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OPINION.

SARGENT, C. J.—We think that no additional stamp would be required on account of the claim for interest from institution of the suit until payment. It stands on the same footing as future mesne profits, which in *Ramkrishna* v. *Bhimabai* (1) were held not to fall under s. 7 of the Court Fees Act.

Order accordingly.

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APPELLATE CIVIL.

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

DAMODAR GOPAL DIKSHIT (*Original Defendant*), *Appellant v.* CHINTAMAN BALKRISHNA KARVE AND OTHERS (*Original Plaintiffs*), *Respondents.** [28th January, 1892.]

Small Cause Court—Provincial Small Cause Courts Act (IX *of* 1887), *sch.* II, *cls.* (4) *and* (31); *s.* 23, *cl.* (1)—*Jurisdiction—Suit to recover share of profits of inam villages —Money had and received for plaintiffs' use.*

In a suit for the recovery of a certain share in the profits of *inam* villages, of which the defendant was the manager, the only relief claimed by the plaintiffs being payment of money, namely Rs. 130.

Held, that the suit was for money had and received for plaintiffs' use, and was cognizable by the Court of Small Causes. It did not fall under cl. (4) of sch. II of the Provincial Small Cause Courts Act (IX of 1887), as it was not [43] a suit for the possession of immoveable property, or for recovery of an interest in such a property. If the plaintiffs had alleged that the defendant had "wrongfully received" the plaintiffs' share of profits, then the suit would have fallen under cl. (31), sch. II of the Act.

[F., 23 A. 437 (438)=21 A.W.N. 128; 32 B. 560 (562)=10 Bom.L.R. 733; 34 B. 171=11 Bom.L.R. 1330=4 Ind. Cas. 880; 9 Bom.L.R. 207-N: Appr., 21 B. 248 (250); R., 35 M. 726=11 Ind. Cas. 31=21 M.L.J. 442=(1911) 2 M.W.N. 189; 16 Ind. Cas. 868=6 S.L.R. 85; 1 L.B.R. 335 (336); 14 M.L.J. 396 (400); 18 M.L.J. 88 (89); 2 O.C. 276 (279); 13 P.R. 1901=137 P.L.R. 1901; 98 P.L.R. 1904; Expl., 25 B. 85 (89).]

THIS was an appeal against an order of remand passed by A. D. Pollen, District Judge of Poona.

Suit to recover a share of the profits of *inam* villages.

The plaintiffs, Chintaman Balkrishna Karve and others, stated that the two villages in dispute belonged to the families of the parties as *inam*; that the plaintiffs had one-fifteenth share therein; that the defendant Damodar Gopal Dikshit, had the management thereof, and that they claimed to recover Rs. 130 from the defendant as their share of the profits for three years.

The defendant, Damodar Gopal Dikshit, resisted the suit on the ground that it was time-barred; that Vishnu Dikshit, whose heirs the plaintiffs claim to be, had no share in the property in dispute; and that the Court had no jurisdiction to entertain the suit.

The Subordinate Judge (Rao Saheb Vaman M. Bodas), in whose Court the suit was originally instituted, held that it was within the

* Appeal No. 25 of 1891.

(1) P. J. 1890, p. 364.

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cognizance of the Court of Small Causes at Poona, and dismissed it for want of jurisdiction.

The plaintiffs appealed to the District Court, which held that the jurisdiction of the Small Cause Court was barred by sch. II, arts. (4) and (31) of the Provincial Small Cause Courts Act (IX of 1887), and reversed the decree, and remanded the suit for trial on the merits.

Against the order of remand, the defendant appealed to the High Court.

Balkrishna Narayan Bhajekar, for the appellant.—The suit relates to the recovery of money, and that was the only prayer of the plaint. The District Judge was wrong in holding that in the present suit the respondents wanted to establish their right to the income of the property. In the plaint they asked for Rs. 130 on account of their share in the income, and nothing more; and that being so, the case falls within the cognizance of the Court of Small Causes at Poona. The plaintiffs [44] did not seek to recover, or establish, their right to any immoveable property over which the Small Cause Court has no jurisdiction.

[BIRDWOOD, J., referred to *Gulam Nabi* v. *Shahabudin* (1).]

That case supports our contention; so also the ruling in *Krishnaji* v. *Gangaram* (2).

Purushottam Parashuram Khare, for the respondents.—The view taken by the District Judge is correct. We say in our plaint that we have got a fifteenth share in the property and the income, and the appellant denies our right to a share in the property. The pleadings in the case, therefore, raise a question of title, which the Small Cause Court has no jurisdiction to entertain. The Judge also relied on arts. (4) and (31) of sch. II of the Provincial Small Cause Courts Act (IX of 1887), and was of opinion that the claim related to an interest in immoveable property.

