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Nov. 21.  
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ORIGINAL  
CIVIL:  
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15 B. 93.

brought, alleging, as breach, non-delivery at both places. In such cases, the cause [103] of action could not be said to have arisen wholly in Madras (1). And Kindersley, J., said that the words 'cause of action' "rather relate to cases of several 'cause of action' contained in one and the same suit, some of which have arisen out of the jurisdiction" (1).

I do not think that in this Court I can act upon this interpretation of the phrase 'cause of action;' and I may further remark that in the Madras case, Morgan, C. J., at the original hearing had taken a different view from that which prevailed in appeal, and that the appellate Court there followed the case of *Gopikrishna Gosami v. Nilkomul Banerjee* (2) in Calcutta, which had been decided, not on the charter, but on s. 5 of the old Civil Procedure Code, and in which Birch, J., expressly based his judgment on that section, making a point of the case coming up on "the appellate side of the Court;" and Markby, J., the other member of the Bench, said that he did not "pretend" that the rule laid down in the case was "applicable to other Courts governed by other statutes."

I must, therefore, hold that in this case, which is governed by cl. XII of the Letters Patent, the leave of the Court was necessary under that clause to give the Court jurisdiction; that the jurisdiction so conferred was confined to the cause of action disclosed in the plaint as originally framed; and that the Court cannot now allow an amendment which shall substantially alter that cause of action. In this view it becomes unnecessary to consider whether the cause of action intended to be introduced into the suit by amendment would itself be one over which this Court could exercise jurisdiction without leave granted under cl. XII.

That being the opinion at which I have arrived, I must find in the negative on issue No. 6, in the affirmative on issue No. 15, in the negative on issue No. 22; and, without finding on the other issues, I must dismiss the suit with costs.

*Suit dismissed.*

Attorneys for the plaintiffs:—Messrs. *Payne, Gilbert and Sayani.*

Attorney for the defendants:—Mr. *D. S. Garud.*

15 B. 104.

[104] APPELLATE CIVIL.

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

GOVIND BIN LAKSHMANSHET ANJORLEKAR (*Original Plaintiff*),  
Appellant *v.* DHONDBARAV BIN GANBARAV TAMBYE (*Original*  
*Defendant*), Respondent.\* [24th March, 1890.]

*Small cause suit—Res judicata.*

Decisions in previous suits which were in the nature of small cause suits and in which there was no right of second appeal.

*Held not to operate as res judicata.*

[N.F., 28 C. 78 (81); F., 29 M. 195 (197)=16 M.L.J. 41=1 M.L.T. 25; R., 15 M. 111 (118); 17 M. 168 (179); 18 M. 189 (191); 5 Bom. L.R. 742 (743); 1 C.W.N. 687 (688); 54 P.R. 1904; 57 P.R. 1907=66 P.W.R. 1907.]

\* Second Appeal No. 51 of 1889.

(1) 1 M. 377.

(2) 13 B.L.R. 461.

THIS was a second appeal from the decision of R.S. Tipnis, Acting Assistant Judge of Ratnagiri.

The plaintiff brought the present suit for a declaration that the lands mentioned in the plaint were *khoti* and not *dhara* lands; he also claimed *thal* rent for one year on account of two of the plots of land in dispute.

The defendant pleaded that the lands were *dhara* lands; that the survey officers had entered them as *dhara* lands in the Government records; that in previous suits (which were brought to recover *thal* rent within the small cause jurisdiction of the Subordinate Judge's Court) he was held not liable to pay *thal* rent, and that certain persons had not been made parties to the suit.

The Subordinate Judge found that the lands in dispute were the defendants' *dhara* lands. He rejected the plaintiff's claim.

The plaintiff appealed to the District Court at Ratnagiri, which held that the question whether the lands were liable to pay *thal* rent was *res judicata* by reason of the previous suits which related to the recovery of *thal* rent and in which the claim had been disallowed. The District Judge reversed the decree of the Subordinate Judge, and declared that the lands in dispute were *khoti* lands, but rejected the claim for *thal* rent.

Against the decree of the District Court the plaintiff preferred a second appeal.

Vasudev Gopal Bhandarkar, for the appellant.

Daji Abaji Khare, for the respondent.

#### JUDGMENT.

[105] SARGENT, C. J.—As the previous suits were in the nature of small cause suits in which there was no right of second appeal, the decisions in those suits could not operate as *res judicata* in the present suit—*Bholabhai v. Adesang* (1) and *Babaji Pandurang Kapdi v. Dhondo Vithal Karande* (2).

We must, therefore, reverse the decree of the Court below and send back the case for a fresh decision after recording a finding on the question whether the defendant has proved that he was not liable to pay *thal*, and also, in the event of that finding being in the negative, on the fifth issue. Costs to abide the result.

*Decree reversed.*

15 B. 105.

#### APPELLATE CIVIL.

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

SANTAJI KHANDERAO, DECEASED, BY HIS SONS (Plaintiffs) v.  
RAVJI AND OTHERS (Defendants).\* [19th August, 1890.]

*Succession Certificates Act, VII of 1889, s. 4—Act XXVII of 1860, s. 2—Construction.*

The plaintiffs brought a suit to recover a certain sum of money due on a mortgage-bond executed by defendant No. 1 in favour of their (the plaintiffs')

\* Civil Reference No. 7 of 1890.

(1) 9 B 75 (79).

(2) P. J. for 1886, p. 82.