIRM OF NAGESHWAR PURSHOTAM, (ORIGINAL DEFENDANT), RESPONDENT. *

1885.
July 30.

Limitation Act XV of 1877, Sec. 19, Expl. 1—Acknowledgment—Entry of a debt in a debtor's book.

An entry in a debtor's own book does not amount to an acknowledgment within the meaning of section 19 of Act XV of 1877, unless communicated to his creditor or to some one on his behalf—Explanation 1 to section 19 showing that the acknowledgment is contemplated as "addressed" to the creditor.

Every acknowledgment, in order to create a new period of limitation, must be signed by the debtor or some one deputed by him, no matter in what part of the document the signature is placed.

* Civil Reference, No. 24 of 1885.

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