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Court : Allahabad

Decided On : Apr-17-1928

Reported in : AIR1928All332

Appellant : Sheopal Singh

Respondent : Durga Prasad

Judgement :

Dalal, J.

1. The grounds of revision contained in the application are:

(1) That the suit was not cognizable by the Court of Small Causes.

(2) That the Small Cause Court Judge had made so many slips in the record and the decision that he could not have brought his mind to bear on the facts of the case.

2. Various decisions were quoted before me. The suit was brought by a plaintiff to recover a fixed amount in excess of the value of the goods supplied by the defendant to him, and for which he had made payments in advance. It was argued here that this was a case for accounting, and removed from the jurisdiction of the Court of Small Causes under Article 31, Schedule 2, Small Causes Courts Act. A suit for an account is removed from the jurisdiction of that Court. The question is

whether this is a suit for account. Most of the rulings referred to above deal with the particular facts of the case. The judgment of Mukerjee, J., in *Kshetranath v. Kalidasi Dasi* [1918] 27 C.L.J. 96, deals with the matter more generally than will be found in most of the other rulings. According to the learned Judge a suit does not become one for accounts simply because accounts have to be taken before a balance due from the defendant to the plaintiff can be discovered. This appears to be true, because otherwise every time a Court has to make an addition or subtraction the suit is turned into one of accounts and every money suit would be taken out of the cognizance of the Court of Small Causes. If there is a debt of Rs. 100 and Rs. 50 have been paid, the necessary arithmetical problem will be involved of deducting Rs. 50 from Rs. 100, but for that reason the suit cannot be turned into one for accounts. A rule was laid down by the learned Judge that there cannot be in essence a suit for accounts by the plaintiff against the defendant unless the defendant is under a liability to render accounts to the plaintiff. More properly a suit for accounts will be one where a preliminary decree for accounts will be necessary, and it will be necessary for the Court to call upon the defendant to render accounts. The present suit is a suit for the recovery of money and prima facie one with which a Court of Small Causes can deal. In the present case it appears that every transaction between the parties was separately dealt with, and the defendant became liable to repay the sum which he had received in excess of the price ultimately fetched by any one consignment delivered by the defendant to the plaintiff. I think that cognizance was rightly taken by the lower Court.

3. The defect is in the copy of the judgment and not in the proceedings of the trial Court. The defendant absented himself at first, and that portion of the order has been amalgamated wrongly in the copy with the final judgment. Subsequently the defendant did put in an appearance, and a proceeding was recorded on 16th December that the only point in dispute between the parties was whether the plaintiff had or had not paid Rs. 578-10-9 to the defendant for a particular consignment on 23rd December 1925. This is the matter referred to in issue 1 where the word 'interest' is wrongly written for 'defendant' by the copyist. The issue properly was whether the defendant was paid Rs. 578-10-9 on 23rd December 1925, and the reply of the Court which amounted to a finding of fact was that the defendant was so paid. No argument against such a finding can be heard in

revision. The lower Court has dealt with the case properly, and there is no reason to believe that the Judge did not bring his mind to bear on the issues arising in the case before him.

4. I dismiss the application in revision with costs.

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