(1869) 02 CAL CK 0027

Calcutta High Court

Case No: Special Appeal No. 2054 of 1868

Kapahi Bewa		APPELLANT
	Vs	
Keshram Kuch		RESPONDENT

Date of Decision: Feb. 4, 1869

Judgement

Norman, J.

We have been prevented from going into the merits of this case by a preliminary objection taken by the respondent''s vakeel, that, u/s 27 of Act XXIII of 1861, no appeal lies, upon the ground that the suit is one cognizable by the Small Cause Court. We think that that objection is well founded. The suit is for "personal property," valued at Rs. 200, said to have been taken from the deceased in his lifetime, and carried away by the defendants. The plaintiff makes title as widow and heiress of the deceased, claiming such personal property or its value. We think this is a matter within the cognizance of a Small Cause Court, u/s 6 of Act XI of 1865. The special appellant''s vakeel contends that the suit falls within the description of a suit for a share or part of share under an intestacy within the meaning of those words in the 2nd proviso in that section. But we think that those words are intended to apply to suits by persons claiming as heirs against other persona similarly entitled, in order to determine their respective rights and interests, and to suits against persons administering the estate of a person who has died intestate, where the share or proportion to which the claimant is entitled is in question. It is quite clear that if the plaintiff had alleged that her husband made a will by which he devised his property to her, and she as his devisee or executrix had sued for the personal property or its value, there would be nothing in the 2nd proviso to prevent the Small Cause Court from having cognizance of this suit. It would be absurd to hold that a suit to recover the property of the deceased against a wrong-doer is maintainable in a Small Cause Court by an executor or devisee, and not by the heir. We think that no such absurdity was intended by the proviso in question.

2. For the above reasons, no special appeal lies. As the case has not been heard on the merits, we give no costs.