
(1944) 09 BOM CK 0008

In the Bombay High Court

Case No : Civil Revision Application No. 76 of 1944

Fidally Usufally

APPELLANT

Vs

Bai Kripa

RESPONDENT

Date of Decision : 18-09-1944

Acts Referred:

Bombay Rent Restriction Act, 1939 — Section 3

Citation : AIR 1945 Bom 469 : (1945) 47 BOMLR 344

Hon'ble Judges : Macklin, J

Bench : Single Bench

Judgement

Macklin, J.—The plaintiff brought a suit in the Small Cause Court at Ahmedabad to evict the defendant, his tenant ; and the defendant among other contentions raised a plea under the Rent Restriction Act. No question of the jurisdiction of the Small Cause Court seems to have been raised in the suit ; and after the decree was passed against the defendant and he put in an application in revision, even then his application in its original form contained no allegation of want of jurisdiction on the part of the Court. A ground was however subsequently added against the jurisdiction of the Court, and that is the only point which I have troubled to hear.

2. Briefly the position seems to me to be this. A Court of Small Causes in the mofussil could not try any suit for the possession of land except by virtue of the limited powers given under the Bombay Amendment to the Small Cause Courts Act which was passed in 1930. That amendment gives jurisdiction in cases where the only substantial issue arising in the case is the determination of the lease by efflux of time or by valid notice. By reason of a plea under the Rent Restriction Act having been raised a substantial issue arose in this case as to the liability of the tenant to be evicted in view of the provisions of the Act. In particular it became necessary to decide whether the landlord bona fide required the property for his own use. In other words a substantial issue arose which was not covered by the Bombay Amendment; and prima facie therefore the suit was outside the

scope of the Small Cause Court.

3. It is however argued that Section 3 of the Bombay Rent Restriction Act saves the jurisdiction of a Court which would have jurisdiction but for the passing of the Act, and that in this case no question arising out of the Act could have arisen in the suit but for the passing of the Act ; so that the suit, but for the passing of the Act, must be deemed to be one in which no substantial question arose for decision other than the determination of the lease by efflux of time or notice. It is an ingenious argument. But the fact remains that a substantial issue other than the issue provided in the Bombay Amendment does arise in this case ; and therefore the Small Cause Court has prima facie no jurisdiction. That being so, the effect of Section 3 is to preserve the existing jurisdiction, which is the jurisdiction of any Court other than the Small Cause Court.

4. The result of this decision may be unfortunate, because I have no doubt that many cases of this kind arise and it is only convenient that they should be tried by a Court of Small Causes; but the legal position seems to me to be as I have indicated above. I may mention that in January of this year a division bench of this Court held that cases in which questions under the Rent Restriction Order had to be determined were outside the purview of the Small Cause Court in Poona (see *Shamchand Tribhuvandas v. Sha Narottamdas* (1944) Civil Revision Application No. 213 of 1943.)

5. The rule is made absolute. The plaint should be returned to the plaintiff for presentation to the proper Court. Costs will be costs in the cause.