JUDGMENT.

SARGENT, C. J.—The plaintiffs sued to recover their one-fifteenth share of the profits of two *inam* villages which had been collected by the defendant as the representative of the eldest branch of the family of *inamdars*, and as manager of the property for the several sharers. The Subordinate Judge dismissed the claim, as he was of opinion thst the suit was within the cognizance of the Court of Small Causes, and that he had no jurisdiction.

The District Judge has, however, held that the case falls under cls. 4 and 31 of sch. II of Act IX of 1887, and is, therefore, excepted from the cognizance of a Court of Small Causes; and he has remanded the case for trial by the Subordinate Judge. We are unable to concur in this decision. The suit is one for money had and received to the plaintiffs' use. It does not fall under cl. 4 of sch. II of Act IX of 1887, as it is not a suit for the possession of immoveable property, or for the recovery of an interest in such property; the only relief claimed being the payment of money. If the plaintiffs had alleged that the defendant had "wrongfully received" the plaintiffs' share of profits, then, no doubt, the suit would have fallen under cl. 31 of the sch. II. But the [45] plaintiffs' allegation is that the defendant rightfully received, but wrongfully retained, the profits. To such a suit cl. 31 has no application (*cf. Krishnaji* v. *Gangaram* (2)). The suit, as brought, is cognizable by a Court of Small Causes. If the plaint is now proceeded with in such a Court, and the

(1) P. J. 1885, p. 14.

(2) P. J. 1890, p. 255.

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defendant denies the plaintiffs' title, it would be open to the Court to act under s. 23, cl. (1) of Act IX of 1887.

We reverse the order of the lower appellate Court and direct that the plaint be returned to the plaintiffs for presentation in the Court of Small Causes. The parties to pay their own costs of this appeal. Other costs to be costs in the cause.

Order reversed.

17 B. 45.

APPELLATE CIVIL.

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

MOTILAL PRANNATH AND OTHERS (*Original Defendants*), *Appellants v.* BAI KASHI, WIDOW OF GOPAL PRANNATH (*Original Plaintiff*), *Respondent.** [1st February, 1892.]

Hindu law—Maintenance — Widow's maintenance — Withholding of maintenance—Demand and refusal—Arrears of maintenance—Limitation—Decree providing for reduction of maintenance in event of altered circumstances of persons paying it.

K., a Hindu widow, sued the undivided brothers of her deceased husband for maintenance. She also claimed arrears of maintenance for six years prior to the institution of the suit. The Court of first instance passed a decree in her favour awarding her maintenance at the rate of Rs. 52 a year during her lifetime, but "subject to variation according to the change in defendants' circumstances for the worse." The Court also awarded her arrears of maintenance for three years only (not six as claimed) on the ground that she was only twenty years old, and had always lived with her father and been maintained by him, and that a formal demand had only been made on the defendants three years previously. On appeal, the District Court increased the rate of maintenance to Rs. 65 per annum, and awarded the plaintiff arrears for six years, holding that the fact of the demand having been made only three years before suit did not prevent her from recovering arrears for six years.

Held by the High Court that although the withholding of maintenance, which constituted the cause of action, might be proved otherwise than by a demand and refusal, yet in this case it had not been shown that there were any circumstances [46] which would amount to a refusal of maintenance. The decree of the lower appeal Court was, therefore, confirmed, except so far as it gave the plaintiff arrears of maintenance for six years, which period was altered to three years. The clause as to the reduction of maintenance in the event of altered circumstances was also struck out.

[R., 24 B. 386 (392); 13 C.P.L.R. 156 (157); 16 C.P.L.R. 30 (32); Cons., 24 M. 147 (155) (P.C.)=2 Bom.L.R. 945=5 C.W.N. 74=27 I. A. 151=10 M.L.J. 294=7 Sar.P.C.J. 761.]

THIS was a second appeal from the decision of E. H. Moscardi, Acting Assistant Judge with full powers, of Broach.

Suit to recover maintenance.

The plaintiff, Bai Kashi, widow of one Gopal Prannath, who died a minor, sought to recover from the defendants, who were the undivided brothers of the deceased, arrears of maintenance for six years prior to the institution of the suit, and also for an order directing that the defendants should continue to pay her maintenance annually in future, and that, in default, she should recover it from their property.

The defendants, Motilal, Lallubhai and Ranchhod Prannath, urged (*inter alia*) that the plaintiff was unchaste; that she had from the

* Second Appeal No. 10 of 1891.