
(1979) 09 CAL CK 0006
In the Calcutta High Court

Sm. Renuka Pal and Others

APPELLANT

Vs

Prahaladrai Aggarwalla and Others

RESPONDENT

Date of Decision : 19-09-1979

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 18, 19, 19A, 41
Provincial Small Cause Courts Act, 1887 — Section 23

Citation : (1979) 09 CAL CK 0006

Hon'ble Judges : R.N. Pyne, J

Bench : Single Bench

Advocate : Pradip Guhosh, for the Appellant; Gautam Chakraborty and Sunit Deb, for the Respondent

Final Decision : Dismissed

Judgement

1. The short question that arises for determination in this application made by the defendants in the above suit for rejection of the plaint is whether this Court has jurisdiction to entertain and try the above suit. The petitioners, who are the defendants in the above suit, have made an alternative prayer for stay of the above suit till the disposal of the Title Suit No. 2297 of 1978 (Prahaladrai Agarwalla v. shri Rahindra Nath Paul & Ors.) now pending in the City Civil Court at Calcutta. For determination of the above question of jurisdiction a reference to the plaint of the above suit is necessary.

2. The main prayers in the plaint are "Decree for possession of the suit property being the first floor of the premises No. 128 Acharya Jagadish Chandra Bose Road, Calcutta save and except two rooms in possession of the said Bimal Homeo Hall (P) Ltd, and Decree for Rs. 4000/- as damages." The plaintiffs' (the respondents in this application) case as stated in the plaint is that by and under an order made by the City Civil Court at Calcutta in Execution Case No. 489 of 1973 in execution of the decree passed in the Ejectment Suit No. 1206 of 1967 (Radhakanta Pal v. Dwarikanath Das & Anr.) the plaintiffs with police help obtained possession of the premises No. 128, Acharya Jagadish Chandra Bose

Road thereafter referred to as "the said premises") on or about November 27, 1978 and at all material times since then they held possession of the said premises. By an agreement of tenancy dated December 1, 1978 entered into by the plaintiff No. 2 on behalf of all the plaintiffs the defendant No. 3 was granted the tenancy and became a tenant of one shop room on the ground floor of the said premises. On or about December 9, 1978 the defendants wrongfully and illegally dispossessed the plaintiffs without their consent and without recourse to law of the entire first floor of the said premises save and except two rooms in possession of one Bimal Homeo Hall (P) Ltd. by forcing open the padlock to the said floor which was put by the plaintiffs after obtaining possession of the said premises. It is further alleged by the plaintiffs that the defendants have also removed the furniture kept by the plaintiffs in the first floor of the said premises. The plaintiffs' case is that before 9th December 1978 they were in actual possession of the suit property with the intention of keeping the same in their possession and duly exercised exclusive control of the suit property before they were wrongfully ousted from actual physical possession by the defendants on or about December 9m 1978. According to the plaintiffs in the aforesaid circumstances they are entitled to receive possession of the suit property notwithstanding any right title or interest which may be set up by the defendants or any of them. The plaintiff have also alleged that they have suffered damages caused by the defendants in respect of the suit property which the plaintiffs have assessed at Rs. 4000/- on and from 9th December, 1978 which is the date of the plaintiffs' dispossession. In the suit the plaintiffs have claimed recovery of possession of the suit property and damages. Facts on the basis of which jurisdiction of this Court has been invoked are set out in paragraph 15 of the plaint. It is stated that - "Inasmuch as value of the suit property exceeds Rs. 50,000/- and the damages claimed by the plaintiffs do not exceed Rs. 5,000/- this Hon"ble Court has jurisdiction concurrent with the Small Causes Court at Calcutta and the City Civil Court at Calcutta has not the jurisdiction to entertain, try and determine this suit." In paragraph 16 of the plaint it is stated that for the purpose of Court fees the suit is valued at Rs. 500/- for delivery of possession and Rs. 400/- for damages.

3.It appears that the plaintiffs have filed the above suit under concurrent jurisdiction of this Court inasmuch as the suit is valued at Rs. 4500/- i.e., Rs. 500/- for delivery of possession and Rs. 4000/- for damages. The question is whether this Court in exercise of its concurrent jurisdiction along with the Small Causes Court is entitled to entertain and try this suit.

4. The point taken on behalf of the petitioners is that under Presidency Small Cause Courts Act, 1882 the Small Cause Court has no jurisdiction to entertain or try a suit for recovery of immovable property or suits for the determination of any right to or interest in immovable property. According to the petitioners the instant suit being for recovery of possession of immovable property as also for determination of the right to or interest in the immovable property the Small Cause Court at Calcutta has no jurisdiction to entertain or try this suit.

