
(1914) 02 MAD CK 0012
In the Madras High Court

P. Ramasami Naidu

APPELLANT

Vs

Venkataramanjulu Naidu and Others

RESPONDENT

Date of Decision : 24-02-1914

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 41

Citation : AIR 1914 Mad 301 : (1914) 26 MLJ 467

Judgement

1. This was a proceeding in ejectment u/s 41 of the Presidency Small Cause Court Act: Defendant executed a rental agreement on the 14th June

1897 agreeing to occupy the site for 15 years , by building a house on it. The agreement provides "" In case you require the aforesaid land if you

give me 6 months" previous notice after the aforesaid 15 years, I shall accordingly vacate the land, remove the superstructure I had built thereon

and put you in possession of it,"" Plaintiff gave two notices, one in October 1911, and another on the 13th December 1913 claiming possession on

the 31st of that month : plaintiff's case is that the tenancy came to an end by efflux of time on the 14th June 1912 and that as he gave notice in

October 1911, defendant was bound to vacate the premises : Defendant contended that the first notice was bad as it was before the 15 years

were over, that the second notice did not terminate the tenancy as it did not allow 6 months" time to vacate, and that the Small Cause Court had

no jurisdiction to entertain the application u/s 41. The learned Third Judge of the Small Causes Court overruled these objections and gave

possession to the plaintiff directing that ""the defendant should remove the superstructure at his cost and deliver the site on 1st May 1913

Defendant moves the High Court to revise this order: A preliminary objection is taken to the jurisdiction of the High Court to entertain the Revision

petition. Mr. Chandrasekara Aiyar who appeared for the plaintiff has argued this point very fully and clearly before me. His contention is that u/s 8

of Act V of 1908 only certain sections of the CPC were made applicable to suits or proceedings of Small Cause Courts, and that Section 115 is

not one of those sections He also contended that as Section 23 of Act XV of 1882 which related to the provisions of the CPC applicable to

Presidency Small Cause Courts was repealed by Act I of 1895, and as the said section referred to the schedule which made Section 622 of the

Old Code corresponding to Section 115 of the present Code applicable to Small Cause Courts, by implication the power of the High Court to

interfere in Revision u/s 115 was taken away : and he quoted Ismalji Ibrahimji Nagree v. N.C. Macleod ILR (1907) B. 138 in support of this

position. Section 8 of the CPC enumerates the sections which are made applicable "" to any suit or proceeding in any Court of Small Causes,"" The

petition before me is not a suit or proceeding in a Small Causes Court. Nor does the repeal of Section 23 affect the question. It was due to the fact

that the CPC contained provisions relating to the provisional powers of the High Court and it was thought unnecessary to provide for it in the Small

Cause Courts Act. As regards Ismaljee Ibrahimjie Nagree N.C. Macleod, Receiver ILR (1907) B. 138 it is true that Mr. Justice Beaman

expressed a doubt whether Section 622 of the old Code was applicable to applications to revise suits or proceedings from Small Cause Courts.

But the learned Judge gives no reason for his conclusion There can be no doubt that the language of Section 115 is in terms applicable to cases

coming"" from Presidency Small Cause Courts. They are subordinate to the High Court (Vide Section 3 of Act V of 1908 and Section 6 of Act

XIV of 1882) Therefore unless by any express provision the power of the High Court is taken away, it will have jurisdiction to revise the

proceedings of Small Cause Courts. The practice in the Presidency has been to entertain these applications. I am fortified in this view by the

decision of the Calcutta High Court in Haladhar-Maiti v. Choytonna Maiti ILR (1903) C. 588. In Ramadhin Bania v. Sewbalak Singh ILR (1910)

C. 714 and in Sarat Chandra Singh v. Brojo Lal Mukerji ILR (1903) O. 986 the learned Judges of the Calcutta High Court came to the conclusion

that the High Court was competent to exercise revisional jurisdiction, but directed that the petition should be disposed of by the Judge sitting in the

Original Side of the High Court. That is not the practice which has been adopted by the Madras High Court. I must overrule the preliminary

objection and hold that the High Court has power to revise the proceeding u/s 115 of the Code of Civil Procedure.

