
(1979) 01 GUJ CK 0005
In the Gujarat High Court

Vaso Nagar Panchayat

APPELLANT

Vs

Jashbhai Ishwarbhai Amin and Others

RESPONDENT

Date of Decision : 31-01-1979

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 28
Provincial Small Cause Courts Act, 1887 — Section 27, 27

Citation : (1979) 1 GLR 886

Hon'ble Judges : D.P. Desai, J

Bench : Single Bench

Judgement

D.P. Desai, J.—On April, 6, 1973, a suit for recovery of Rs. 320/-paid by the plaintiffs to the defendant Nagar Panchayat on account of various taxes came to be filed in the Court of the learned Civil Judge (Senior Division) at Nadiad. At that time the learned Civil Judge Mr. N.D. Gehani was invested with the jurisdiction of a Court of Small Causes for the trial of suits cognizable by such Court unto the extent of Rs. 800/ u/s 28 of the Bombay Civil Courts Act. This is clear from the Yearly Gradation list as on July 1, 1972 and July 1, 1973. This suit was originally instituted as a regular Civil Suit and came to be transferred to the file of the learned Joint Civil Judge (Junior Division), Naiad. Thereafter on December 28, 1974 one Mr. J.K. Thoria, Civil Judge (Junior Division), Naiad framed issues in this suit; and it is admitted on both hands that Mr. Thoria was not invested with the jurisdiction of a Court of Small Causes u/s 28 of the aforesaid Act. On March 18, 1976, plaintiffs' evidence was recorded by Mr. C.T. Pariah who was invested with the aforesaid powers to the extent of Rs. 400/- as can be seen from the Gradation list as on July 1, 1975 and July 1, 1976. This Mr. Pariah tried the suit; and by his judgment and decree dated April 13, 1976 dismissed the same. Against this decree of dismissal an appeal was preferred by the original plaintiffs being Regular Civil Appeal No. 88 of 1976 in the District Court at Naiad. The learned Assistant Judge who heard this appeal allowed it; and gave a decree to the plaintiffs for Rs. 256-87 Ps. with running interest. This decree was given on March 16, 1977. It is against this decree that the original

defendant has come to this Court in revision.

2. The only contention urged on behalf of the defendant-petitioner goes to the root of the matter; and it is this. The suit being of the nature of a suit cognizable by a Court of Small Causes, the decree of dismissal of the suit passed by Mr. Parikh, Joint Civil Judge (Junior Division), Nadiad became final u/s 27 of the Provincial Small Cause Courts Act, 1887 (hereafter referred to as "the Act") and no appeal lay against that decree to the District Court. Therefore, runs the argument, the District Court was not competent to hear the appeal; and the decree passed in appeal is without jurisdiction. As against this contention, the contention on behalf of the plaintiffs was three fold. Firstly it was urged that the suit was not of the nature of a suit cognizable by a Court of a Small Causes. Secondly, assuming that it was cognizable by a Court of Small Causes, no objection to jurisdiction of the appellate Court having been taken, this Court should not interfere in revision; and lastly the suit having been tried as an ordinary suit and a decree passed, the provisions of Section 27 of the Act are not applicable; and the appeal was competent.

3. So far as the first contention on behalf of the plaintiff is concerned, reliance was placed on Clause (j) of Article (35) of the Second Schedule to the Act which specifies suits excepted from the cognizance of the Court of Small Causes. This clause excludes a suit for compensation for illegal, improper or excessive distress, attachment or search, or for trespass committed in, or damage caused by, the illegal or improper execution of any distress, search or legal process. Now, the present suit is not a suit for compensation at all. It is for refund of taxes which the plaintiffs had to pay on account of an illegal posture adopted by the defendant Panchayat. No question of compensation or illegal, improper or excessive distress, attachment or search as contemplated by Clause (j) of Article (35) of the Second Schedule to the Act would arise in this suit, it being- a suit for refund of taxes was cognizable by a Court of Small Causes.

4. In Gurunathappa Deekappa Vs. The Dharwar Municipality, , a Full Bench of the Bombay High Court held that a suit for refund of the amount paid under illegal distress is not a suit for compensation for illegal distress or for damages caused by illegal distress under Article 35(j) ; and is therefore, not excepted from the cognizance of a Small Cause Court. As observed above, this is not even a suit for compensation for illegal distress or for damages caused by illegal distress. The first contention raised on behalf of the plaintiffs must, therefore, fail.

5. We must now come to the third contention before taking up the second contention. It is true that the suit in this case was tried by the learned Joint Civil Judge (Junior Division) as an ordinary suit. But once it was a suit of the nature of a suit cognizable by a Court of Small Causes, it fell within the exclusive jurisdiction of the Court of Small Causes as provided by Section 16 of the Act which, inter alia, states that a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable. It is true

that no Court of Small Causes was established under the Act. However, we find that Section 16 occurs in Chapter III of the Act; and Section 32 lays down, *infer alia*, that so much of Chapter III as relates to the exclusion of the jurisdiction of other Courts in case of suits of the nature cognizable by Courts of Small Causes will apply to the Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts. Therefore, by virtue of sec. 32 read with sec. 16 of the Act, it is clear that this suit could not have been tried as an ordinary suit; and its trial by the Judge invested with the jurisdiction of a Court of Small Causes as an ordinary suit is, in law, a trial as a Small Cause suit under the provisions of the Act.

