

(1951) 06 BOM CK 0006
In the Bombay High Court
Case No : O.C.J. Appeal No. 17 of 1951

Goverdhanlal Bansilal

APPELLANT

Vs

Ramrichpal Dalsukhrai

RESPONDENT

Date of Decision : 27-06-1951

Acts Referred:

Bombay City Civil Court Act, 1948 — Section 12
Civil Procedure Code, 1908 (CPC) — Section 16

Citation : AIR 1952 Bom 75 : (1951) 53 BOMLR 825

Hon'ble Judges : Chagla, C.J.;Gajendragadkar, J

Bench : Division Bench

Advocate : M.J. Mistree, for the Appellant;

Judgement

Chagla, C.J.—This is an appeal from an order of Mr. Justice Tendolkar dismissing a suit on the ground that this Court had no jurisdiction to entertain a mortgage suit. In fairness to the learned Judge it must be stated that the point now urged before us by Mr. Mistree was never urged, nor was it considered by the learned Judge. The learned Judge dismissed the suit solely on the ground that the value of the subject-matter was below Rs. 25,000, and therefore the Court that could try the suit was the City Civil Court, and by reason of Section 12 of the Bombay City Civil Court Act, 1948, the jurisdiction of the High Court was excluded. Now, this is a suit to enforce a mortgage. The mortgage was created by the deposit of title deeds. It is an equitable mortgage. The deposit was made in Bombay (that is the averment in the plaint) and the property in respect of which the mortgage was created is situated in Ajmer, The amount claimed in the plaint at the foot of the mortgage is less than Rs. 25,000. Now, what the learned Judge over-looked was, with respect to him, that although the value of the subject-matter was less than Rs. 25,000, inasmuch as the Suit was to enforce a mortgage and inasmuch as the property was situated in Ajmer, the City Civil Court had no jurisdiction to entertain the suit. The jurisdiction of the City Civil Court is governed by the Civil Procedure Code, and u/s 16 no Court can entertain a suit with regard to a mortgage if the property, the subject-matter of the mortgage, is situated outside

its jurisdiction. Therefore, it is clear that although the amount involved in the suit was less than Rs. 25,000, inasmuch as the plaintiff wanted to enforce a mortgage, the City Civil Court could not have entertained this suit. With regard to the High Court the position is different. It has been held by this Court that a suit on a mortgage is not a suit for land; it is a suit to enforce a debt, and although the property mortgaged is outside the jurisdiction, inasmuch as the deposit of title-deeds was made in Bombay, this Court would have jurisdiction to entertain and try the suit. Therefore, the only question is whether although the High Court had jurisdiction to try the suit, there is anything in the provisions of the City Civil Court Act which excludes the jurisdiction of the High Court. Turning to Section 12, it provides:

"Notwithstanding anything contained in any law, the High Court shall not have jurisdiction to try suits and proceedings cognizable by the City Court."

2. Therefore, it is only with regard to those suits which have been made cognizable by the City Court by reason of this Act that the Jurisdiction of the High Court, has been taken away; but with regard to all those suits which were cognizable by the High Court and which have not been made cognizable by the City Court, the jurisdiction of the High Court continues, and therefore as this suit was cognizable by the High Court and is not cognizable by the City Court, the jurisdiction of the High Court has not been affected. Therefore we must hold that this Court has jurisdiction to try the mortgage suit. We, therefore, set aside the order of dismissal passed by the learned Judge and send back the suit to be disposed of on the merits. Appeal allowed. No order as to costs. We direct that the suit should be tried as a short cause. The suit to be on the board of the learned Judge dealing with short causes on July 17.

3. Appeal allowed.