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PÁNDU,

objection, however, has been taken for the first time in this Court and cannot now be entertained. We must, therefore, reverse the decree and send back the case to be decided on the merits. Costs to abide the result.

Decree reversed and case sent back.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

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January 9.

MANAJI BAHIRJI (ORIGINAL DEFENDANT), APPELLANT, v. NA'RA'YAN-
RA'O MA'DHÁVRA'O (ORIGINAL PLAINTIFF), RESPONDENT.*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), Sec. 4—Practice—Pro-
cedure—Jurisdiction—Jurisdiction of Second Class Subordinate Judge.*

The plaintiff sued to establish his title to, and recover a moiety of a cash allowance payable to him from the Mámlatdár's treasury at Sátára. The claim was valued at Rs. 455-4. The plaintiff was filed in the Court of the First Class Subordinate Judge at Sátára, who transferred the case for trial to the Joint Subordinate Judge of the Second Class. The latter Judge dismissed the suit on the merits, holding that the plaintiff had no right to the moiety of the allowance which he sought to recover. This decision was reversed, on appeal, by the Assistant Judge, on the ground that the Joint Subordinate Judge of the Second Class had no jurisdiction to hear the suit under section 4 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

Held, that the requirements of section 4 of Act XVII of 1879 were sufficiently complied with by the suit having been filed in the Court of the Subordinate Judge of the First Class. He was competent under section 23 of Act XIV of 1869 to transfer the suit to the Joint Subordinate Judge of the Second Class who was deputed to assist him.

THIS was an appeal from the decision of the Assistant Judge of Sátára, in appeal No. 12 of 1892.

This suit was instituted by the plaintiff to obtain a declaration of his title to a moiety of the allowance payable to him from the Mámlatdár's treasury at Sátára, amounting to Rs. 455-4, and that it was not liable to be attached in execution of a decree against one Bahirji, deceased. The plaintiff also prayed that the amount attached be ordered to be paid to him, and not to defendant.

* Appeal No. 15 of 1893 from order.

The plaint was originally filed in the Court of the First Class Subordinate Judge at Sátára who transferred the case for trial to the Joint Subordinate Judge of the Second Class who had been deputed to assist him.

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The Joint Subordinate Judge of the Second Class dismissed the suit on the ground that the plaintiff had no title to the portion of the allowance in respect of which the declaration decree was sought.

On appeal the Assistant Judge of Sátára was of opinion that the Joint Subordinate Judge of the Second Class had no jurisdiction to try the suit under section 4 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). He, therefore, reversed the decree of the first Court and returned the case for retrial in a Court of proper jurisdiction. The following extract from his judgment states his reasons:—

“The remaining point for decision is whether section 4 of the Dekkhan Agriculturists' Relief Act excludes the jurisdiction of a Second Class Subordinate Judge. *Prima facie* the exclusion is clear, for the language of the section is imperative—‘shall be instituted.’ I find no force in the contention of respondent's (defendant's) pleader, that this suit was as a matter of fact ‘instituted’ in the Court of the First Class Subordinate Judge, Sátára, and that the First Class Subordinate Judge had power to transfer the case for trial to the Joint Subordinate Judge, Second Class, who had been deputed to assist him. No authority is quoted in support of this contention. The language of section 4 is clear. It provides for cases where a Subordinate Judge, First Class, and a Subordinate Judge, Second Class, have ordinary jurisdiction in the same local area. The section may, therefore, be said exactly to apply to the present circumstances. I have no option, therefore, but to find that the Second Class Joint Subordinate Judge had no jurisdiction to try the present suit in accordance with section 4 of the Act.”

Against this decision the defendent appealed to the High Court.

Báláji A. Bhagvat for appellant:—Section 4 of Act XVII of 1879 has been misconstrued by the lower Court. A suit is said to be “instituted” when the plaint is presented to the proper officer of a Court: see section 48 of the Code of Civil Procedure (XIV of 1882). In the present case the suit was actually instituted in the Court of the First Class Subordinate Judge. The plaint was filed in his Court. But he transferred the case to the Joint Subordinate Judge, which he was competent to do under

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section 23 of Act XIV of 1869. When it was so transferred, the Joint Subordinate Judge was competent to try the suit.

Máhádev V. Bhat for the respondent:—Reading section 23 with section 12 of Act XIV of 1869, it is clear that the First Class Subordinate Judge had no power to transfer the case to the Joint Subordinate Judge of the Second Class. Refers to *Balaji v. Nána*⁽¹⁾.

JARDINE, J.:—The requirements of section 4 of the Dekkhan Agriculturists' Relief Act were complied with by this suit having been filed in the Court of the Subordinate Judge of the First Class. That Judge was competent under section 23 of Act XIV of 1869 to make over the suit to the Subordinate Judge of the Second Class who had been deputed to his Court to assist him in the disposal of suits on his file. Having regard to the language of the Code of Civil Procedure (XIV of 1882), section 48, section 15 *et seq.*, where the institution of suits is regulated, and to other sections of the Dekkhan Agriculturists' Relief Act (XVII of 1879), such as sections 3, 6 and 11, where the words "heard," "heard and determined" and "tried" are used, we cannot treat the word "instituted" in section 4 as meaning "heard and determined." We, therefore, reverse the order of the Assistant Judge and remand the appeal to the District Court for disposal on the other issues. Costs to be costs in the cause.

Decree reversed.

(1) P. J. for 1881, p. 196.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

MA'HA'DEV BALVANT AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS,
v. LAKSHMAN BALVANT (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation Act (XV of 1877), Sch II, Arts. 170, 178—Pauper—Application for leave to appeal in formá pauperis—Practice—Procedure.

Plaintiffs filed a suit for partition, which was dismissed on 9th December, 1890. On 17th March, 1891, plaintiffs presented an appeal to the High Court on a Court fee stamp of Rs. 10.

* Appeal No. 145 of 1892.

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January 15.