

(1956) 04 MP CK 0001

In the Madhya Pradesh High Court

Case No : Civil Revision No. 119 of 1956

Sadashiv Hirwe

APPELLANT

Vs

Trimbak Chitnis

RESPONDENT

Date of Decision : 05-04-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 35 Rule 5

Citation : AIR 1957 MP 171

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

Bench : Single Bench

Advocate : Gandhe, for the Appellant;

Final Decision : Dismissed

Judgement

Nevaskar, J.—This revision petition arises out of an inter-pleader suit filed by a tenant against persons claiming title as landlords. In the initial allegations made in the plaint the Plaintiff slates that Defendant No. 1. Trimbak is claiming the property on the ground of its being ancestral and having devolved upon him in partition and that Defendant No. 2 is claiming the property as her own on the basis of a sale-deed in her favour. That for this reason the Plaintiff is unable to determine as to who the landlord is and he has filed this inter-pleader suit.

During the course of this suit an application for amendment was sought whereby the Plaintiff wanted to allege that the Plaintiff had taken the property on rent from Defendant No. 2; that the property initially belonged to Defendant No. 2 on purchase made by one Moreshwar; that Plaintiff paid rent to Defendant No. 2 for some time but that when she had gone to Dhar the Defendant No. 1 obtained a rent note from the Plaintiff by misrepresentation and fraud and began collecting rent. This amendment was disallowed by the trial Court. This is a petition for revision against that order.

2. It is clear from the statement of the initial and subsequent allegations that there is clearly a change in the nature of the suit. The initial allegation was made

on the basis that two contesting claimants are claiming rent from the Plaintiff and therefore the contest between them may be determined in order to enable the Plaintiff to make the payment to the right person. In the subsequent amendment that was sought the Plaintiff wanted to take the position that his own landlord is Defendant No. 2 and that Defendant No. 1 had obtained a rent note by misrepresentation and fraud from the Plaintiff.

There is clearly a departure of a substantial nature in the initial nature of the suit and from that point of view the lower Court has rightly rejected the petition for amendment. But I may observe that a suit of this sort between a tenant and landlord for inter-pleading may be incompetent prima facie by reason of the provisions of Order 35, Rule 5, CPC which do not seem to have been noticed by the parties and the Court. The petition has no force. It is accordingly dismissed. A copy of this order may be sent to the trial Court.