

mortgagee. He based this conclusion on the case of *Martand v. Dhondo*⁽¹⁾ but he did not find all the facts to exist which would enable the reasoning in *Martand v. Dhondo*⁽¹⁾ to apply. If a case of the kind considered in *Martand v. Dhondo*⁽¹⁾ arose now, we should, I apprehend, have to apply section 90 of the Trusts Act, and the first thing to do would be to find whether facts existed which made section 90 of the Trusts Act applicable. Such facts are not stated in the judgment of the Judge of first appeal, nor do they appear to exist. It seems to me, therefore, that the decision of that Judge is wrong. But supposing there had in truth appeared facts which did bring the case within section 90 of the Trusts Act, then in my opinion the decision might perhaps have been different, though I do not wish to express a positive opinion upon that point, for it is unnecessary to do so.

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Decree reversed.

J. G. B.

(1897) 22 Bom. 624.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.

RAMKRISHNA YESHWANT KAMAT ADARKAR (ORIGINAL DEFENDANT No. 2), APPELLANT v. THE PRESIDENT OF THE VENGURLA MUNICIPALITY (ORIGINAL PLAINTIFF), RESPONDENT. *

Provincial Small Cause Courts Act (IX of 1887), Second Schedule, Article 8—Suit for rent—Suit of a nature cognisable by the Court of Small Causes—Civil Procedure Code (Act V of 1908), section 102—Second appeal.

A suit for rent for an amount less than Rs. 500 was filed in the Second Class Subordinate Judge's Court. By a Government Notification contemplated by Article 8 of the Second Schedule of the Provincial Small Cause Courts Act, 1887, the Subordinate Judges of all districts in the Bombay Presidency

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proper were invested with authority to try on the Small Cause Side of their Courts all suits for the recovery of rent arising within the local limits of the ordinary jurisdiction of their Courts and falling within the pecuniary limits up to which suits are cognisable by them as Judges of Courts of Small Causes. Both the lower Courts decreed the claim.

In the High Court a preliminary objection was taken that no second appeal lay on the ground that the suit in which it was preferred was of a nature cognisable by Courts of Small Causes within the meaning of section 102 of Civil Procedure Code, 1908.

Held, allowing the objection, that no second appeal lay.

SECOND appeal against the decision of M. B. Tyabji, District Judge of Ratnagiri, confirming the decree passed by V. S. Nerurkar, Subordinate Judge at Vengurla.

Suit for rent.

The plaintiff sued to recover Rs. 250 as rent of the plaint lands.

Defendants denied the claim.

The Subordinate Judge at Vengurla who tried the suit was invested with the jurisdiction of a Small Cause Court only up to a limit of Rs. 50.

A Government Notification as contemplated by Article 8 of the Second Schedule of the Provincial Small Causes Courts Act (IX of 1887) was issued, whereby the Governor in Council was pleased:

"To invest Subordinate Judges of all districts in the Bombay Presidency proper (except the districts of Poona, Satara, Sholapur and Ahmednager) with authority to try on the Small Cause Side (if any) of their Courts all suits for the recovery of rent arising within the local limits of the ordinary jurisdiction of their Courts and falling within the pecuniary limits up to which suits are cognisable by them, as Judges of Courts of Small Causes."

(Vide, *Bombay Government Gazette* for September 21, 1911, Part I, page 1694, Notification No. 5271.)

The plaintiff's claim was allowed by the Subordinate Judge in his ordinary jurisdiction.

The District Judge, on appeal, confirmed the decree.

Defendant No. 2 preferred a second appeal.

P. V. Kane, for the respondent :—I take a preliminary objection that no second appeal lies under section 102 of the Civil Procedure Code, 1908. The amount claimed was below Rs. 500 and the suit was of the nature cognisable by Court of Small Causes. Although suits for rent other than house-rent are exempted from the cognisance of Court of Small Causes, yet the Government having issued Notification as contemplated by Article 8 of the Second Schedule of the Provincial Small Causes Courts Act, 1887, the suit was tried by the Subordinate Judge as of a small cause nature. The fact that the Judge was invested with small cause jurisdiction up to only Rs. 50 was immaterial. If the amount claimed fell within the small cause jurisdiction of the trying Judge, even a first appeal would not lie: see section 27 of the Provincial Small Causes Courts Act. The effect of the Notification is to make all suits for rent below five hundred in amount of the nature cognisable by Court of Small Causes whether the Judge actually trying them be invested with small cause powers or not, or whether he be invested with small cause jurisdiction up to Rs. 500 or not. If this were not so, anomalous results would follow, as a suit for rent for Rs. 500 if tried by a First Class Subordinate Judge would be a small cause suit, but if the same suit were tried by a Second Class Subordinate Judge, it would cease to be so. This would be contrary to the proposition that a small cause is a small cause wherever the suit may be instituted: see *Kalian Dayal v. Kalian Narer*; ⁽¹⁾ *Soundaram Ayyar v. Sennia Naickan*. ⁽²⁾

A. G. Desai, for the appellant :—I lay stress on the last words of the Notification, viz., 'falling within, &c.'

⁽¹⁾ (1884) 9 Bom. 259.

⁽²⁾ (1900) 23 Mad. 547 at p. 559.

