

(1971) 09 MP CK 0006
In the Madhya Pradesh High Court
Case No : C.R. No. 462 of 1970

Shil Chand

APPELLANT

Vs

Samoochik Krishi Sahkari Samiti Ltd. and another

RESPONDENT

Date of Decision : 06-09-1971

Acts Referred:

Limitation Act, 1963 — Section 14
Madhya Pradesh Civil Courts Act, 1958 — Section 9
Provincial Small Cause Courts Act, 1887 — Section 16, 25

Citation : (1972) MPLJ 816

Hon'ble Judges : A.P. Sen, J

Bench : Single Bench

Advocate : P. Rusia, for the Appellant;

Final Decision : Allowed

Judgement

A.P. Sen, J.

This revision filed by the plaintiff u/s 25 of the Provincial Small Cause Courts Act, 1887 is directed against the judgment and decree of the Additional District Judge, Tikamgarh, dismissing his suit as barred by limitation.

The dismissal of the suit on the ground of limitation was wholly unwarranted. The plaintiff had originally instituted the suit in the Court of Civil Judge, Class II, Orchha, on 20-11-1967, and on that day the suit was within time. The suit was of a small cause nature, being for recovery of Rs. 928. Under the old distribution memo., such a suit had to be presented in the Court of the Additional District Judge at Tikamgarh, as he was invested with powers u/s 9 of the Madhya Pradesh Civil Courts Act to try suits of a small causes nature above the value of Rs. 200. In Jagannath Vs. Hari Singh and others, and AIR 1969 44 (M.P.) and S. B. Sen J. held that where a suit of small cause nature is tried by an ordinary Court on the regular side, the decree rendered therein is without jurisdiction and a nullity. Consequently, the Civil Judge, Class II, Orchha returned the plaint for presentation to proper Court on 11-12-1968 after making the necessary

endorsement under Order 7, rule 10 of the Code of Civil Procedure. The plaintiff, who is resident of Mauranipur in district Jhansi., had to go back to his place and arrange for counsel's fee and other expenses. He then went to Tikamgarh, and the plaint was re-presented in the Court of the Additional District Judge, Tikamgarh on 16-12-1968.

The learned Additional District Judge was of the view that even excluding the time between 20-11-1967, when the plaint was presented in the Court of the Civil Judge, Class II, Orchha, and 11-12-1968, when that Court returned the plaint for presentation to proper Court, u/s 14 of the Limitation Act, 1963, the suit was still barred by limitation. u/s 14 of the Limitation Act, the period during which the plaintiff was prosecuting the suit in a wrong Court, with due diligence, can alone be excluded. The learned Additional District Judge held that the decision in *Firm Pursottam Das Ganpati Rai Vs. Gulab Khan*, was distinguishable.

In my view, there was no question of limitation involved. When the suit was originally instituted in the Court of Civil Judge Class II, Orchha, that Court though not empowered u/s 9 of the Madhya Pradesh Civil Courts Act, to try suits of a small causes nature above the value of Rs. 200, could nonetheless have tried the suit on the regular side. The view of Dixit C.J. and S. B. Sen J. in *Jagannath v. Harisingh* (supra) and *Poonamchand v. Ramprasad* (supra) holding that a decision in such circumstances would be a nullity, and that the Court would not be a Court of competent jurisdiction, has now been reversed by the Full Bench in *Bhaiyalal Girdharilal Shrivastava Vs. Tikaram Udaichand Jain*, . The Full Bench has laid down that where a suit of a small causes nature is instituted and tried as a regular suit, in contravention of the provisions of section 16 of the Provincial Small Cause Courts Act, the judgment so rendered therein is not one which is without jurisdiction and is, therefore, not a nullity. That being so, the Court of Civil Judge Class II, Orchha, was a Court of competent jurisdiction to try the suit on the regular side. In *Wamanrao Anandrao Patil v. Umrao Tulsiramji Deshmukh* ILR 1937 Nag. 217, Bose J. in somewhat similar circumstances held that the plaintiff, under such circumstances, is precluded from contending that the Court where the suit was initially presented "was the proper Court", as he should have applied in revision against the order returning the plaint. The rule enunciated in that case is, however, of no application to the present case. When the plaint was returned by the Court of Civil Judge, Class II, Orchha, the decisions of Dixit C. J. and S. B. Sen J. in *Jagannath v. Harisingh* (supra) and *Poonamchand v. Ramprasad* (supra) held the field. The plaintiff, therefore, could not have challenged the order returning the plaint in revision. The cases, which are more in point, are *Gopal Chandra Vs. Bepin Behari*, and *Union of India v. Abdul Kadir* and another ILR 1964 Ker 355. According to the view of the Full Bench in *Tikaram v. Bhaiyalal* (supra), the Court of Civil Judge, Class II, Orchha was a Court of competent jurisdiction and, therefore, the suit was filed before a proper Court as it could be tried on the regular side. Under the circumstances, the suit was not barred by limitation. It is noteworthy that after the Full Bench decision, the new distribution memo, pertaining to the Court of Civil Judge Class

II, Orchha reads as follows :

Small cause suits over Rs. 200 and not over Rs. 1,000 in value to be tried by Regular procedure.

The result, therefore, is that the revision succeeds and is allowed. The judgment and decree passed by the learned Additional District Judge are set aside and the suit is remanded to him for trial afresh, according to law. The parties shall bear their own costs.

Revision application allowed.