

**(1897) 07 AHC CK 0009****Allahabad High Court****Case No:** None

Makund Ram

APPELLANT

Vs

Bodh Kishen

RESPONDENT

**Date of Decision:** July 24, 1897**Citation:** (1898) ILR (All) 80**Hon'ble Judges:** Banerji, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Banerji, J.

A preliminary objection has been taken to the hearing of this appeal by the learned vakil for the respondent on the ground that no appeal lies to this Court, the suit being one of the nature cognizable by a Court of Small Causes. The suit was one to recover from the defendant Rs. 130 under the following circumstances:--The defendant, in execution of a decree held by him against certain judgment-debtors, caused some property to be sold at auction and the plaintiff purchased it. Subsequently the plaintiff applied u/s 315 of the CPC to the Court which executed the decree for a refund of the sale price paid by him on the allegation that the judgment-debtors had no saleable interest in the property sold. That application having been disallowed, he brought the present suit against the defendant, decree-holder, to recover from him the sale price paid by the plaintiff, together with interest. It is urged on behalf of the respondent that this was a suit which was not excluded from the cognizance of a Court of Small Causes by the second schedule to Act No. IX of 1887. If the suit does not come within any of the classes of suits specified in that schedule it is a suit which, under the second paragraph of Section 15 of Act No. IX of 1887, was cognizable by a Court of Small Causes. In my opinion the suit was not covered by any of the articles mentioned in the second schedule as excepted from the cognizance of a Court of Small Causes. The learned vakil for the appellant refers to Article 23 which relates to "suits to alter or set aside a decision,

decree or order of a Court or of a person acting in a judicial capacity." This is not a suit to set aside any order. If a decree be passed in the suit in favour of the plaintiff, it may have the effect of nullifying the order of the Munsif refusing to refund to the plaintiff the sale price paid by him, but that circumstance would not make the suit a suit to set aside a decision, decree or order, which it does not purport to be. The amount claimed being a sum not exceeding Rs. 500, a second appeal is barred by Section 586 of the Code of Civil Procedure. The appeal is dismissed