

(1926) 03 CAL CK 0043

Calcutta High Court

Case No: None

Kader Sheikh

APPELLANT

Vs

Najumaddi Sheikh

RESPONDENT

Date of Decision: March 5, 1926**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 102
- Provincial Small Cause Courts Act, 1887 - Section 35(ii)

Citation: AIR 1926 Cal 1230**Hon'ble Judges:** Cuming, J; B.B. Ghose, J**Bench:** Full Bench

Judgement

Cuming, J.

The plaintiff sued the defendant for Rs. 280 as the price of the paddy which he alleged was out and misappropriated by the defendant. The first Court dismissed the plaintiff's suit. On appeal this finding was reversed, the appeal was allowed and the plaintiff's suit was decreed with costs. Against this decree the defendant has appealed to this Court.

2. A preliminary objection is raised by the respondent that no appeal lies. He contends that Section 102 of the Civil P.C., is a bar, because this is a suit of a nature cognizable by Courts of Small Causes and under the value of Rs. 500, hence no second appeal lies to this Court. The appellant contends that the suit falls within the exception set forth in Section 35, Clause (ii) of the Provincial Small Cause Courts Act.

3. 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. The result is the appeal is dismissed as incompetent. The respondent is entitled to his costs.

B.B. Ghose, J.

4. I agree.