Therefore, this Court cannot also entertain or try this suit in exercise of its concurrent jurisdiction.

5. Referring to Ss. 5(2), (4) and (5) of the City Civil Court Act 1953 as amended and Items 16 and 17 of the First Schedule counsel for the petitioners has submitted that under the above provisions this Court's jurisdiction to entertain and try suits is limited only to suits triable by the Small Cause Court under the Presidency Small Cause Courts Act, 1882 as amended upto date. According to counsel as the instant suit is for recovery of immovable property and it involves questions of determination of the rights to or interest in the immovable property the Small Cause Court has no jurisdiction to entertain or try this suit in view of S. 19(d) and (g) of the Presidency Small Cause Courts Act and, therefore, the High Court has also no jurisdiction to entertain or try this suit in exercise of its concurrent jurisdiction. It has been further submitted that for the purpose of determination of the amount of damages it is necessary to determine the right to and interest in the movable property and in this connection reference has been made to paragraph 10 of the plaint which reads as follows: -

The plaintiff stat that in the premises aforesaid they are entitled to recover possession of the suit property notwithstanding any title right or interest which may be set up by the defendants or by any of them.

6. The petitioners" contention is that the relief for granting damages necessarily involves determination of the question of right to or interest in immovable property. It is submitted that in view of the allegations of paragraph 10 of the plaint determination of the above question is necessarily involved in this suit. According to counsel Small Cause Court has no jurisdiction to decide that question under S. 19(g) of the Presidency Small Cause Courts Act. Therefore as the suit is not triable by the Small Cause Court this court in exercise of its concurrent jurisdiction is not entitled to entertain or try this suit. Counsel has referred to the case of Pushparaj v. Dwarkaprasad, 87 CLJ 181.

7. It is further submitted by the petitioners" counsel that for the purpose of considering whether the Court has jurisdiction or not the suit as framed is to be seen and by giving up a part of a claim it cannot be said that the suit becomes cognizable or be brought within the Court's jurisdiction. In other worlds, for the purpose of considering whether the suit is cognizable or not by this court the plaint as has been filed is to be looked at and considered. Counsel has referred to the cases of Amritalal Chatterjee Vs. Hiralal Chatterjee and Another, and Ss. 7(iv) and (a) of the Court Fees Act, 1970.

8. Counsel for the respondents has submitted that the jurisdiction of the High Court has been conferred by the Letters Patent and the pecuniary jurisdiction of the High Court in respect of the suits of the value of Rs. 100/- to Rs. 5000/- (after the amendment 10,000/-) has still been retained. It is also submitted that in respect of the suits up to the value of Rs. 100/- to Rs. 10,000/- which are triable by the Small Cause Court the jurisdiction of this court has not been taken

away or affected by the City Civil Court Act. In respect of those suits concurrent jurisdiction of the High Court has not been affected. It is further submitted that even if the suit so far as it relates to recovery of possession is outside the jurisdiction of this Court still regarding the relief for recovery of damages of Rs. 4000/- it cannot be said to be so.

9. It is the submission of the counsel that for the purpose of granting damages no question regarding determination of any right to or interest in the immovable property arises. Therefore, the entire suit is not beyond the concurrent jurisdiction of this Court. Counsel has also submitted that in any event it is open to the plaintiffs to amend the plaint by putting the value of the suit at Rs. 50,000/- so far as the decree for possession is concerned. It is further submitted that in the instant case in any event by amendment of the plaint the entire suit can be brought within the jurisdiction of this Court. Counsel has also referred to the cases of Prayag Deb Ganguly Vs. Sm. Rama Roy, and Firm Ram Krishna Das Jawahar Lal v. Firm Mutsadilal Murlidhar, AIR 1942 All 70.

10. In the case of Prayag Deb Ganguly Vs. Sm. Rama Roy, referring to clause 12 of the Letter Patent, S. 18 of the Presidency Small Cause Court Act and S. 5(4) and Item 17 of the First Schedule of the City Civil Court Act 1953 a Full Bench of this Court observed as follows: -

The combined effect of the above provisions is that both the Small Cause Court and the High Court have jurisdiction to try suits above one hundred rupees and upto five thousand rupees, whereas the City Civil Court shall try suits above five thousands rupees and upto fifty thousand rupees.

