

(1959) 04 MP CK 0032
In the Madhya Pradesh High Court
Case No : C.M.A. No. 14 of 1957

Motilal Kesarimal Mahajan

APPELLANT

Vs

Gordhan Mathuralal Joshi

RESPONDENT

Date of Decision : 16-04-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102

Citation : (1959) MPLJ 695

Hon'ble Judges : V.R. Nevaskar, J

Bench : Single Bench

Advocate : J.D. Patel, for the Appellant; C.S. Chhajed, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Nevaskar, J.

Appellant Motilal sued the respondent Gordhan before the Nyaya Panchayat for recovery of Rs. 84-11-0. The plaint mentioned that the cause of action arose within the jurisdiction of Nyaya Panchayat, Khachrod. The defendant in the written statement denied the claim of the plaintiff on merits but did not give any reply regarding the allegations as to jurisdiction referred to above in Para. 5 of the plaint. Later there was a compromise and the Nyaya Panchayat passed a decree on the basis of that compromise. The decree was put into execution. The defendant judgment-debtor on service of notice upon him appeared and contested the execution of the decree on the ground that the decree was passed by a Court having no jurisdiction and was therefore a nullity. The contention prevailed in both the Courts below. In view of the terms of section 1 (2) of the Madhya Bharat Panchayat Vidhan, Samvat 2006, under which the Nyaya Panchayat purported to act was inapplicable to those areas for which the Municipalities had been established. It was found by both the Courts below that a Municipality had been established for the town of Khachrod. This is a second appeal against that decision.

Mr. Patel relied upon the provisions of Section 69 of the Panchayat Vidhan according to which Nyaya Panchayat could entertain a claim of the nature mentioned in Section 67 irrespective of the value of the suit where there is consent of both the parties. In the present case, according to the Learned Counsel, although there was no consent when the proceedings started yet at the stage of passing of the compromise decree the parties had consented and this consent should, according to the Learned Counsel, be taken to be enough for enabling the Panchayat Court to entertain the suit and to pass a consent decree thereon.

I am unable to accept the contention raised by Mr. Patel on behalf of the Appellant. It is not disputed that both the parties reside in the town of Khachrod. It is also not disputed that there is a Municipality for the town of Khachrod. Section 1 (2) of the Madhya Bharat Panchayat Vidhan is as follows:?

It is clear from this provision that the Act is inapplicable in the present case. Section 69 to which the Learned Counsel refers cannot have bearing upon what Section 1(2) of the Act provides. Section 69 only permits trial of cases by the Nyaya Panchayat by the written consent of both the parties where the objection is as regards the valuation. In this case the want of jurisdiction does depend upon any particular value but because the Act itself is inapplicable due to existence of Municipality for the town of Khachrod. Moreover u/s 69 the consent contemplated for conferring jurisdiction upon the Nyaya Panchayat is the consent given by both the parties before or at the time of initiation of the proceedings and it should be a consent given specifically for that purpose. A decree passed, by Nyaya Panchayat on the basis of a compromise entered into between the parties is not a consent contemplated u/s 69 of the Act. In view of this position the contention raised on behalf of the Appellant is unsustainable.

5, There is another objection to the maintainability of the appeal. The claim is of small cause nature and in view of the provision of Section 102, CPC an appeal is not competent. Even if I were to consider this appeal as a petition for revision the same cannot succeed in view of the foregoing discussion as regards the merits of the matter.

The appeal therefore has no force. It is dismissed with costs.