

(1869) 06 CAL CK 0036

Calcutta High Court

Case No: Special Appeal No. 2327 of 1868

Mahommed Hafezulla

APPELLANT

Vs

Lasmani Debia and Others

RESPONDENT

Date of Decision: June 8, 1869

Final Decision: Dismissed

Judgement

Hobhouse, J.

The nature of this suit is accurately described in the first paragraph of the first Court's judgment. It is there said that "the plaintiff has brought this action for the recovery of his share of malikana of Chur Deekandi formed by the reformation of his mehals amounting to rupees 62-3 annas out of the entire rupees 311-2 annas which the principal defendants, Nos. 2 to 8, have realized from the Collector of Mymensingh (defendant No. 1), on the allegation that the said principal defendants have taken the whole amount without giving his share." From this statement of the plaint it appears that the claim was to recover a sum of money to the extent of rupees 62, on the allegation that the defendants had deprived the plaintiff of that money by keeping it themselves.

2. Both the Courts below have given the plaintiff a decree, and the defendants now appear as the special appellants before us. But a preliminary objection is taken by the pleader for the plaintiff to the effect that under the provisions of section 27, Act XXIII of 1861, no special appeal will lie in this case. He urges that the suit was of a nature cognizable by a Court of Small Causes; that it was a suit for damages, and that, as is admitted, the amount of the money in suit was below rupees 500. It is contended by the pleader for the special appellant that the matter in suit was not properly for damages; that it was a question of malikana, or money derived from a proprietary interest in land. But it seems to us on the face of the suit that it was a suit for damages. Whatever was the original source from which the money was derived, still it was a sum of money which was taken by the defendants to the injury of the plaintiff, and it therefore represented that which the plaintiff had been

endamaged by the defendants. Clearly therefore the matter in dispute was a matter of damages. It is next, however, contended by the pleader for the appellant that the suit was not cognizable by a Court of Small Causes; that a question of right was raised and determined in that suit, and that such a question is not one cognizable by a Court of Small Causes. We think, however, on a perusal of the plaint itself and on the understanding between the parties as represented by the statements on record as to the point at issue, that no question of right was determined, and that though such a question was raised, yet it was simply raised incidentally in order to the determination of the question of damages. The plaintiff did not sue to have his right established to a particular share in the land from which malikana was derived. He simply asserted that share, and then claimed to recover the money due in reference to that share. And the case seems to us to be clearly of the nature contemplated by the decision of the Full Bench, on which the pleader for the special respondent relied Case referred to High Court from Small Cause Court of Kishnaghur; Aug. 26th, 1863. [See Raghu Ram Biswas v. Ramchandra Dobay, B.L.R. Sup. 34 : Special W.R.F.B. 126.]. The suit was in fact a suit to recover a certain sum of money, and a question of right was simply raised as a question incidental to the question of the recovery of the money. We think therefore that the provisions of section 27, Act XXIII of 1861, bar a special appeal in this case, and we therefore dismiss this appeal with costs.