11. The only question that arises for consideration, is whether the instant suit, which is valued at Rs. 4,500/- and for recovery of immovable property and for damages, is triable by the Small Cause Court. If it is, then and when only this Court has jurisdiction to entertain and try this suit.

12. Regarding the prayer for possession of immoveable property, which relief is valued at Rs. 400/-, it is not disputed that such relief cannot be granted by the Small Cause Court in view of S. 19(d) of the Small Cause Courts Act, 1882 as amended and in that view of the matter this Court in exercise of its concurrent jurisdiction is also not competent to entertain or try such a suit. It is however submitted that inasmuch as the entire suit is not barred the valuation regarding relief for recovery of immovable property may be amended to bring the suit within the Court's jurisdiction and in fact the plaintiffs have already made an application for such amendment which is pending. I shall deal with this aspect later on.

13. The next question is whether the suit so far as it relates to the relief for damages, (which relief is valued at Rs. 4000/-) can be entertained or tried by the Small Cause Court.

14. Before dealing with the second point mentioned above a brief reference to

the relevant cases may be made.

15. In the case of *Thakurds Pushpraj v. Dwaraka Prasad Bazaz & Anr.* 87 CLJ 181 it was held that by virtue of S. 19 of the Presidency Small Cause Courts Act, the Presidency Small Cause Court was not entitled to determine any question of right to or title in immoveable property.

16. In the case of *Makhan Lal Datta v. Gouribala Sardar*, ILR 17 Cal. 541 it was held that a suit for the recovery of damages for the use and occupation of land is within the jurisdiction of the Mofussil Small Cause Courts.

17. In the case of *Vinayak Gangadhar Bhat v. Krishnarao Sakharan Adhikari*, ILR 25 Bom 625 the plaintiff sued to recover Rs. 75 as the utpan (income) of certain lands. In his defence the defendant raised the question of the title to the land. The plaintiff obtained a decree which was confirmed in appeal. It was held that the suit although raising the question of title, was a suit cognizable by a Small Cause Court and that therefore under S. 586 of the CPC no second appeal lay. The Court observed that -

It is clear that a Small Cause Court cannot entertain a suit for the determination or enforcement of any right to or interest in immovable property, but the authorities decide that having regard to S. 23 of the Provincial Small Cause Courts Act a Court of Small Causes can entertain a suit, the principal purpose of which is to determine a right to immoveable property, provided the suit in form does not ask for this relief, but for payment of a sum of money.

18. In the case of *Puttangowda Bin Mallangowda Patil v. Nilkanth Kalo Deshpande*, ILR 37 Bom 675 the facts were that the plaintiff brought a suit in the Court of Small Causes to recover Rs. 12 as the value of certain trees felled by the defendant. The plaintiff's claim to relief proceeded on the basis that the trees belonged to him because the land on which they stood also belonged to him. A question having arisen as to the jurisdiction of the Court of Small Causes to entertain the suit it was held by the Full Bench that a Court of Small Causes could entertain a suit, the principal purpose of which was to determine a right to immoveable property, provided the suit in form did not ask for that relief but for payment of a sum of money.

19. In the case of *Rajendra Mullick v. Nanda Lal Gupta*, ILR 31 Cal. 1001 the plaintiff filed two suits in the Small Cause Court against the defendant. In one suit the plaintiff sued for possession and in the other suit for damages for wrongful use and occupation. In both the suits the plaintiff alleged that the defendant was the tenant of the plaintiff as a monthly rent of Rs. 30 under a lease, which terminated on the 31st October 1902, and that the plaintiff on the 27th October, 1902 gave the defendant notice to quit. The defendant's case was that at the end of October 1902 he had given up possession to the plaintiff, but subsequently had been put into possession of the premises by a third party (a stranger to the two suits) under whom he then held and the defendant produced a registered lease from this third party and swore to its execution. The two cases

came up for hearing before the 5th Judge of the Small Cause Court who without coming to the findings as to whether or not the defendant had given up possession of the premises to the plaintiff or whether the defendant held under the plaintiff or not, ordered the two complaints to be returned under S. 19A of the Presidency Small Cause Courts Act on the ground that the defendant having raised a question of title, the Small Cause Court had no jurisdiction to entertain the suit. Two suits then came up upon an application for a new trial before the Full Bench of that court. Thereafter, a case was stated for the opinion of the High Court by the Court. The question submitted was : "Is the jurisdiction of this Court (Small Cause Court) ousted by the defendants raising a question of title in a suit which, according to the case as stated in the complaint, this Court has jurisdiction to try - the question of title being the principal contested matter in the suit "

20. It was observed in connection with the above question that the Presidency Small Cause Court had jurisdiction to try question of title which arose incidentally in the suit and even if such question would be the principal, though not the sole one, in the suit, the jurisdiction of the Small Cause Court was not ousted. To oust the jurisdiction of Small Cause Court, the question of title must be the sole and only one in the suit.