6. In *Shankerbhai and Ors. v. Somabhai and Ors.* ILR XXV Bom 417 it was held that where a Subordinate Judge invested with Small Cause jurisdiction tried a small cause suit under his ordinary jurisdiction the character of the suit was not altered by the mode in which the Subordinate Judge had exercised his jurisdiction and that his decree being final, was not appeasable to the District Court. The decision clearly applies to the present case. The principle laid down is that the character or nature of the suit as cognizable by a Court of Small Causes is not altered by the mode in which the Subordinate Judge trying it exercises his jurisdiction. It is, therefore, clear that though the mode of trial adopted was a trial of a regular suit, the same did not alter the nature of the suit which was cognizable by a Court of Small Causes and therefore, the decree passed, even by adopting such a different mode of trial, was final. In view of the provisions of Section 16 read with Section 32(1)(b) of the Act, it is clear that this suit being of the nature of a suit cognizable by a Court of Small Causes, could not have been tried by any other Court, and, therefore, its trial as an ordinary suit cannot be treated for the purpose of an appeal as one in a regular suit.

7. The fact that the Joint Civil Judge (Junior Division) who tried the suit and passed a decree dismissing it on April 13, 1976 was invested with the jurisdiction of a Small Causes Court to the extent of Rs. 400/- is amply borne out by the Gradation List referred to above to which no objection could be raised on behalf of the plaintiffs. Therefore, we have a case before us in which the suit was originally instituted in a Court of Civil Judge (Senior Division), but could be tried as a suit cognizable by a Court of Small Causes in view of the investment of jurisdiction of that Court on the presiding Judge. When it came to be tried and disposed of, the learned Judge who tried and disposed it of was also invested with the jurisdiction of a Court of Small Causes. However, it was urged that the issues in this case were framed on December 23, 1974 by Mr. J.K. Thoria who was not invested with the jurisdiction of a Court of Small Causes. The contention was that once the issues have been framed by a Judge not invested with the jurisdiction of a Small Causes Court, the suit retains its character as a regular suit throughout till its conclusion. There is no basis for this proposition; nor was any basis pointed out. For the purpose of rendering out whether the appeal was competent or not we will have to see whether the decree passed in the suit was

passed by a Judge who was invested with the jurisdiction of a Court of Small Causes. If in a case like this the learned Judge invested with the requisite jurisdiction has recorded evidence and passed a decree, it cannot be said that the decree was passed by that Civil Judge in" his ordinary jurisdiction, because he could not pass such a decree in the ordinary jurisdiction in view of the provisions of Sections 16 and 32(1)(b) of the Act. It is, therefore, clear that the appeal before the District Court in the present case was not competent.

8. That brings us to the second contention raised on behalf of the plaintiffs. In support of this contention, reliance is placed on *Kamruddin v. Ml. Indrani* AIR 1924 Nag 17. In that case the learned Judicial Commissioner refused to interfere in revision u/s 115 of the Code in a case where a suit cognizable by a Court of Small Causes was tried by a Munsif in his ordinary jurisdiction without objection to the jurisdiction though he had none. The learned Munsif gave a decree to the plaintiff. The defendant appealed to the District Court without any reference to the question of jurisdiction; and the District Judge reversed the decree of the Munsif which brought the plaintiff to the High Court. The learned Judicial Commissioner observed as under:

In the present case the Munsif had no jurisdiction to try the suit and the question is therefore whether 1 should decline to interfere on the ground that the parties have submitted to the jurisdiction of the ordinary Courts, which is the view taken by the Calcutta and Allahabad High Courts, or whether the whole of the proceedings should be set aside and plaint returned for presentation to the proper Court as was done in 26 Madras. There is no ruling of the Bombay High Court exactly on the point in issue, as I have already explained, and the balance of authority is in favour of the former course, the latter view being taken by the Madras High Court alone.

The learned Judicial Commissioner agreed with the Allahabad and Calcutta view and refused to interfere in revision. Unfortunately, the attention of the learned Judicial Commissioner was not drawn to an earlier decision of the Division Bench of the Bombay High Court reported as *Maharana Shri Davlatsinhji v. Khachar Hamir Man* ILR XXXIV Bom 171. In that case a suit for money decree cognizable by a Court of Small Causes was dismissed by the first Court. The plaintiff appealed and the appellate Court reversed that decree of dismissal and decreed the plaintiff's claim. Against that decree, the defendant preferred a Second Appeal and prayed for treating it as a revision application u/s 115 of the Code on the ground that the District Court acted without jurisdiction in entertaining the appeal. The plaintiff-respondent who had succeeded before the District Court urged in the High Court that the second appeal was competent; and further urged that by reason of the conduct of the parties and the fact that the appellant had not objected to the jurisdiction of the District Court it was too late in second appeal to take the point. The Division Bench held that the District Court had no jurisdiction to try the case and the conduct of the parties could not give it jurisdiction. In doing so, the Division Bench also followed an earlier decision of

the Privy Council reported as *Meenakshi Naidoo v. Subramaniay Sastri* 14 IA 160 which had laid down that no amount of consent could confer jurisdiction where none existed. In view of this decision of a Division Bench of the Bombay High Court, Nagpur decision cannot help the plaintiffs in the present case. The second contention, therefore, also must fail. The failure to object to jurisdiction did not confer jurisdiction on the District Court where none existed.

9. In view of the aforesaid position, it is clear that the appeal to the District Court in the present case was incompetent; and the learned Assistant Judge had no jurisdiction to decide the appeal. In the result, the decree passed by the lower appellate Court decreeing plaintiffs' suit is reversed and the decree passed by the trial Court is restored. Rule made absolute. Looking to the fact, however, that no objection as to jurisdiction was raised at the proper stage, it will be in the fitness of things to direct each party to bear its own costs throughout.