

(1993) 08 KAR CK 0024

In the Karnataka High Court

Case No : Regular Second Appeal No. 636 of 1992

Laxminarayana Rao, Mangalore

APPELLANT

Vs

Janardhana Shettigara

RESPONDENT

Date of Decision : 19-08-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Karnataka Small Causes Courts Act, 1964 — Section 8, 9

Citation : AIR 1994 Kar 105 : (1993) ILR (Kar) 3204 : (1994) 1 KarLJ 45

Hon'ble Judges : S. Venkatakraman, J

Bench : Single Bench

Advocate : Sri A. Keshava Bhat, for the Appellant; Sri Sanath Kumar Shetty, K., for the Respondent

Judgement

1. This Second Appeal is directed against the judgment and decree dated 29th February, 1992 in R.A. 195 of 1990, on the file of the Prl. Civil Judge at Mangalore, Dakshina Kannada, dismissing the appeal filed by the appellant and confirming the judgment and decree dated 22nd October, 1990, in O.S. No. 1162 of 1990.

2. When this second appeal came up for admission, as it was found that the appeal involved substantial questions of law, by consent of the Advocates appearing for both sides, this second appeal has been treated as admitted and arguments have been heard on the said questions of law.

3. The facts, giving rise to this appeal, may briefly be stated, as hereunder :

The respondent was a monthly tenant in respect of the suit shop premises and the appellant was the landlord of the said premises. The appellant filed a suit in O.S. 542 of 1988, on the file of the Munsiff, mangalore for recovery of possession of the suit premises from the respondent on the ground that the tenancy had been terminated by issue of notice. In the plaint the plaintiff had stated that as the defendant was likely to raise substantial question in his defence the suit was

filed in that Court. The respondent contested that suit and one of the grounds taken by him was that he was entitled to protection under the Karnataka Rent Control Act. That suit was dismissed by the trial Court and the appeal filed by the appellant in R.A. 109/89 was allowed and the appellant's suit for eviction was decreed. It is not disputed that in that suit the Court held that the Karnataka Rent Control Act was not applicable to that case and that the respondent was not entitled to protection under that Act. When the time granted in that decree for the respondent to vacate the premises expired, the respondent filed a suit in O.S. 1162/90, on the file of the Munsiff, Mangalore for a declaration that the judgment and decree passed in O.S. 542/88, on the file of the Munsiff, Mangalore, as well as the judgment and decree in R.A. 109/89 were null and void as the Civil Court had no jurisdiction to try that suit in view of the provisions of Section 9 of the Karnataka Small Cause Courts Act, 1964 (hereinafter referred to as the "Act"). The respondent also sought for a permanent injunction restraining the appellant from interfering with his possession of the schedule premises. The learned Munsiff has decreed suit and the learned Civil Judge has concurred with the finding of the learned Munsiff and dismissed R.A. 195/90 filed by the appellant. The courts below have held that the suit as brought by the appellant in O.S. 542/88 was cognizable by the Court of Small Causes in view of the averments made in the plaint; that for purpose of finding out whether the suit was cognizable by the Court of Small Causes only the averments in the plaint have to be taken into consideration and not the averments in the written statement and that as such the Civil Court had no jurisdiction to entertain that suit or to pass any decree therein.

4. In this appeal Sri A. Keshava Bhat, learned Counsel for the appellant, has contended that Section 8 of the Act specifically prohibits a Court of Small Causes from taking cognizance of the suits which are specified in the schedule as the suits excepted from such cognizance; that u/s 9 of the Act Civil Court is prohibited only from trying a suit which is cognizable by a Court of Small Causes; that under Article 4 the Schedule, a suit for possession of immovable property is one of the suits which is excepted from cognizance of a Court of Small Causes and that to that general exception an exception is made only in respect of a suit for ejectment which complies with the three conditions referred to therein; that one of the conditions which has to be complied with before a suit for ejectment becomes cognizable by the Court of Small Causes is that the only substantial issue arising for decision in that suit must be with regard to the question as to whether the lease had been determined by efflux of time limited thereby etc. that if any other substantial issue is involved in the suit, then it would not be a suit which is cognizable by the Court of Small Causes and that to find out whether an ejectment suit is one which is cognizable by the Court of Small Causes, the Court has to take into consideration not only the averments in the plaint but also the defence taken by the defendant. He has further contended that a suit for possession of immovable property is a suit of civil nature which is entertainable by a Civil Court and that it is only where the Court finds, after filing