21. In the case of Sukhdeo Prasad v. Lachman Singh & Ors., ILR 24 All 456 the plaintiff, a mortgagee came to Court asking for a decree for sale on his mortgage, or "any other relief to which the plaintiff might be entitled". The mortgage deed contained the usual covenant for payment. In addition to the further covenant that in default of payment proceedings might be taken against the mortgaged property. It was held that there was nothing to prevent such a plaintiff in the course of the suit relinquishing his claim for sale of the mortgaged property and asking merely for a simple money decree. Such an amendment of the pleadings did not amount to a conversion of the suit into a suit of another and inconsistent character.

22. In the case of Ashutosh Dey Vs. Foolchand Keshabdeo and Another, , facts were that A in his suit instituted in the Small Cause Court Calcutta against B and C claimed that he was a co-sharer with C with respect to certain premises. He alleged that B was a tenant in that premises under himself and C and claimed his share of rent from B. In the alternative A prayed that if B had paid all the rent to C, C should be made to pay A's share of the rent. B took up a position that he was C's tenant and had nothing to do with A. C claimed to be the sole owner of the premises. It was held that although substantial question of title to immovable property was involved in the suit that question was merely an incidental one and the Court had therefore jurisdiction to try the suit which was recovery of rent and in the alternative for recovery of money paid by the defendant on behalf of the plaintiff. It was therefore, held that Small Cause Court had jurisdiction to try the suit.

23. In the case of M. R. Nataraja Nacker v. M. Kamalamma ILR (1958) Mad 913

it was held that where landlord, after terminating tenancy applies under S. 41 of the Presidency Small Cause Court Act for ejectment of tenant, and tenant pleaded that tenancy had not been validly terminated and that lease still subsisted there was no dispute as to the title and therefore jurisdiction of the Small Cause Court was not excluded.

24. In the above case the learned Judges relied on an unreported decision of that Court in Letters Patent Appeal No. 35 of 1902 (Lala Bishnu Sarup v. Mongal Sen) decided on 15th February, 1902 where while considering the question of second appeal Banerji and Aikman, JJ. held that the jurisdiction of the Small Cause Court depended upon the nature of the suit as brought and not upon the character which it ultimately assumed.

25. In the case of Lakshmandas Narayandas v. Anna R Lane, ILR 32 Bom 356 while considering the question of second appeal it was held that S. 586 contemplated rather the original case of the suit then the character which it might subsequently assume by operation of the findings of the Court.

26. In the case of Ganappa Putta Hegde Vs. Hammad Saiba, the plaintiff sued the defendant to recover Rs. 150/- and to obtain a declaration that the mortgage bond was satisfied. The defendant pleaded that he did not make any representation to the plaintiff that the plaintiff bought agreeing to take all risks, and that the suit was not in time. As the plaintiff had not paid the necessary Court fees with regard to the declaration sought for that the mortgage bond had been satisfied, he gave up his claim for the declaration. The Trial Judge passed a decree for Rs. 150/- with costs and future interest at 6%. The appeal preferred against the said decree was dismissed by the District Judge. In second appeal it was contended that no appeal lay as the suit was of a Small Cause Court nature, the plaintiff having given up his claim for declaration asked for in the plaint. Dealing with the above point matched, C.J. observed that - "We do not think that this contention is sound. The suit as framed was not a suit of a Small Cause Court nature, and it did not attain that character because the plaintiff gave up his claim to the declaration.

27. In the case of Manick Lal Memani Vs. Shiva Jute Bailing Ltd. the main prayers formulated in the plaint were:

- (a) Declaration that the aforesaid alleged contract is void;
- (b) Delivery up of the said contract by the Defendant to the plaintiff
- (c) Cancellation of the said alleged contract;
- (d) Injunction on the Defendant from proceeding with the arbitration or taking any other steps.

28. While dealing with an application under Or. 7 r. 11 of the CPC for rejection or taking off the plaint from the file Dss, J. observed as follows: -

Under Or. 7, r. 11 the Court has no authority to reject parts of the plaint.

Therefore even if the prayers for declaration and for injunction may not be maintainable, the plaint cannot be rejected or taken off the file, for it discloses a cause of action for cancellation under S 39 of the Specific Relief Act.

