

# BOMBAY HIGH COURT

Puttangowda Mallangowda Patil

Vs

Nilkanth Kalo Deshpande

(B Scott, Kt., C.J. Beaman and Shah , JJ.)

26.06.1913

## JUDGMENT

### **Basil Scott, Kt., C.J.**

1. We are of opinion that the authorities rightly decide that a Court of Small Causes can entertain a suit, the principal purpose of which is to determine a right to immoveable property, provided the suit in form does not ask for this relief but for payment of a sum of money, and that under the circumstances of this particular case the suit was cognizable by a Court of Small Causes. Section 15 of Act IX of 1887 Provides that subject to the exceptions specified in the second Schedule of the Act, and to the provisions of any other enactment for the time being in force, all suits of a civil nature, in which the value does not exceed Rs. 500, shall be cognizable by a Court of Small Causes, The exceptions contained in the second Schedule are numerous and specific, and, in Our opinion, the Court in *Bapuji Raghunath v. Kuvarji Edulji Umrigar*<sup>1</sup> was right in holding that those exceptions could only refer to suits brought expressly for the purpose of obtaining decrees of the nature mentioned in the exceptions. *Jamnadas v. Bai Shivkor* (sic) was decided prior to the passing of Act IX of 1887, and cannot be applied to the law declared by that Statute. It appears to us that it is not possible that the finding of a Court of Small Causes, in a such properly within its jurisdiction as such a Court, upon an issue incidentally arising as to the title to immoveable property, can operate as *res judicata* in any subsequent suit for the determination or enforcement of any right or interest in immoveable property, the reason being that under Section 33, a Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature not cognizable by a Court of Small Causes, are for the purpose both of the Provincial Small Cause Courts Act and of the Civil Procedure Code, to be deemed to be different Courts. In the connection the observations of Sir Raymond West in *Pitamber Vajirshet v. Dhondu Navlapa*<sup>2</sup> are in point:- " Having the Small Cause Court jurisdiction the Subordinate Judge must have, dealt with this case under that jurisdiction, even if he was not quite alive to it at the time." If he were to

deal with the case under his ordinary civil jurisdiction, he would be violative the provisions of Section 16 of Act IX of 1887 which prohibits the trial of a suit cognizable by a Court of Small Causes by any other Court having jurisdiction within the local limits of the Court of Small Causes, by which the suit is triable.

Cases Referred.

1(1890) I.L.R. 15 Bom. 400, 404

2(1887) I.L.R. 12 Bom. 486, 489