of the written statement by the defendant that the ejectment suit involves only a substantial issue as to whether the lease has been determined by efflux of time or by a notice in accordance with law, the Court loses jurisdiction to try the suit, as at that point of time the suit becomes cognizable by the Court of Small Causes. He therefore, contended that where a suit for ejectment is filed in the regular Court and the defendant files a written statement raising a substantial issue other than the issue relating to the determination of the tenancy the suit would not be one cognizable by the Court of Small Causes and the regular Court can proceed to try that suit and that in such a case the decree passed by the regular Court cannot be held to be one without jurisdiction or a nullity.

Sri. Keshava Bhat, contended that where a suit for ejectment of the tenant is straightaway filed in the Court of Small Causes, the Court of Small Causes cannot be said to have jurisdiction to proceed with that suit that it is only after the filing of the written statement and if it is found that that suit involves only a substantial issue with regard to the proper determination of the lease, the Court will have jurisdiction to try the suit and that if the defendant raises some other substantial issue, then the suit will have to be rejected as not one cognizable by the Court of Small Causes and that the question of returning the plaint for presentation to proper Court would not arise as that Court had from the beginning no, jurisdiction to entertain that suit. In support of this contention he drew the attention of the Court to Section 16 of the Act which contains a provision for return of plaint in suits involving question of title. He submitted that while there is provision for return of plaint in suits involving questions of title, there was no provision for return of the plaint where after filing of the written statement by the defendant it is found that the suit involves a substantial issue other than the one pertaining to the determination of the lease.

Sri. Keshava Bhat contended that as in O.S, 542 of 1988 another substantial question regarding the applicability of Karnataka Rent Control Act was involved; that was not a suit cognizable by the Court of Small Causes; that the two Courts below seriously erred in holding that in view of the averments in the plaint the suit was cognizable by the Court of Small Causes and that the regular Court had no jurisdiction to try that suit.

5. Sri Sannath Kumar Shetty, learned counsel for the respondent trying to support the judgment of the lower Courts contended that the Civil Court will have jurisdiction to try a suit only if it comes within the ambit of Section 9 C.P.C., that for purpose of finding as to whether the Civil Court had jurisdiction to entertain a suit only the averments in the plaint will have to be looked into; that Section 9 of the Act expressly bars the jurisdiction of a Civil Court in respect of a suit cognizable by the Court of Small Causes; that this Section does not enlarge the scope of Section 9 C.P.C. and that as such for purpose of finding out whether the suit is one cognizable by a Court of Small Causes only the averments in the plaint will have to be taken into account.

6. Both sides have referred to some authorities in support of their contentions

and I will refer to them in the course of this judgment.

7. The learned counsel for the appellant at one stage of the arguments sought to contend that even if a suit cognizable by the Court of Small Causes is tried by the regular Court the decree passed therein would not be one without jurisdiction. He relied upon the decision of the Full Bench of the Madhya Pradesh High Court in *Bhaiyalal Girdharilal Shrivastava Vs. Tikaram Udaichand Jain*, But this point is fully covered by a decision of the Division Bench of this High Court in *Shivamurthi Mailayya Swami v. Mahadev Umarane* 1989 (1) KarLJ 83. In this decision this High Court has held that the plain, clear and unambiguous language employed in Section 9 of the Act does not admit of any meaning other than this that no court other than the Court of Small Causes can try a suit cognizable by a Court of Small Causes within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable. It is further held that where the suit has been tried and disposed of by the regular Court, then the decree passed in such proceedings would be a nullity. As such it can no longer be contended that even if it can be said that the suit in O.S. 542/88 was a suit cognizable by the Court of Small Causes, when the decree passed therein would not be a nullity.

