

Kadar Sheikh Vs. Najamuddi Sheikh

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Court : Kolkata

Decided On : Mar-05-1926

Reported in : 97Ind.Cas.556

Judge : Cuming and ;B.B. Ghose, JJ.

Appellant : Kadar Sheikh

Respondent : Najamuddi Sheikh

Judgement :

Cuming, J.

1. The plaintiff sued the defendant, for Rs. 5-80 as the price of the paddy which he alleged was cut and misappropriated by the defendant.

2. The first Court dismissed the plaintiff's. suit. On appeal this finding was reversed, the appeal was allowed and the plaintiffs suit was decreed with costs. Against this decree the defendant has appealed to this Court. A preliminary objection is raised by the respondent that no appeal lies He contend) that Section 102 of the C.P.C. is a bar because this is a suit of a nature cognizable by the Court of Small Causes and under the value of Rs. 500, hence no second appeal lies to this Court.

3. The appellant contends that the suit falls within the exception set forth in Section 35, Clause (ii) of the Provincial Small Cause Courts Act.

4. I am of opinion that the contention of the respondent is correct. The plaint itself does not make out any criminal offence. Nor is it the case of the defendant that he committed any criminal offence. In the circumstances the suit is of a nature cognizable by a Court of Small Causes and no second appeal lies to this Court, the value being under Rs. 500.

5. The result is the appeal is dismissed as incompetent.

6. The respondent is entitled to his costs.

Ghose, J.

7. I agree.