

1887
 JUNE 23.
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 APPEL-
 LATE
 CIVIL.
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 12 B, 30.

contemplation of s. 244 of the Civil Procedure Code, and, therefore, an order determining that question would be appealable under s. 2 of the Civil Procedure Code—*Ghazidin v. Fakir Bakhsh* (1); *Udeyadeta Deb v. Gregson* (2). No reference, therefore, lies to this Court under s. 617, even assuming that section to apply to a proceeding of this nature under s. 647. Plaintiffs to pay defendant his costs.

12 B 31.

APPELLATE CIVIL.

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

RAMPRATAP (*Plaintiff*) v. GANESH RANGANATH (*Defendant*).*
 [27th June, 1887.]

Jurisdiction—Subordinate Judge invested with Small Cause Judge's powers—Civil Procedure Code (Act XIV) of 1882, s. 111—Set-off exceeding pecuniary jurisdiction of the Small Cause powers of the Subordinate Judge—Practice.

In a suit brought by the plaintiff to recover Rs. 33-7-9 from the defendant, under the Small Cause jurisdiction of a Subordinate Judge, the defendant claimed to set-off Rs. 72, which exceeded the pecuniary jurisdiction of the Judge as a Small Cause Judge. On reference to the High Court,

Held, that the set-off might be pleaded by the defendant. The Judge would exercise his Small Cause Court jurisdiction in trying the claim of the plaintiff and his ordinary jurisdiction in trying the set-off.

[D., 31 B 314=9 Bom. L. R. 327.]

[32] THIS was a reference by Rav Sahab Karpurram Manmathram, Subordinate Judge of Panvel, under s. 617 of the Civil Procedure Code (Act XIV) of 1882.

The plaintiff sued to recover from the defendant Rs. 33-7-9, being the price of two cases of clarified butter bought by the defendant on the 6th April, 1886; Rs. 1-12 as interest thereon at the rate of 12 annas *per cent. per mensem*; and Rs. 1-3-6, the cost of a notice given to the defendant. The defendant entered his appearance, and put in a written statement admitting the claim, but claiming a set-off of Rs. 75

The Subordinate Judge referred the following question to the High Court for its opinion:—

Whether a defendant has a right to set-off a sum exceeding Rs. 50 in a suit which is within the Small Cause Court jurisdiction of his Court?

The Subordinate Judge's opinion on the point was in the negative.

Ghanasham Nilkanth Nalkarni, for the plaintiff.—The set-off claimed by the defendant exceeds the pecuniary jurisdiction of the Subordinate Judge as a Small Cause Judge, and he cannot try the question of set-off. If the defendant proved his set-off, the effect would be the same as if he obtained a decree: see cl. 3 of s. 111 of the Code. But the Small Cause Court jurisdiction of the Subordinate Judge is limited to Rs. 50; therefore, the set-off can only be proved to that amount.

Vasudev Gopal Bhandarkar, for the defendant.—The Subordinate Judge, who has been invested with Small Cause Court powers, exercises

* Civil Reference, No. 4 of 1887.

two separate jurisdictions: first, that of a Small Cause Court Judge; second, that of a Subordinate Judge—*Balkrishna v. Lakshman* (1). Under the first he can try the claim of the plaintiff, and under the second he can try the set-off of the defendant.

JUDGMENT.

SARGENT, C.J.—We think there is no objection to the Subordinate Judge trying the set-off pleaded by the defendant. He is not the Judge of two Courts, but has two jurisdictions—*Malhari* [33] v. *Narso Krishna* (2)—and will exercise his Small Cause Court jurisdiction in trying the claim made by the plaintiff and his ordinary jurisdiction in trying the set-off; and as he is governed by the Code of Civil Procedure in his procedure—*Bhagvan Dayalji v. Balu* (3)—he will set-off the one debt against the other as provided by s. 111.

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12 B. 33.

APPELLATE CIVIL.

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

GOVINDRAV AND ANOTHER (Original Plaintiffs) Appellants v. RAVJI
AND ANOTHER (Original Defendants), Respondents.*

[5th July, 1887.]

Mortgage—Subsequent assignment of the equity of redemption by the mortgagor—No notice to mortgagees of such assignment—No change of name in Collector's books—Further advances by mortgagees to original mortgagor on same security—Suit by assignee of equity of redemption to redeem—Liability of assignee to pay off the further advances to mortgagor—Standing by—Allowing original mortgagor's name to remain in Collector's books.

In order to complete an assignment of an equitable estate in immoveable property it is not necessary by English law that notice of the assignment should be given to the owner of the legal estate. Nor is there any rule of Hindu law which requires notice to be given to the person in possession whose position may be considered analogous to the holder of the legal estate in English law.

By a registered mortgage-deed, P. in 1869 mortgaged certain property with possession to the defendants. In 1871, P. sold his equity of redemption to the plaintiffs, who allowed it to remain in P's name on the Collector's register. Subsequently, in 1873, the defendants made further advances to P. on the security of the same mortgaged property. The plaintiffs sued to redeem. The Court of first instance rejected the plaintiffs' claim, being of opinion that their purchase was not proved. On appeal, the District Judge reversed the decree, holding that the sale to the plaintiffs was proved. He held, further, that the plaintiffs could not redeem without paying off the further advance made by the defendants in 1873, on the ground that the plaintiffs had given no notice of their purchase to the defendants, and had allowed Pandoji's name to remain on the Collector's register as the ostensible owner.

The plaintiffs appealed to the High Court.

Held, that the plaintiffs' title as assignee of the equity of redemption was complete, although no notice of the assignment had been given to the defendants. [34] But, although such notice was not necessary to complete the plaintiffs' title, it was plain, upon general principles of equity, that if the plaintiffs' conduct was such as to amount to a standing by and allowing the defendants to make further advances to Pandoji under the supposition that he was still the

* Interlocutory Judgment in Appeal, No. 200 of 1885.

(1) 3 B. 219.

(2) 9 B. 174.

(3) 8 B. 230.