

(1950) 03 BOM CK 0007
In the Bombay High Court
Case No : Appeal No. 44 of 1949

Shiavax C. Cambata and Another	Vs	APPELLANT
Sunderdas Ebji		RESPONDENT

Date of Decision : 08-03-1950

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 23, 28, 50

Citation : AIR 1950 Bom 343 : (1950) 52 BOMLR 381

Hon'ble Judges : Chagla, C.J.;Coyajee, J

Bench : Division Bench

Advocate : M.M. Jhaveri and H.M. Seervai, for the Appellant;

Judgement

Chagla, C.J.

[1]. This is an appeal from a judgment of Bhagwati J., holding that he had no jurisdiction to try the suit from which this appeal arises and transferring that suit to the Small Causes Court under S. 50 of Bombay Act LVII [57] of 1947. Section 28 of that Act confers jurisdiction upon the Small Causes Court to entertain and try all suits and proceedings between a landlord and tenant relating to the recovery of rent or possession of any premises to which any of the provisions of Part II apply and that section ousts the jurisdiction of every other Court with regard to those matters ; and S. 50 provides for transfer of suits of the description mentioned in S. 28 to the Small Causes Court or other Courts which have jurisdiction to try those suits.

[2] So the question that we have to determine is whether the suit which in the opinion of Bhagwati J., was not triable by the High Court but by the Small Causes Court was a suit between a landlord and a tenant relating to the recovery of rent or possession of premises. The suit is a simple suit under S. 9, Specific Relief Act. That section gives a special remedy to a party who has been dispossessed to file a suit for possession. The suit has to be filed within six months from the date of dispossession and in that suit no question as to the title of the plaintiff or the

defendant can arise. Such suit does not bar any person from suing to establish his title to such property and to recover possession thereof. It is, therefore, a summary remedy given to a dispossessed person to obtain possession of the property of which he has been dispossessed. Once the nature of the suit under S. 9 is understood, it will be clear that such a suit would not fall within the description of the suit mentioned in S. 28 of the Act. The object of S. 9 is to protect possession without regard to the title or the origin of possession. In the plaint in the suit the plaintiff sets out the history which led to his coming into possession and what he says is that one Dalaya was a tenant of the defendants and this tenant assigned his tenancy rights to the plaintiff and thereby became entitled to be in possession of the property. Then he goes on to say that he was lawfully in possession of the premises and he was dispossessed by the defendants without his consent and otherwise within due course of law and he asks for possession under S. 9. In the written statement the defendants controvert the averments contained in the plaint and allege that the plaintiff was not in possession, but the defendants were in possession. Therefore it is clear that the only issue that would arise in this suit and which would have to be determined by the Court would be whether the plaintiff was in possession of the premises in suit within six months from the filing of the suit, and if he was in possession whether he was dispossessed by the defendants. If that issue is answered in favour of the plaintiff, a decree must go in his favour. If the issue is answered against him, the suit must be dismissed.

[3] The view that the learned Judge has taken is that the plaintiff was in possession as a tenant because he relies on the assignment in his favour by Dalaya and therefore according to him this is a suit by a tenant against his landlord for possession. It is not every suit for possession that is liable to be transferred under S. 50 of the Act. It is only those suits for possession which are filed between a landlord and a tenant. In our opinion, it is only when a landlord or a tenant files a suit for possession as a landlord or a tenant and in his capacity as a landlord or a tenant and relying on his title as a landlord or a tenant that it becomes a suit of the description mentioned in S. 50 and S. 28 of the Act. Although the plaintiff might have set out his title in the plaint, those averments were entirely unnecessary and irrelevant. It is clear that the defendants could not have raised an issue as to the plaintiff's title in the suit. He could not have contested the position that the plaintiff was not entitled to possession because he was not a tenant. He could only have contested the plaintiff's claim on the one simple and short ground, viz., that the plaintiff was not in possession within six months of the filing of the suit. Therefore, the issue as to landlord and tenant could never have arisen in this suit. Therefore, in our opinion, the learned Judge, with respect to him, was in error when he held that this Court had no jurisdiction to try the suit which was before him. The learned Judge was also in error in transferring the suit under S. 50 of the Act.

[4] The result is that the order of the learned Judge must be set aside and we hold that this Court has jurisdiction to try and dispose of the suit. Appeal will be

allowed. No order as to costs.

[5] Mr. Jhaveri informs us that the suit is ready for hearing and therefore, we direct the Prothonotary to place it on some board for hearing and final disposal.

[6] Appeal allowed.