
(1919) 10 MAD CK 0042
In the Madras High Court

Thevar alias Cheruni Moothan

APPELLANT

Vs

Ammunni and Others

RESPONDENT

Date of Decision : 27-10-1919

Acts Referred:

Citation : 55 Ind. Cas. 541 : (1920) 11 LW 211

Hon'ble Judges : Odgers, J

Bench : Single Bench

Judgement

Odgers, J.—In this petition it is argued that the suit was not triable by a Court of Small Causes on the ground that the subject-matter falls within the mischief of Schedule II, Articles 11, and 15 of the Provincial Small Cause Courts Act.

2. The plaint alleges that the plaintiffs agreed to assign certain nilam items to the 1st defendant for Rs. 400. This was partly to be discharged by cash payment and partly by 1st defendant discharging an encumbrance on the property. The plaint further alleges that the assignment deed was registered on 9th June 1918 and that the defendants were put into possession of the property. The prayer is for a decree that defendants should pay the cash amount due. The written statement of 1st defendant merely traverses the plaint and says that the allegations are false. The 2nd defendant does not join in this petition.

3. The findings of the learned Subordinate Judge are to the effect that the sale-deed has been duly executed and registered by plaintiffs and that 1st defendant has been put in possession prior to suit. With regard to the point under Schedule II, Article 11, much reliance was placed on the case in Maturi Subbayya v. Kota Krishnayya 28 M.P 227 which decided that a suit for unpaid purchase money under a contract for the sale of land fell within Section 16, Clause (d), of the CPC for the purpose of determining the jurisdiction of the Munsif's Court, the contract having been made within the jurisdiction of the District Munsif of Masulipatam and the land being situate within that of the District Munsif of Gudivada.

4. This was not a case under the special provisions of the Small Cause Courts Act

and, moreover, has not been followed in the more recent case reported as Sowdager Nabheekan v. Muhammad Hustain 10 Ind. Cas. 267 : 9 M.L.T. 372 where it is distinctly laid down that a suit to recover the price of land is one cognisable by the Small Cause Court, though such a suit may incidentally involve the question of title. The nature of a suit is to be inferred from the allegations set forth in the plaint and I have no hesitation in finding that, on the authority of the case last quoted, on an examination of the plaint, this is a suit for money

5. As to Schedule II Article 15 it was argued that this was in effect a suit for specific performance of the contract to buy and sell land and the case *Bhashyakarlu Naidu v. Nungambakkam Andalammal* 49 Ind. Cas. 386 : (1918) M.W.N. 896 : 9 L.W. 19 : 86 M.L.J. 89 was quoted in support of this view. As there laid down, the question is whether the plaint discloses a suit for specific performance and the lower Court's judgment says that the form is that the plaintiff is to prepare a conveyance as an escrow and deliver to the defendant if money is paid within a limited time, the averment being that plaintiff is ready and willing to perform his part of the contract. The learned Chief Justice (at page 897 Page of (1918) M.W.N.--Ed.) says: "Although the prayer only asks for the payment of Rs. 301-13 0, taking the plaint as a whole with the averment that the plaintiff is ready and willing to perform her part of the contract, I think it must be taken as a prayer for the specific performance. That is sufficient to dispose of the present case." It is thus a question in each case to be decided on the allegations raised.

6. As already, stated, the assignment deed so called was executed and registered on or about 9th June 1918; the suit was instituted on 20th September 1918. The plaintiffs have moreover put the 1st defendant into possession before the date of the suit and have thus fully and entirely performed their part of the contract. There is nothing more left for them to do. I am clearly of opinion from this fact and from the fact that the plaint naturally contains no such allegation as that in *Bhashyakarlu Naidu's* case 49 Ind. Cas. 386 : (1918) M.W.N. 896 : 9 L.W. 19 : 86 M.L.J. 89 that the latter case is wholly different from the present. The petition on the point of specific performance, therefore, also fails.

7. The result is the petition is dismissed with costs of respondents Nos. 1 and 2.