
(1907) 02 BOM CK 0024
In the Bombay High Court
Case No : Civil Application No. 335 of 1906

Gulam Rasul

APPELLANT

Vs

Balu Sayaji Chambhar

RESPONDENT

Date of Decision : 19-02-1907

Acts Referred:

Mamlatdars Court Act, 1906 — Section 5

Citation : (1907) 9 BOMLR 527

Hon'ble Judges : Beaman, J

Bench : Single Bench

Judgement

Beaman, J.—The facts appear to be that the plaintiff before the Mamlatdar has brought a suit on the 25th of October 1906 to recover possession of a house situated within the town limits of Kalyan.

2. According (it is admitted) to the Mamlatdars Courts Act then in force the Court would have had jurisdiction over the subject-matter of the suit; but on the 29th October 1906, the amended Mamlatdars' Courts Act II of 1906 came into force and under the provisions of Section 5 of that Act it is clear that the Mamlatdar would no longer have jurisdiction over the subject-matter of the present suit.

3. The case came on for hearing before the Mamlatdar on the 8th November 1906 and an objection was then taken on behalf of the defendant that the jurisdiction of the Mamlatdar's Court had been ousted.

4. Apparently the Mamlatdar felt unable to dispose of the question himself and he referred the matter to the Collector for order or advice. The Collector on hearing what the plain-tiff had to say in the matter, but without calling upon the defendant to appear before him, sent the case back to the Mamlatdar and recommended him to proceed with the trial.

5. Thereupon the Mamlatdar proceeded with the case and came to a conclusion adverse to the defendant.

6. The defendant has now moved this Court and a rule has been issued to show cause why the order of the Mamlatdar should not be set aside on the ground that Bombay Act II of 1906 took away the Mamlatdar's jurisdiction over houses not falling within the description contained in Section 5 of that Act.

7. On the face of it it would appear that the Mamlatdar's jurisdiction has been taken away by the later Act and great reliance has been placed on the well-established rule that enactments relating to procedure are to be given retrospective effect.

8. Against this it has been argued by Mr. Rao for the opponent that it is clear that in the first place the plaintiff had a right to have recourse to the summary procedure provided by the Act, in force at the date of the institution of the suit. Next that by the filing of this plaint a legal proceeding had been instituted. In the terms of Section 7 of the Bombay General Clauses Act I of 1904, which is identical with the corresponding section in the General Clauses Act X of 1897, it is enacted in Clause (c) as follows :-

Where any Bombay Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;" while Clause (e) runs as follows :-

Affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid," and the section further goes on to say "and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture, or punishment may be imposed as if the repealing Act had not been passed.

9. Relying upon these two grounds Mr. Rao contends, that this rule should be discharged.

10. I must own that I felt some doubt whether recourse to the cheap and expeditious procedure of a Mamlatdar's Court was or was not a " right " within the meaning of the section. But if it is not then it is quite plain, as Mr. Chaubal contends, that Clause (c) of Section 7 of the Bombay General Clauses Act cannot, have any applicability to this case. And notwithstanding that upon the first reading of Clause (e) of the same section it might appear that it did directly bear upon the question, I agree with Mr. Chaubal that that clause must be read as a whole and conditioned by the term "right." So read, if the opponent had no right to have recourse to the Mamlatdar's Court this clause will not any more than the preceding clause help him.

11. So high an authority as Maxwell in his work on the Interpretation of Statutes says (p. 314) :-" No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the

time being, by or for the Court in which he sues."

12. Now those words appear to me to apply with peculiar aptness to the matter before me and if I am correct in this view, then there can be no doubt, I think that the contention of Mr. Chaubal on behalf of the applicant must prevail.

13. It would then follow that the amended Act of 1906 did no more than bring about a slight change in procedure and in matters of this kind the plaintiff has no vested right which would bring his case within the provisions of Section 7 of the Bombay General Clauses Act.

14. I feel therefore that after giving this matter my best consideration the Mamhitdar has erred and that the rule must be made absolute and the order of the Mamlatdar set aside as having been made without jurisdiction.

15. Costs throughout upon the opponent.