

(1959) 07 MP CK 0030

In the Madhya Pradesh High Court

Case No : Civil Revision No. 42 of 1959

Madhorao Ramchandra Salunke

APPELLANT

Vs

Rambharose Singh Zalim Singh

RESPONDENT

Date of Decision : 11-07-1959

Acts Referred:

Limitation Act, 1908 — Article 120, 25, 28, 29
Provincial Small Cause Courts Act, 1887 — Article 2

Citation : AIR 1960 MP 30 : (1959) 4 MPLJ 1203

Hon'ble Judges : Shiv Dayal Srivastava, J

Bench : Single Bench

Advocate : Ganga Sahai Garg, for the Appellant;

Final Decision : Dismissed

Judgement

Shiv Dayal Srivastava, J.

The disputed facts are that in Civil Suit No. 68 of 1949 the additional Civil Judge, Second Class, Gwalior passed a decree in favour of the petitioner for arrears of rent and also for ejectment. The respondent on the other hand took proceedings for the assessment of fair rent before the Rent Controller. On 1-3-1949 a rent of Rs. 19-6-0 per year was fixed as fair rent of the premises by the Rent Controller and that was affirmed by the High Court of Madhya Bharat on 1st February 1955. The petitioner (decree-holder) recovered Rs. 362-10-6 on the basis of the rate of rent which was the basis of the decree in Civil Suit No. 68 of 1949. Then he brought the present suit in the Court of Small Causes alleging that only Rs. 119-14-6 were due, and thus the decree-holder had realized an excess amount of Rs. 242-12-0. The suit has been decreed. Aggrieved by the same the present revision application has been preferred by the defendant.

Shri Garg, learned counsel for the petitioner first of all contends that whatever the decree-holder recovered was in execution of the decree which was passed by the Civil Judge and the present decree passed by the Small Cause Court is

without jurisdiction because it amounts to setting aside of the decree passed by the Civil Judge. In my opinion, this contention has no substance. The Small Cause Judge has not set aside any decree. He has only granted the relief which the plaintiff became entitled to because of the assessment of the fair rent and the declaration therein that the landlord was not entitled to recover from the plaintiff a rent higher than Rs. 19-6-0 per year.

Then Shri Garg contends that the Small Cause Judge had no jurisdiction because of Article 2 of Schedule II. That article runs thus :

"A suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office."

I have no doubt in my mind that this relates to acts of ministerial officers and not to the acts of suitors. This article applies to a case where the suit is instituted against a ministerial act of an officer alleging that he has done something which was not lawful and the act purported to have been done by the officer in the execution of his duty. If any authority is needed, the case reported in *Balekkala Subraya Bhatta Vs. Nuliyal Govinda Bhat*, may be referred to.

Then it is contended that the Rent Controller had no jurisdiction to assess the fair rent in this case. In my opinion, that point cannot be agitated now. That question became concluded when the Madhya Bharat High Court decided the revision before it.

The next contention advanced is that the suit was barred by limitation. Reliance is placed on Articles 28 and 29 of the Limitation Act. It is obvious enough that these articles have no application to such a suit. They read thus :

For compensation for an illegal, irregular or excessive distress.

One year.

That date of the distress.

For compensation for wrongful seizure of moveable property under legal process.

One year.

The date of the seizure.

There was no excessive distress or wrongful seizure of moveable property. In my opinion no other Article applies to such a suit except the residuary Article. The learned counsel is not correct when he argues that the residuary Article prescribes three years as the time limit. Under Article 120 of the Indian Limitation Act it is six years. The plaintiff has given dates for the realization of the amounts from him and the suit is clearly within time from those dates. My view finds support in cases reported in *Laxman v. Bishram* AIR 1923 Nag 94 and *Narayana v. Narayana* ILR 13 Mad 437.

Then it is contended that the decree which was passed in favour of the applicant was for three months' rent and the rest of the amount was by way of compensation. The fact remains that the plaintiff had a right to recover whatever was realized from him in excess of Rs. 19-6-0. It was a civil suit and not an execution matter. Therefore, the Small Cause Court had jurisdiction to give an order for the recovery.

The last contention is that the amount decreed is not correct. This is a question of fact not open to be canvassed in this proceeding.

This revision is, therefore, dismissed without notice to the respondent.