

Manmatha Nath Chatterjee Vs. Kshetra Nath Chatterjee

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Court : Kolkata

Decided On : Feb-13-1920

Reported in : 55Ind.Cas.642

Judge : Beachcroft, J.

Appellant : Manmatha Nath Chatterjee

Respondent : Kshetra Nath Chatterjee

Judgement :

Beachcroft, J.

1. This Rule was issued at the instance of the defendant, calling upon the opposite party to show cause why the judgment and decree made by the Appellate Court should not be set aside as made without jurisdiction.
2. The suit was one to recover a sum of Rs. 251 anna alleged to be due to the plaintiff as his share in money decreed to the plaintiff and defendant jointly, the plaintiff alleging that the defendant had realized the money and not paid him his share. The defence was that the money had been paid. The Munsif tried the suit under the regular procedure and dismissed it with costs.
3. It is quite clear on the facts that this ought to have been tried as a Small Cause Court suit. The Munsif who tried the case was invested with Small Cause Court

powers.

4. However, the matter went on appeal. Nobody apparently noticed in the Appellate Court that the case ought to have been tried as a Small Cause Court suit and the Subordinate Judge reversed the Munsif's decision. Consequently the defendant has obtained this Rule. That the suit was triable as a Small Cause Court suit is not contested. But what is urged on behalf of the opposite party is that no objection to the form of the suit or to the competency of the appeal was taken in the lower Courts and that by the defendant's negligence the plaintiff has been deprived of any remedy which he might have had. I asked the learned Pleader for the opposite party to put forward before me any facts which would justify interference with the order of the Munsif on the footing that he had dealt with the matter as a Small Cause Court suit and that I am perfectly prepared to consider those facts in dealing with the present application. No such facts, however, have been put before me beyond the negligence of the plaintiff in describing his suit as a title suit and raising no objection in the Appellate Court. The case of *Indra Chandra Mukherjee v. Srish Chandra Banerjee* 21 Ind. Cas. 120 : 40 C. 537 is an authority for the proposition that the decree of the Munsif was not appealable to the lower Appellate Court.

5. That being so, the order made on appeal must be set aside and the Munsif's order will be restored. But as regards costs in the lower Appellate Court and in this Court each party will bear his own.