

(1985) 09 GUJ CK 0012
In the Gujarat High Court

Kedarnath Tukaram Nikam

APPELLANT

Vs

Prataprao Khanderao Ta Rare

RESPONDENT

Date of Decision : 06-09-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Provincial Small Cause Courts Act, 1887 — Section 17
Transfer of Property Act, 1882 — Section 3

Citation : (1986) 1 GLR 657

Hon'ble Judges : I.C. Bhatt, J

Bench : Single Bench

Judgement

I.C. Bhatt, J.—This Revision Application has been directed against the order passed below Application Exhibit 20 in Misc. Application No. 132 of 1978 of the Court of Small Causes at Baroda.

2. The petitioner herein is a tenant and the opponent is the landlord. Rent Suit No. 538 of 1977 was filed by the present opponent-landlord against the petitioner-tenant for the recovery of the possession of the premises on the ground of non-payment of arrears of rent for more than six month on the date of the Notice. The said suit proceeded ex parte on 26-4-1978 against the tenant and it was decided in favour of the landlord-present opponent. The petitioner-tenant was ordered to handover actual physical and peaceful possession of the demise rented premises to the opponent-landlord along with the arrears of rent, electric charges and costs of the suit. The landlord-present opponent had filed execution Petition No. 291 of 1978 for the recovery of the possession and the arrears of rent alongwith costs and it appears that the possession of the said premises was recovered by the landlord from the tenant on 27-7-1978. It appears that the tenant had filed Misc. Application No. 132 of 1978 under Order 9 Rule 13 of the CPC for setting aside the ex parte decree and pending that application of the petitioner-tenant, the opponent-landlord gave application Exhibit 20 for dismissing the Misc. Application No. 132 of 1978 given by the present petitioner-tenant. The second Additional Judge, Small Causes Court,

Baroda, who heard the said Application Exhibit 20, allowed the same and dismissed the main Application Exhibit 1 with costs. The petitioner-tenant against the said order has filed the present Civil Revision Application before this Court.

3. The trial Court has come to the conclusion that Misc. Application No. 132 of 1978 (Exhibit 1) is not maintainable as the procedure prescribed u/s 17 of the Bombay Provincial Small Cause Courts Act, 1887 has not been complied with. Section 17 of the said Act reads as under:

17(1). The procedure prescribed in the Code of Civil Procedure, 1908 shall, save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed.

(2) Where a person has become liable as surety under the proviso to Sub-section (1), the security may be realized in manner provided by Section 145 of the Code of Civil Procedure, 1908.

4. The view of the trial Court is based on the assumption that jurisdiction is vested in the Small Causes Court under the Provincial Small Cause Courts Act, 1887, as per Article No. 4 in the second Schedule to the Act. Now, under Article 4 of the Second Schedule of the said Act, as amended by Bombay Act 6 of 1930 and Bombay Act 9 of 1932, a suit for possession of immovable property or for the recovery of interest in such property is not cognizable by the Court of Small Causes unless (a) the property has been let under a lease made by a written instrument or orally, (b) the Court of Small Causes would be competent to take cognizance of a suit for the rent of the property; and (c) the only substantial issue arising for decision is as to whether the lease has determined by efflux of the time limited thereby or has been determined by a notice in accordance with Clause (h) of the Section III of the Transfer of Property Act, 1882.

5. Thus, it is clear that where there is any substantial issue arising for decision other than the determination of lease by efflux of time or by notice u/s III of the T.P. Act, the Court of Small Causes would have no jurisdiction to hear a suit for possession of immovable property or for the recovery of any interests in such property. Whether the question at issue is substantial or not must be determined having regard to the averments made in the plaint and the contentions taken in the written statement.

6. In the present case, the suit is for recovering possession and for arrears of rent and no issue arises for the determination of lease. The present suit is

governed by the Bombay Rent Act and the suits under the Bombay Rent Act are triable by the Special Court as has been held in 56 B.L.R. 540. The learned Counsel for the petitioner in support of his contention, that provisions contained in Section 17 of the Provincial Small Cause Courts Act are not applicable to the present case, has heavily placed reliance on a decision reported in the case of Premchand Mahasukhbhai Vs. Chamanlal Ranchhoddas, . The question there was whether the Court of Small Causes had jurisdiction to hear the suits for possession of immovable property or for the recovery of the interest in such property. And it was held that a suit for possession of immovable property or for the recovery of any interest in such property was not cognizable by the Court of Small Causes.

7. In view of the above facts and circumstances of this case, I am of the opinion that the provisions of Section 17 of the Provincial Small Cause Courts Act, 1887, would not be applicable to the present case and hence the order passed below Application Exhibit 20 requires to be set aside.

8. In the result this Revision Application is allowed. The order dated 20-3-81 passed below Application Exhibit 20 is set aside and the Application Exhibit 20 is dismissed. The trial Court is directed to proceed further with Misc. Application No. 132 of 1978 which is for setting aside the ex-parte decree, and to decide the same on merits after hearing the parties, in accordance with law. Rule is accordingly made absolute with no order as to costs.