

own property by acts done in the exercise of its power by the Supply Company, and that those acts were not so done as to cause the least damage, detriment or inconvenience to the Gas Company that might be.

Costs of the reference to be dealt with by the Arbitrators.

Attorneys for the Arbitrators :—*Messrs. Little & Co.*

Attorneys for the Gas Company :—*Messrs. Crawford, Brown & Co.*

Attorneys for the Bombay Electric Supply and Tramways Company :—*Messrs. Craigie, Blunt & Caroe.*

H. S. C.

1914.  
BOMBAY  
GAS  
COMPANY,  
LTD. AND  
BOMBAY  
ELECTRIC  
SUPPLY AND  
TRAMWAYS  
COMPANY,  
LTD.,  
IN THE  
MATTER OF

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Davar.*

MADHAVRAO MORESHVAR PANT AMATYA (ORIGINAL PLAINTIFF),  
APPELLANT, v. RAMA KALU GHADI (ORIGINAL DEFENDANT), RESPONDENT.\*

1914.  
August 26.

*Provincial Small Cause Courts Act (IX of 1887), Schedule II, Article 13—  
Revenue Jurisdiction Act (Act X of 1876), section 5, clause (c)<sup>(1)</sup>—  
Civil Procedure Code (Act V of 1908), Order VIII, Rule 6—Suit by an  
Inamdar against a Khatedar for recovery of sums—Dues—Suit not cognizable  
by a Small Cause Court—Set-off claimed in a capacity different from that in  
suit, not allowable.*

\* Second Appeal No. 798 of 1913.

<sup>(1)</sup> Section 5, clause (c) of the Revenue Jurisdiction Act (Act X of 1876) is as follows :—

5. Nothing in section 4 shall be held to prevent Civil Courts from entertaining the following suits :—

- (a)        °        °        °        \*        °  
(b)        °        °        °        °        °

(c) Suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter

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Sums payable by a Khatedar to an Inamdar as superior holder are dues and a suit to recover such dues, though less than Rs. 500, is not cognizable by a Court of Small Causes and a decree passed in such suit is subject to a second appeal.

In a suit brought by an Inamdar against a Khatedar for the recovery of dues in respect of certain immoveable property payable by the Khatedar, the defendant, as a *pujari* (worshipper), claimed to set off the stipend payable to him by the plaintiff,

*Held*, that the defendant could not claim the set-off which was due to him in a different capacity from that in which he held as tenant or Khatedar of the plaintiff.

SECOND appeal against the decision of V. G. Kaduskar, Additional First Class Subordinate Judge of Ratnagiri, with appellate powers, modifying the decree of E. F. Rego, Subordinate Judge of Malwan.

The plaintiff, as Inamdar, sued to recover from the defendant Rs. 39-6-8 on account of arrears of assessment of four years. He also claimed Rs. 1-14-2 for costs which he had incurred in a suit in the Revenue Court to obtain assistance against the defendant and Rs. 3-11-2 for interest, thus claiming in all Rs. 45.

The defendant answered *inter alia* that he had co-sharers who were necessary parties, that he was a *pujari* (worshipper) of the village temple and for the *puja* (worship) work he was entitled to get Rs. 6-14-6 annually, that the said stipend was deducted from the assessment in previous years, therefore, it should be allowed in the suit, that if the set-off could not be allowed, the defendant claimed the stipend in the present suit and he had paid the Court-fee for the same and that the plaintiff could not recover the costs incurred by him in the Revenue Court.

The plaintiff filed a counter reply denying the defendant's counter claim.

The Subordinate Judge found that the defendant was not entitled to the set-off he claimed, that the plaintiff

could recover his costs in the Revenue Court and that the plaintiff's claim for interest could not be allowed. The Subordinate Judge, therefore, passed a decree for the plaintiff for Rs. 11-12-8 after deducting from Rs. 39-6-8, the arrears of assessment, the amount of the stipend due to the defendant for four years, namely, Rs. 27-10.

On appeal by the plaintiff, the appellate Judge modified the decree of the first Court by adding to it Rs. 1-14-2, the costs which the plaintiff had incurred in the Revenue Court. The decree of the appellate Court was, therefore, in all for Rs. 13-10-10.

The plaintiff preferred a second appeal.

*G. S. Rao* and *S. Y. Abhyankar* for the appellant (plaintiff).

*A. G. Desai* for the respondent (defendant):—We have to urge a preliminary objection. The suit being for recovery of arrears of assessment is a suit of the Small Cause nature and the claim being for an amount less than Rs. 500 no second appeal can lie. Article 7 of Schedule II of the Provincial Small Cause Courts Act would not exclude the suit from the jurisdiction of the Court of Small Causes as the suit is not for the assessment of rent, nor would Article 39 of the Schedule help the plaintiff as it applies to the case of a village community only.