29. In the instant case the petitioners' case as stated in paragraphs 2 and 3 of the petition is that they at all material time were and still are tenants in respect of the self contained flat on the first floor and one shop room on the ground floor of the said premises at the monthly rents of Rs. 215/- and Rs. 40/- respectively, payable according to English Calendar. The petitioner No. 1 was inducted in the year 1976 in respect of the self contained flat and the petitioner No. 2 was inducted as tenant of the shop room as far back as in the year 1966. Therefore, the plaintiff's claim for damages would depend on the question whether the petitioners were and are tenants in respect of the said flat. In other words, the existence of the tenancy in respect of the flat in question is in dispute and upon that depends the plaintiffs' claim for damages. The above question may also involve incidentally a question regarding determination of any other right to or interest in the immoveable property. That question, even if be the principal question, is not the sole one in the suit but would arise incidentally in the suit. From the decision referred to above it appears that by abandoning a part of the relief which is outside the jurisdiction of the Small Cause Court the plaintiff can proceed with the rest of the suit in that Court. The contention of the petitioners' counsel that the suit as framed or the suit a whole cannot be said to be a suit of Small Cause nature and therefore, the Small Cause Court has no jurisdiction to try it cannot be accepted. The decisions relied upon by counsel and mentioned above would show that only for the purpose of considering the question of availability of second appeal under S. 102 of the CPC the Court should consider if the suit as originally framed is a suit of Small Cause Court nature or not. But it appears that the Small Cause Court has jurisdiction to try a suit and in fact tried the suit when the plaintiff abandoned the relief of claim which was beyond the jurisdiction of the Small Cause Court. Therefore, in the instant case had this suit been filed in the Small Cause Court it was open to the plaintiff to proceed with the same by giving up of abandoning the prayer for delivery of possession. In view of the above decisions even if the plaintiffs give up the prayer for possession it cannot be said that the rest of the suit cannot be tried by the Small Cause Court. In the above view of the matter it cannot be said that the claim for damages is barred under S. 19(g) of the Presidency Small Cause Court Act, 1882. Therefore, regarding the plaintiff, claim for damages of Rs. 4000/- this Court is competent to entertain and try the suit in exercise of its concurrent jurisdiction.

30. Further even if the prayer for recovery of possession is not maintainable still in view of the decision of *Manick Lal Memani v. Shiva Jute Bailing* (supra), the plaint cannot be rejected or taken off the file because it cannot be said, as stated above, that this court has no jurisdiction to decide upon the plaintiffs' claim for recovery of damages.

31. For all the aforesaid reason this application in my view should fail. This application is, therefore, dismissed. There will however be no order as to cost.

32. On the 8th August 1979 when I was going to deliver my judgment in this case it was submitted by Mr. P. K. Ghose, learned counsel for the petitioner that a few days ago a judgment on the same point had been delivered by Mrs. Padma Khastgir, J. In that view of the matter I did not deliver my judgment on that day and directed Mr. Ghose to give a copy of the said judgment. Thereafter, a copy of the dictated order dated 6th August, 1979 of Mrs. Padma Khastgir, J in an application made in Suit No. 417 of 1979 (Amar Nath Sen v. Triloki Nath Dave & Ors.) was produced before me. I have gone through the said dictated order. In my view the said decision is distinguishable. In the case in the suit, which was valued at Rs. 4,500/- and filed invoking the concurrent jurisdiction of this Court along with the jurisdiction of the Small Cause Court, Calcutta the plaintiff's claim included claim for mandatory injunction against the defendant. Application was made for rejection of the plaint. In that case it appears that reliance was also placed by the petitioner's counsel on the case reported in Ghanshiram Baluram Vs. Misrilal Chunilal, . Mrs. Padma Khastgir J. made an order for taking of the plaint of the file. It was observed by Mrs. Padma Khastgir, J. that - "By looking into the averments made in the plaint and various prayers I am of the view that the plaintiff has definitely asked for certain relief's which the Small Cause Court of Calcutta is not entitled to grant under sub-s. (1) to s. 19 of the Small Cause Court Act, as such this Court has no concurrent jurisdiction to grant the relief's.

33. It appears that the question involved in the present application are not fully covered by the decision. Further, various decisions on the question of jurisdiction cited before me and dealt with by me were not cited before Mrs. Khastgir, J. Inasmuch as the present case is distinguishable it is not necessary to refer the matter to a large bench as submitted by Mr. P. K. Ghose, counsel for the petitioners.