

(1965) 04 OHC CK 0021

In the Orissa High Court

Case No : Civil Revision No. 184 of 1964

Bhagabat Gossain Marfatdar Durga Charan Bhuyan

APPELLANT

Vs

Gopi Bhoi and Another

RESPONDENT

Date of Decision : 15-04-1965

Acts Referred:

Penal Code, 1860 (IPC) — Section 379

Provincial Small Cause Courts Act, 1887 — Article 35, 15(1)

Citation : AIR 1966 Ori 84 : (1966) 32 CLT 94

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : A.C. Mohanty, for the Appellant;

Final Decision : Allowed

Judgement

G.K. Misra, J.—The suit is for recovery of Rs. 15/- towards damages on the allegation that the defendants cut away 32 palm-leaves from the palm trees belonging and in the possession of the plaintiff dishonestly and forcibly without the consent of the plaintiff. The suit was filed in the Court of the S.C.C. Judge, Cuttack. Defendants filed written statement alleging that the palm leaves belong to them and that they did not remove the palm leaves on the date of occurrence. (22-4-1963). The learned S.C.C. Judge dismissed the suit and the Civil Revision has been filed against his judgment.

2. The suit was dismissed on the following findings which may be quoted in the words of the learned S.C.C. Judge:

(i) In the absence of any satisfactory proof from the side of the plaintiff I do not believe the cutting and removal of palm leaves as alleged by the plaintiff.

(ii) The learned Advocate for the defendants further urged that this case is not maintainable as a S.C.C. suit. It should have been a suit on the original side. The learned Advocate for the plaintiff also could not satisfy that this suit as a S.C.C. suit is maintainable.

3. The first finding being a pure finding of fact was not rightly assailed in Civil revision. Mr. Mohanti advanced the only contention that the suit was not cognizable by the Small Cause Court and that the plaint should have been returned to be filed in the proper court. This contention requires careful examination.

4. It is to be noted that the plaintiff-petitioner advanced an unusual contention of want of jurisdiction in the S.C.C. Court though he chose to file the plaint in that very court. Defdts. in the written statement, also did not take any objection as to want of jurisdiction. At the argument stage, however, they raised objection and the plaintiff did not assert that the S.C.C. Court had jurisdiction.

5. It is, however, well settled that whether a suit is cognizable by a Small Cause Court or not does not depend upon the defence. Even though no objection is raised, the Court is to see whether it has got inherent jurisdiction. Where there is lack of jurisdiction, there cannot be waiver of it nor can it be conferred by consent (See 13 IA. 134 (PC) : 14 IA 160 (PC)). Their Lordships held that when the Judge has no inherent jurisdiction over the subject matter of a suit, parties cannot by their mutual consent convert it into a proper judicial process although they may constitute the Judge as their arbitrator and be bound by his decision on merits when those are submitted to him. It, is therefore, necessary to examine whether the S.C.C. Judge had jurisdiction over the subject-matter of the suit.

6. Section 15(1) of the Provincial Small Cause Courts Act (Act IX of 1887) of 1887 lays down that a Court of Small Causes shall not take cognizance of the suits specified in the 2nd schedule as suits excepted from the cognizance of a court of small causes. Article 35, Clause (ii) in the 2nd Schedule relates to a suit for compensation for an act which is or, save for the provisions of Chapter IV of the Indian Penal Code, would be an offence punishable under Chapter XVII of the said Code. Chapter IV of the Indian Penal Code relates to general exceptions. Chapter XVII of the Code deals with offences against property. If the suit is for compensation for an act which amounts to an offence against property under Chapter XVII of the Indian Penal Code, the suit is excluded from the cognizance of Small Cause Court.

7. In this case, the averments in the plaint unambiguously make out a case that the act of cutting and removal of palm-leaves amounts to an offence u/s 379, I.P.C. All the ingredients of the offence were referred to in the plaint. On a plain reading of the Article 35 (ii) the conclusion is irresistible that the suit was excluded from the cognizance of Small Cause Court.

8. For the purpose of determining the question of jurisdiction, the averments in the plaint alone should be the guide. There are authorities to the effect that the superfluous allegations in the plaint to exclude the cognizance of the Small Cause Court may sometimes be ignored by the Court. An illustration of such a case would be found in AIR 1942 Bom 316, The observations of Sir John Beaumont may be noticed.

"We were referred to a later decision of this Court in AIR 1930 Bom. 361 in which the learned Judges pointed out that the question whether an act sued upon constituted a crime, must depend upon the nature of the pleadings and the particulars of the plaint. I agree with that view, subject to this qualification, that I think that for this purpose a consideration of the plaint must be confined to what is relevant. If a plaintiff inserts in his plaint irrelevant allegations merely in order to show that the act complained of amounts to a crime, I should say that those irrelevant assertions might properly be struck out, and the Court should pay no regard to them."

These observations merely show how the pleadings are to be construed. It does not take a different View with regard to the substantive aspect of the law that if the averments in the plaint comprised an act which amounts to a crime, cognizance by a Small Cause Court is excluded. On this aspect of the matter, there is no difference of opinion and all decisions are unanimous as to the plain language of the Article which leads to such a conclusion. In the aforesaid Bombay decision, their Lordships took the view that the averments in the plaint indicated a case of civil trespass and not criminal trespass, and, as such, the suit was cognizable by the Small Cause Court. The Bombay decision is, therefore, no authority for the wide proposition generally contended that even where there is an allegation of an offence, the jurisdiction of the Small Cause Court would be excluded. The crucial test in such a case is whether the allegations in the plaint make out a case of offence against property and that if in a criminal court the evidence, if carried in light of the allegations made in the plaint, would ultimately result in a conviction. For a fuller analysis, see the discussion in AIR 1956 Mad 610. It is unnecessary to refer to a plethora of authorities on this point.

9. I am therefore, of opinion that even though the defendants did not raise an objection in the written statement that the Court had no jurisdiction, and the plaintiff submitted to the jurisdiction of the Small Cause Court by filing the plaint there, the said court lacked inherent jurisdiction on the allegations made in the plaint and the learned S.C.C. Judge should have returned the plaint to be filed in proper court.

10. In the result, the judgment of the learned S.C.C. Judge is set aside, the Civil Revision is allowed and the S.C.C. Judge is directed to return the plaint to be filed in proper court. As the plaintiff was mainly to blame for all these unnecessary proceedings by filing the suit in a wrong forum, he would pay the costs before the Small Cause Court to the defendants. As there is no appearance for the opposite parties in the Civil Revision, there will be no order as to costs of this Court.