8. The substantial questions which arise for determination in this appeal are as here-under :

1. Whether in an ejectment suit the question of jurisdiction of ordinary Civil Court to entertain or try that suit, has to be decided only on the averments made in the plaint?

2. Whether the decree passed in R.A. 109/89 arising out of the (sic) in O.S. 542/88 could be said to be a nullity?

9. Section 9, C.P.C. provides that a Civil Court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is no doubt true that ordinarily the averments in the plaint will have to be taken into consideration to find out whether the suit is cognizable by the regular Civil Court.

10. In the present case, there can be no dispute that the suit for recovery of possession filed by the appellant in O.S. 542/ 88 was a suit of civil nature and could therefore be filed in the regular Court. It is contended that the regular Civil Court has no jurisdiction to try that suit because the filing of that suit in that Court is expressly prohibited u/s 9 of the Act. If it could be said that all suits for ejectment of tenant are cognizable only by a Court of Small Causes, then by virtue of Section 9 the jurisdiction of the regular Court even to entertain such a suit would stand ousted and the Court would have no jurisdiction from the inception. We have therefore, first find out as to when a suit for ejectment is cognizable by a Court of Small Causes ?

11. Section 9 of the Act reads as under :

9. Exclusive jurisdiction of Courts of Small Causes. -- Save as expressly provided

by this Act or by any other law for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable."

12. The above provision makes it clear that the jurisdiction of the ordinary Civil Court to try a suit gets ousted only when that suit is cognizable by Court of Small Causes.

13. Section 8 of the Act which deals with the cognizance of suits by Courts of Small Causes, reads as hereunder :

"8. Cognizance of Suits by Courts of Small Causes:-- (1) 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.

(2) Subject to the exceptions specified in the Schedule and to the provisions of any law for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by the Court of Small Causes :

Provided that the State Government, in consultation with the High Court, may be notification, direct that all suits of which the value does not exceed twenty five thousand rupees shall be cognizable by a Court of Small Causes mentioned in the notification."

14. . From the above provisions it is clear that there is a prohibition against the Court of Small Causes taking cognizance of the suits which are excepted in the Schedule. It is only subject to such exceptions suits of civil nature of a particular value can be taken cognizance of by the Court of Small Causes.

15. Article (4) of the Schedule where suits excepted from cognizance of Court of Small Causes are described as hereunder :

"(4) a suit for the possession of immovable property or for the recovery of an interest in such property but not including a suit for ejectment where -

(a) the property has been let under a lease or permitted to be occupied, by a written instrument or orally, and

(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 the decision is as to whether the lease has been determined by efflux of the time limited thereby or has been determined by a notice in accordance with the law for the time being in force in respect of such lease, or the permission to occupy has been withdrawn;"

16. Thus it is seen that generally a suit for possession of immovable property or for recovery of an interest in such property is excepted from the cognizance of Court of Small Causes. For this exception there is an exception in respect of suit

for ejectment which complies with the requirements mentioned Clauses (a) to (c).

It is therefore clear that all suits of ejectment are not made cognisable by the Court of Small Causes. One of the conditions which will have to be fulfilled before a suit for ejectment becomes cognizable by the Court of Small Causes is that in that suit the only substantial issue which would arise for decision is as to whether the lease has been determined by efflux of time or by a notice in accordance with law. It is obvious that to find out whether in a suit for ejectment the only substantial issue involved is the one referred to in Clause (C) the Court has to refer to the defence taken by the defendant, without reference to the written statement, it would not be possible to find out as to what is the substantial issue involved in the suit. No further discussion on this aspect is necessary as this point is dealt with elaborately in two earlier decisions of this Court.

17. In *Angara Kotian v. Kavu Heggadthi* 1970 (2) MysLJ 293, it has been held that it is not correct to state that in a suit for ejectment, the averments of the plaint alone must be looked into for the determination of the jurisdiction of the Court of Small Causes and that what is relevant is the nature of the issues to be tried by the Court. In that case it was held that where the substantial issue is whether the lease is a building lease or an agricultural lease, the Court of Small Causes has no jurisdiction to try the suit.

