

ALLAHABAD HIGH COURT

Ram Dayal Sonar

Vs.

Sukh Mangal Kalwar

(Bennet, J.)

05.05.1937.

ORDER

Bennet, J.

1. This is a civil revision by a plaintiff who has a very strange objection, which his counsel cannot explain, to having his case heard by the ordinary civil Court; possibly it may be that he thinks it would be desirable to prevent any right of appeal. He brought a suit for arrears of rent in the Small Cause Court at Basti and the written statement pleaded in the additional pleas that the plaintiff was not the owner of the house in question. On that pleading issue 1 was framed : "Whether the plaintiff is the owner of the house?" On this issue the Small Cause Court has held that the cognizance of the Small Cause Court is barred by Section 23(1), Small Cause Courts Act. That sub-section provides that:

When the rights of a plaintiff depend upon the proof of a title to Immovable property...the Court may return the plaint to be presented to a Court having jurisdiction to determine the title.

2. There is no doubt that as the Court below has framed this issue and the issue does arise on the pleadings, therefore the plaint was properly returned as the Small Cause Court has an option under Section 23 to return the plaint to a Court which can take cognizance of the question of title. It is most inconvenient for the time of a Small Cause Court to be taken up with a case which involves evidence on a point of title. Now learned Counsel for the applicant relied on a ruling of a learned single Judge of this Court reported in *Mahomed Ilyas v. Hari Ram*¹, In that ruling it was urged by the plaintiff that a defendant was estopped from disputing the plaintiff's title under Section 116, Evidence Act, and therefore no question of title had to be decided in the suit and Section 23 did not apply. The learned single Judge of this Court proceeded to try this question of estoppel and held that as the defendant admitted that he had executed the document in favour of the plaintiff stating that he had taken the house from him at a rent of L 20 from a certain date, an estoppel would arise and that the defendant was not allowed then to allege that he had taken the house from the brother of the plaintiff. In the present case learned Counsel desires that I should

hold that there was an estoppel because in para. 1 of the plaint it was alleged that the plaintiff had let the house to the defendant and in para. 1 of the written statement it was stated that para. 1 of the plaint was admitted. The pleading in para. 1 of the written statement is contradictory to the pleading that plaintiff was not the owner of

¹ AIR 1926 All 344

the house and I do not think that the pleading in para. 1 of the written statement was anything more than a clerical error, Counsel also referred to a sentence which was written by the lower Court in regard to costs and which the copy showed as "the plaint is returned but the defendant who is estopped to deny the plaintiff's (sic) title legally is not allowed costs".

3. On examining the record I do not think that the word can be read as "title" and in any case the Court below could not come to a decision on the question of estoppel when it held that it had no jurisdiction to try the case. Learned Counsel also referred to a ruling by a learned Single Judge reported in *Dhani Ram v. Maikoo Lal*², But that ruling did not refer at all to Section 23 although that section has been mentioned in the heading. I see no reason to interfere with the order of the Court below and the rulings in question do not seem to have noticed that the word used in Section 23 is "the Court may at any stage of the proceeding return the plaint". Section 23 apparently does not lay down that the Small Cause Court has not got jurisdiction to determine the question of title to Immovable property, but it gives that Court an option to send a case to a Court having jurisdiction to determine the title, probably on the ground of convenience. For these reasons I dismiss this application in revision. No order as to costs as no one appears on the other side.

² AIR 1925 Oudh 687 : 87 Ind. Cas. 286