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Here the Subordinate Judge was invested with small cause powers up to Rs. 50 only and the suit was for Rs. 250. Suits for rent were not originally cognisable by Courts of Small Causes and the Notification making them cognisable must be interpreted strictly: see *Soundaram Ayyar v. Sennia Naickan*.⁽¹⁾

SCOTT, C. J.:—The preliminary objection taken in this case is that no second appeal lies on the ground that the suit in which it is preferred is of a nature cognizable by Courts of Small Causes within the meaning of section 102 of the Civil Procedure Code, the amount or value of the subject matter not exceeding Rs. 500. On the other hand it is contended on behalf of the appellant that a second appeal will lie because the suit was not cognizable by the Judge of the district in which it was instituted since he was invested with the jurisdiction of a Small Cause Court only up to a limit of Rs. 50. In nature the suit is a suit for rent, and the Notification contemplated by clause 8 of the Second Schedule of the Provincial Small Cause Courts Act (IX of 1887) has been issued in the *Bombay Government Gazette* of 1911, whereby the Governor in Council was pleased “to invest Subordinate Judges of all districts in the Bombay Presidency proper ... with authority to try on the Small Cause Side of their Courts all suits for the recovery of rent arising within the local limits of the ordinary jurisdiction of their Courts and falling within the pecuniary limits up to which suits are cognizable by them, as Judges of Courts of Small Causes.”

It has been held by various Courts in India that the words “suit of the nature cognizable in Courts of Small Causes,” which was the wording of section 586 of the Code of 1882, referred to the nature of the suit, that is, to a suit relating to a subject matter over which a Court

(1) (1900) 23 Mad. 547 at p. 559.

of Small Causes would have jurisdiction if within its pecuniary limits, and not to the Court which tries the case. There is no substantial difference between the words of section 586 of the Code of 1882 and section 102 of the Code of 1908. The particular point which arises for decision in this case was referred to a Full Bench of the Madras High Court, the judgments on which reference will be found reported in *Soundaram Ayyar v. Sennia Naickan*.⁽¹⁾ There a rent suit had been instituted before the District Munsif of Madura. The District Munsif's jurisdiction was limited to suits not exceeding Rs. 200 in value, and Mr. Justice Shephard, one of the Judges whose opinion prevailed, states as follows :—“To my mind it is, in the legal sense of the term, absurd to say that a suit for Rs. 400 claimed as rent might, but for the fact that the District Munsif's jurisdiction under the Act was limited to suits not exceeding Rs. 200 in value, be tried as a small cause, and at the same time to deny that such suit is of the nature of suits cognizable by Courts of Small Causes.” As has been pointed out by my learned Brother in argument, the pecuniary limit of the Small Cause Court Judge's jurisdiction in this case is Rs. 50 for all suits cognizable by a Court of Small Causes but that would be no reason for permitting a Second appeal in every suit not excluded by the terms of the Second Schedule of the Provincial Small Cause Courts Act which was tried by him, where the amount claimed is Rs. 60 for all the suits would still be of a nature cognizable by Courts of Small Causes. For these reasons, I am of opinion that the preliminary objection must prevail that no Second appeal lies and the appeal must, therefore, be dismissed with costs.

HEATON, J.—I agree. I think that the intention of the Legislature is given effect to by the decision

⁽¹⁾ (1900) 23 Mad. 547.

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proposed, though I am not unmindful of the force of some of the arguments used by Mr. Justice Subrahmaniam Ayyar in the Madras Full Bench case of *Soundaram Ayyar v. Sennia Naickan*.⁽¹⁾

Appeal dismissed,

J. G. R.

(1) (1900) 23 Mad. 547.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Heaton.

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TAVAKALBHAI WALAD SULTANBHAI (ORIGINAL DEFENDANT NO. 2),
APPELLANT v. IMATIYAJ BEGAM JAVJE MIRBANESAHEB (ORIGINAL
PLAINTIFF), RESPONDENT.*

Mahomedan Law—Deed of gift—Gift with a condition attached—Obligation in the nature of trust—Construction of document.

A Mahomedan woman made a deed of gift in favour of three persons, Mirza Vazir Beg, Imatiyaj Begum and Chaggan Bibi in the following terms: "the lands have been given to you three as gifts. All my rights of ownership are transferred to you. The vahiwat or management of the lands should be made by one of you three, namely, Vazir Beg, and after paying Government dues, Rs. 40 should be paid out of the residue of the income annually to the Imatiyaj Begum, and the remainder should be divided equally between Mirza Vazir Beg and Chaggan Bibi. Mirza Vazir Beg should have vahiwat and give income according to their shares to the two. They have no right of claiming division of the lands from Mirza Beg, but only a right of claiming income every year." A suit was brought by Imatiyaj Begum to enforce her right under the deed of gift. The second defendant, transferee of Mirza Beg's interest in the property, contended that the deed of gift in so far as it conferred benefits on the two women mentioned therein was void and that he was absolutely entitled.

Held, that the gift was good and complete under the Mahomedan law and the deed could be supported in favour of the plaintiff.

SECOND appeal against the decision of G. D. Madgao-
kar, District Judge of Ahmednagar, reversing the

* Second Appeal No. 955 of 1915.