
(1972) 12 KL CK 0017
In the High Court Of Kerala
Case No : A.S. A. No. 1 of 1970

Chandu Nair

APPELLANT

Vs

Abdurahiman

RESPONDENT

Date of Decision : 06-12-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102
Kerala Small Causes Courts Act, 1957 — Section 12

Citation : (1972) 12 KL CK 0017

Hon'ble Judges : P. Govindan Nair, J;G. Viswanatha Iyer, J

Bench : Division Bench

Advocate : A. Achuthan Nambiyar, T.P. Kelu Nambiyar and C.S. Narayanan, for the Appellant; B. Moosakutty, for the Respondent

Judgement

P. Govindan Nair, J.—This is an appeal from the decision of Madhavan Nair, J. in second appeal No. 551 of 1965. The appeal is by the defendant. The question is whether the second appeal taken by the plaintiff before this court was maintainable. The learned judge who heard the appeal held, it was. It is urged before us that this decision requires reconsideration. We think, the appellant is entitled to succeed on this contention. The suit was for rent for an year, Rs. 25. The suit was originally filed as a small cause suit. The defendant raised the contentions that the plaintiff had no title to the property and the lease pleaded was untrue. The defendant also contended that in view of the defence that the plaintiff was not entitled to the property, the suit should not be tried as a small cause suit. The plaintiff thereafter withdrew the suit and the trial court as well as the first appellate court dealt with the matter as if the suit was a regular suit. Issue No. 2 raised in the case was "whether the plaintiff has title" The trial court decreed the suit In appeal, the decision of the trial court was reversed and this court in second appeal No. 561 of 1965 restored the decision of the trial court.

2. The question whether a second appeal was maintainable will have to be determined with reference to S. 102 of the CPC which is in these terms:

102. No second appeal in certain suits.- No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject matter of the original suit does not exceed odd thousand rupees.

The question therefore is whether the suit was of a nature cognizable by Courts of Small Causes. This has to be determined in accordance with the provisions of S. 12 of the Kerala Small Cause Courts Act, 1957 and the schedule to that Act. S. 12 enacts that a Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes.

The suit is question was not one of the nature specified in the schedule as a suit excepted from the cognizance of a Court of Small Causes. Item (9) in the Schedule is "a suit for the recovery of rent; other than house-rent unless the judge of the Court of Small Causes has been expressly invested by the Government with the authority to exercise jurisdiction with respect thereto". It is admitted before us that the Small Cause Court has been expressly invested by the Government with authority to exercise jurisdiction in a suit for recovery of rent. So item (9) of the Schedule is not applicable. Reference was made to item (20) "a suit for a declaratory decree". In the suit however, there was no prayer that a declaration should be given that the plaintiff is the owner of the property. In fact, the suit as originally framed was never sought to be amended and no additional relief's were asked for. So we think that item (20) of the Schedule is also not applicable. Nor was it contended that the suit will fall under any of the other items in the Schedule. There was therefore no bar in the suit being tried as a Small Cause Suit. S. 102 of the CPC is therefore a bar to the maintainability of a second appeal. The decision of this Court cannot stand. We allow this appeal, reverse the decree of this Court in S. A. No. 551 of 1965 and restore that of the lower appellate court-We direct the parties to bear their costs throughout.