

ALLAHABAD HIGH COURT

Madan Kishor

Vs

Mahabir Prasad

(Dalal, J.)

12.07.1929

JUDGMENT

Dalal, J.

1. The regular Court had no jurisdiction. The suit for a small amount of money was certainly triable by a Court of Small Causes. The lower appellate Court was of opinion that the case was one of mischief, if not of theft and, therefore, barred from the jurisdiction of the Court of Small Causes under Article 35(ii), Sch. 2 of the Act, No criminal Court would countenance such a charge. A branch of a joint tree is alleged to have been cut and the plaintiffs have sued for their share of the price. The second reason given by the lower appellate Court is that a question of title is involved. That matter, however, is for the Court of Small Causes to decide under Section 23 of the Act. If the Court of Small Causes so desires he may return the plaint.

2. I set aside the decrees of the two subordinate Courts and direct the trial Court to return the plaint to the plaintiffs for presentation to the proper Court. The defendants raised the plea of jurisdiction in the lower appellate Court and in this Court, so they will receive their costs of these two Courts. In the trial Court costs will follow the event.