18. In *Monappa Mulya v. Kusuma S. Shetty* 1971 (2) MysLJ 356, after refuting a contention that for the purpose of finding out what is the substantial issue, only the allegations made in the plaint are to be looked into, this Court has held that under Art. 4 of the Schedule to the Act, it is only in the special type of cases where the only substantial issue is with regard to the determination of the lease as provided under Cl. (c), that the Small Cause Court is entitled to entertain the suit and that for the purpose of finding out what is substantial issue, allegations made in the plaint and in the written statement have to be looked into.

19. A reading of Ss. 8 and 9 of the Act and Art. 4 of the Schedule, would make it clear that in so far as a suit for ejectment is concerned, the question as to whether that suit is cognizable by a Court of Small Causes or whether it is maintainable in the ordinary Civil Court, cannot be decided only by reading the plaint averments and that question has to be determined with reference to the substantial issue involved in the suit as could be made out from the averments in the plaint as well as in the written statement of the defendant. It is obvious that in a suit for ejectment where the defendant is either *ex parte* or does not file any written statement at all, the need for complying with Clause (C) would not arise and in such a case the question of jurisdiction will have to be decided on the basis of the plaint averments and with reference to clauses (a) and (b) of Art. 4 of the Schedule. The view of the lower-Courts as well as the contention of the learned counsel for the respondent that it is only on the basis of the averments in the plaint the question of jurisdiction with reference to the provisions of the Act will have to be decided and that as in the present case, the suit was a suit for ejectment of the tenant the Civil Court had no jurisdiction at all to entertain it, is

not correct.

20. The contention of Sri. Keshava Bhat that in all ejectment suits the suit will have to be first filed in the regular Court; that it is only where the defendant files a written statement not raising any question other than the question with regard to the validity of the notice or validity of the determination of the lease, or where he remains ex parte or does not file a written statement, the Civil Court would lose jurisdiction and that it is only thereafter the plaint will have to be returned to the plaintiff and then the plaintiff will have to present it in the Court of Small Causes, is too broad a proposition which cannot be accepted. There is no initial bar either for the Court of Small Causes or for the regular Court entertaining a suit for ejectment as at that point of time it would not be known as to whether that suit is one which is triable by the Court of Small Causes or by the regular Court. It is no doubt true that there is no specific provision in the Act for return of the plaint where after the defendant filed the written statement it is found that the suit involves a substantial issue other than the one referred to in Clause (c) of Art. 4 of the Schedule. S. 16 of the Act has made a specific provision for return of plaint even in a case where the suit is cognizable by the Court of Small Causes if it involves a que(sic) of title. But from fact that there is such a provision for return of plaint in S. 16, it cannot be inferred that in no other case that Court has power to return a plaint. If the Court has no jurisdiction to try a suit and that suit is triable by a regular civil court, then the court has power to return the plaint for presentation to proper court. S. 12 of the Act gives power to the Registrar to admit a plaint or return or reject a plaint for any reason for which the Judge might return or reject it. The Judge also is empowered under sub-sec. (2) of S. 12, return or reject a plaint which has been admitted by the Registrar or admit a plaint which has been returned or rejected by the Registrar. This shows that apart from S. 16, which is applicable only to a particular class of suits, the Small Cause Court has power to return the plaint where it has no jurisdiction to try the suit. In fact in Monappa Mulya's case and in Angara Kotian's case, this court has directed the Small Causes Court to return the plaint for presentation to proper Court as it was found that Court had no jurisdiction to entertain it.