Even assuming that this was a suit for rent, which it was not under the ruling in *Sadashiv v. Ramkrishna*<sup>(1)</sup>, such suits have become cognizable by Subordinate Judges as provided for in Article 8 by reason of the Government Notification, No. 5271, of the 15th September 1911, published in the Bombay Government Gazette of the year 1911, Part I, p. 1694, and therefore

(1) (1901) 25 Bom. 556.

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the appeal to the District Court was not maintainable, much less a second appeal.

*Rao* :—The Inamdar was the superior holder and the tenant, the inferior holder. A sum payable by the inferior holder to the superior holder was “dues” payable to the superior holder by reason of his interest in immoveable property within the meaning of Article 13 of Schedule II of the Provincial Small Cause Courts Act. The term “dues” is used in a similar sense by the Legislature in the Bombay Revenue Jurisdiction Act, section 5, clause (c).

*Desai*, in reply.

The preliminary objection was over-ruled.

*Rao* for the appellant (plaintiff) :—We contend that the order granting set-off to the defendant was contrary to the provisions of Order VIII, Rule 6 of the Civil Procedure Code as the amount was not due to the defendant alone but to him and his bhaubands.

*Desai* for the respondent (defendant) :—We concede that the order awarding set-off was not according to the provisions of Order VIII, Rule 6, but as the plaintiff sued the defendant alone without making the defendant's bhaubands parties for the purpose of escaping from this claim of set-off, the order made by the lower Court was equitable and should be confirmed. The plaintiff having obtained decrees in Revenue Courts against us, it was not at all necessary for him to file the present suit for harassing us.

*Rao*, in reply :—No doubt we had obtained decrees in the Revenue Court, but it takes a long time to realize the money through the Revenue Court, and as it was likely that the period of limitation for this suit might expire, we filed the suit as a matter of precaution. We are willing to give credit to the defendant for whatever would be recovered in execution of the Revenue decrees.

SCOTT, C. J. :—This is a suit for the recovery by an Inamdar of sums payable by a Khatedar in respect of certain immoveable property held by him, under the Inamdar as his superior holder. It is contended that being for an amount less than Rs. 500, and cognizable by a Court of Small Causes, no second appeal will lie. The question is whether it is cognizable by a Court of Small Causes. We have been referred, on the part of the appellant, to Article 13 of Schedule II of the Provincial Small Cause Courts Act IX of 1887 which excepts from the cognizance of a Court of Small Causes a suit to enforce payment of dues when the dues are payable to a person by reason of his interest in immoveable property. Now the sums payable by an inferior holder to a superior holder in the Bombay Presidency are in another Act of the Imperial Legislature characterised as dues: see Revenue Jurisdiction Act X of 1876, section 5, clause (c). The moneys claimed, therefore, in this suit may appropriately be described as dues payable to the plaintiff by reason of his interest in immoveable property held by the defendant, and therefore Article 13 of the Schedule of the Small Cause Courts Act applies, and this was a suit not cognizable by a Court of Small Causes. We, therefore, over-rule the preliminary objection.

The defendant does not contest the right of the plaintiff to payment of his dues as superior holder, but claims to be entitled to set off the stipend payable by the plaintiff to certain *pujaris* of a temple of whom defendant was one. That stipend was payable to the defendant and his bhau-bands. He, therefore, claims a set-off in a different capacity, in a different category to that in which he holds as tenant or Khatedar of the plaintiff, and he cannot have the set-off having regard to the provisions of Order VIII, Rule 6. We, therefore, set aside the decree of the lower appellate Court which allowed the set-off

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claimed by the defendant. The plaintiff is entitled to Rs. 41-4-10 (Rs. 39-6-8, the amount of his claim, plus Rs. 1-14-2, the amount of costs incurred in the Revenue Court), with further interest upon Rs. 41-4-10. We do not think that he is entitled to his costs because this suit appears to us to have been unnecessarily filed having regard to the fact that he had already obtained decrees in assistance suits.

No order as to costs throughout.

*Decree partially set aside.*

G. B. R.

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APPELLATE CIVIL.

FULL BENCH.

*Before Sir Basil Scott, Kt., Chief Justice, Mr. Justice Davar and  
Mr. Justice Beaman.*

1914.

*August 28.*

THOMAS GEORGE GILBERT FRENCH, APPLICANT, v. JULIA FRENCH,  
OPPONENT.\*

*Bombay Civil Courts Act (XIV of 1869), section 16—Indian Divorce Act (IV of 1869), sections 4, 6, 7, 8, and 15—Decree for dissolution of marriage—Assistant Judge—Jurisdiction.*

Section 16 of the Bombay Civil Courts Act (XIV of 1869) does not authorize any reference to an Assistant Judge to decide a suit under the Indian Divorce Act (IV of 1869).

REFERENCE under section 17 of the Indian Divorce Act (XIV of 1869) made by S. N. Sathaye, Assistant Judge of Dharwar, for the confirmation of the decree *nisi* in miscellaneous application No. 15 of 1913.

This was a proceeding started by the applicant in the District Court of Dharwar for dissolution of marriage under the Indian Divorce Act. At the time of the

\* Civil Reference No. 6 of 1914.