2. On the merits, the question turns upon the construction to be placed on the rental agreement. Mr. Parthasarathi Aiyangar for the petitioner

contends that the language of the rental agreement imports that the defendant was not to be disturbed under any circumstance within the 15 years

of his lease, and that on the expiry of that period, the plaintiff can recover possession only after giving six month's notice. It is contended on the

other side that the term as to six months " notice was inserted in order that the defendant may know at the end of the 15th year that the landlord

intends to eject him and that the notice of October 1911 is sufficient compliance with this condition. I am unable to accept this construction. The

language is plain and unambiguous; and that parties apparently contemplated the continuance of the tenancy on the original terms after the fixed

period was over, leaving it to the landlord the right to claim possession after giving six months notice. I cannot accept the conclusion of the learned

Judge that the six months notice was to be anterior to the 15 years and not subsequent. There are no Indian authorities on the construction to be

placed on similar clauses in rent agreements. Nor are the English authorities uniform. In *Thompson v. Maberly* (1811) 2 Campbell 573 it was held

where a tenancy was " for 12 months certain and six months" notice to quit afterwards, "notice given to terminate the tenancy at the end of the first

year was good. In 61 Law Times page 729, Lord Coleridge says this with reference to *Thompson v. Maberly* (1811) 2 Campbell 573 " Mr.

Cross relied on the case" of *Thompson v. Maberly* (1811) 2 Campbell 573 (ubi. sub), where Lord Ellenborough, C.J. stated that if premises are

taken for " twelve months certain and six months, notice to quit afterwards," the tenancy may be determined by a six months notice to quit expiring

at the end of the first year." That case is not, however, quite satisfactory, as it appears to have been decided on the meaning of the word certain,

and as Lord Campbell points out in a note, the decision was for the plaintiff on another point, so that Lord Ellenborough's observation was obiter.

It is true that, in the case of *Brown v. Symons and Anr.* (1860) 8 C.B.N.I. 208 : 29 L.J. 251, C.P in the Common Pleas, which was an

apprenticeship case and turned upon the words "" for twelve months certain"", Thompson v. Maberly (1811) 2 Campbell 573 (ubi-sub) was cited in the argument, and was not disapproved of. But I think that in a case of a similar agreement where the word "" certain "" does not occur, it would be very doubtful whether Thompson v. Maberly (1811) 2 Campbell 573 (ubi-sub) should be treated as an authority."" The same view was held by the Court of appeal in The Canon Brewer v. Nash (1898) 77 LT 648 The case Brown v. Symons and Anr. (1860) 8 C.B.N.I. 208 : 29 L.J. 251, C.P related to a contract of service and does not affect the decision in the above cases. In Halsbury's Laws of England Vol. XVIII page 444, the proposition is thus stated in the notes. "" In general where there is a fixed term and then the tenancy is determinable on notice, the notice cannot, it seems, be given until after the expiration of the fixed term."" This view is in consonance with reason and justice. I therefore hold that the tenancy was not terminated by the notice of October 1911 and that the notice of the 13th of December 1912 was not sufficient.

3. The further question now arises, whether the Presidency Small Cause Court had jurisdiction to direct possession to be given u/s 41 of the Act.

The second paragraph of that section makes the determination of the tenancy a condition precedent to the exercise of jurisdiction. It must be

remembered that the power to pass orders relating to Immovable property is an exceptional authority conferred on the Presidency Small Cause

Courts. The conditions under which this power can be exercised must therefore be strictly complied with; if the conditions fail, the jurisdiction does

not exist. It was argued before me that the defendant has other remedies and that he is not entitled to invoke the aid of the High Court's revisional

powers. A number of cases were quoted before me. I take the principle of these decisions to be that where there is discretion to be exercised, the

High Court will ordinarily refuse to interfere, if the petitioner has other remedies. Generally speaking, only cases which are sought to be brought

under Clause (c) of Section 115 will be affected by this rule. I am of opinion that where want of jurisdiction has been established, no question of

the exercise of discretion arises and that the High Court cannot condone absolute want of jurisdiction. The decision of Mr. Justice West in

Amritra''v Krishna Deshpande v. Balakrishna Ganesa Amrapurkar ILR (1887) B. 488 is not against this position. In the view that I have taken of

the right of revision, it is not necessary to consider whether the remedy by way of retrial is open to a party against whom an order u/s 41 has been

passed. I need only mention that it has been decided in Ramakrishna Sitaram v. Haji Dawood Ismail ILR (1907) B. 259 that such proceedings

should not be dealt with under Chapter VI of the Presidency Small Cause Courts Act.

4. The decision of the learned Judge must be set aside and the application u/s 41 must be dismissed with costs throughout.