21. The lower-appellate Court has relied upon the decision in A. Mukambika v. A. Premananda Rao ILR 1993 Kar 2289 in support of its conclusion that for purpose of determining the question of jurisdiction only the averments in the plaint will have to be looked into. That was a case where a petition was filed for eviction of a tenant under the Rent Control Act. In the petition the petitioner did not assert that the respondent was a tenant. The question arose as to whether the petition was maintainable under the Rent Control Act when the petitioner himself does not allege that the respondent was in occupation of the premises as a tenant. Dealing with this question this Court has observed as hereunder in para 7 :

"7. It is an established principle that the jurisdiction of a Court or a Tribunal depends upon the assertion of facts made in the plaint or in the petition by the

party, who invokes the jurisdiction of the Court or the Tribunal as the case may be. It is only in exceptional cases the jurisdiction of a Court or Tribunal depends upon the nature of the issue involved. I do not find any provision under the Act which create the jurisdiction in the Court under the Act depending upon the issues framed. Under S. 21 of the Act the landlord approaches the Court seeking certain reliefs. Therefore, the person who invokes the jurisdiction will have to be the "landlord" as defined under the Act. The relief is sought against the "tenant". The term "tenant" also is defined under the Act. In other words, the Court can entertain a petition u/S. 21(1) of the Act only when it is a petition by the landlord against the tenant. In the petition if the landlord says that the relief is sought not against the tenant, but some one else, without prejudice to his contention that the respondents are not tenants, the said petition will not be maintainable. In the petition, it is necessary to assert that the respondents or any one of the respondents is a tenant to invoke the jurisdiction under S. 21(1) of the Act."

22. It may be noted that in the above case the Court was dealing with the provisions of the Rent Control Act. That apart, the court has observed that in exceptional cases the jurisdiction of a Court or Tribunal depends upon the nature of the issue involved. The lower appellate Court failed to note that under the provisions of the Act the jurisdiction of the Small Causes Court in so far as a suit for ejectment is concerned, depends upon the nature of the issue involved in the suit. The above decision does not purport to lay down that in all cases the question of jurisdiction will have to be decided only with reference to the plaint averments.

23. Another decision which has been cited in support of the finding of the lower-appellate Court is the one in Hanumantha Acharya G. v. K. Madhava Prabhu 1988 (2) KarLJ 362. In that case plaintiff filed the suit for ejectment of the defendant in the Court of Small Causes. The defendant pleaded that he was a tenant for life time and that there was no proper termination of the lease. The suit was decreed and in the division petition filed by the defendant it was contended that the Court of Small Causes had no jurisdiction to try that suit as it is one of the excepted suits. This Court found that the fact that the lease had been terminated was not disputed and on the facts of that case this Court held that the suit was one triable by the Court of Small Causes and that there was no inherent lack of jurisdiction. This decision proceeds only on the facts of that case and it does not deal with the question that is involved in this appeal.

24. In view of the above discussion, point No. 1 is answered in the negative.

25. In the instant case, the respondent had taken up a contention in the written statement in O.S.542 of 1988 that he was entitled to protection under the Karnataka Rent Control Act and that the suit was not maintainable. The defence taken by the respondent involved a substantial issue other than the issue referred to in cl. (c) of Art. 4 of the Schedule. As such that was not a suit for ejectment which was cognizable by the Court of Small Causes under S. 8 of the

Act and consequently the jurisdiction of the ordinary civil Court was not barred under S. 9 of that Act. The finding of the lower Courts that the decree passed in R.A. 109/89 arising out of the suit in O.S.542/88 is a nullity, cannot be sustained.

25A. Before concluding, I may refer to the contention raised by the learned counsel for the appellant that the present suit filed by the respondent was barred under S. 47 of, CPC. According to him, S. 47, CPC as amended by the 1976 Amendment, prohibits a separate suit raising the question with regard to the validity of the decree. He submitted that as it is well established that the objection that a decree is a nullity, can be raised even in the execution proceedings, a separate suit for a declaration that the decree is a nullity is not maintainable under S. 47, CPC. This ground has not been urged before the lower-Courts. This has also not been urged in the memorandum of appeal. As such I do not think that it is necessary to go into that question now.

26. For the above reasons, this appeal is allowed with costs and the judgment and decree in O.S. 1162/1990 and R.A. 195/1990 are set aside. The suit in O.S.1162/1990 is dismissed with costs.

27. Appeal allowed.