

ALLAHABAD HIGH COURT

Muhammad Abdul Ghafur Khan

Vs.

Gokul Prasad

(Piggott, J.)

27.02.1914

JUDGMENT

Piggott, J.

1. This was a suit which on the face of it purported to be one for the recovery of house-rent. The plaintiff, however, admitted that he was only the proprietor of a certain share, namely 9/16th of the house, and he impleaded as defendants, not only the lessee from whom the rent was claimed, but also certain other persons, namely, a former usufructuary mortgagee of the house and a person alleged to be the owner of the remaining 7/16th share. The Munsif, in whose Court the suit was filed, held that the suit was one of a nature cognizable by a Court of Small Causes and returned the plaint for presentation to such a Court. The learned Judge of that Court has again returned it for presentation to a Court of regular civil jurisdiction. The difficulty which I feel in dealing with the application now before me is that the learned Judge of the Court below has given too many reasons for his order. He gives a number of reasons for his order. He gives a number of reasons why the suit must necessarily fail, which, if valid at all, could be reasons for dismissing the suit, but not for passing the order which he has passed. He then refers to three Articles of Schedule II of the Provincial Small Cause Courts Act, two of which are certainly inapplicable, while there might be some controversy as to the applicability of the remaining one, that is Article 7; but it is useless for me to go into the question whether the suit was or was not one reserved by law to be for the cognizance of a Court of Small Causes, because the learned Judge of that Court has cut the ground from under my feet by referring to Section 23 of that Act. There can be no doubt that the present suit was one to which the provisions of that section might reasonably be applied. The learned Judge of the Small Cause Court had, therefore, a discretion to return this plaint under the provisions of Section 23 aforesaid merely on a finding that the relief claimed by the plaintiff would depend upon the proof or disproof of title which a Court of Small Causes could not finally determine. The point to be noticed, however, is that when the Judge of a Court of Small Causes acts under Section 23 of Act IX of 1887, he should be careful to frame his order so as to put this point beyond doubt, because certain legal consequences follow an order under that section which do not follow on an order merely holding that the Small Cause Court

had no jurisdiction in the matter. Not only is there a provision in Clause 2 of Section 23 for saving limitation; but it is also quite clear that the effect of an order under Section 23 is to remove any bar which might otherwise exist by reason of the provisions of Section 16 of the Small Cause Courts Act to a trial of the suit by a Court of ordinary civil jurisdiction. I think it expedient, therefore, to interfere in revision to this extent only, that I direct that the order of the Court below be amended so as to make it clear that the plaint is returned for presentation to a Court having jurisdiction to determine the question of title raised and that this order is passed under the provisions of Section 23 of Act IX of 1887 and not otherwise. The parties will bear their own costs of this application.

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