

## **BOMBAY HIGH COURT**

Asgarali Roshnalli

Vs.

Kayumalli Ibrahimji

Civil Revn. Appln. No. 1570 of 1953, in Sm. C. C. Suit No. 80 of 1952

(Shah, J.)

01.09.1955

### **JUDGMENT**

**Shah, J.**

1. This revision application is filed against the order passed in Small Cause Civil Suit No. 80 of 1952 by the Civil Judge, Senior Division, at Godhra, in the exercise of his Small Cause Jurisdiction dismissing the plaintiffs' suit for a decree for rent due for the period between the 25-3-1952 to 24-5-1952 in respect of certain premises occupied by the defendant. The plaintiff's claimed that the defendant was their tenant in respect of the premises. The defendant inter alia denied the relationship of landlord and tenant between the plaintiffs and himself. The learned trial Judge held on a consideration of the evidence that there was no relationship of landlord and tenant between the plaintiffs and the defendant. In arriving at the conclusion as to the relationship between the parties the learned trial Judge considered the question, whether the property did really belong to the plaintiffs or it was the property of the plaintiffs' father who had been adjudicated insolvent. The learned trial Judge observed in the course of his judgment that on a consideration of the evidence it appeared to him that the property belonged to Roshanalli, father of the plaintiffs find that 'there was no privity of contract between the defendant and the present plaintiffs, but that it was between Roshanalli and the defendant'. On the view taken by him the learned trial Judge dismissed the plaintiffs' suit. Against the decree passed by the trial Court the plaintiffs have come to this Court in revision.

2. Now the question decided by the learned trial Judge is a pure question of fact, and in exercise of its jurisdiction, under Section 25, Provincial Small Cause Courts Act, 9 of 1887, this Court cannot interfere with the conclusion of the learned trial Judge.

3. Mr. S.M. Shah who appears on behalf of the petitioner has contended that the learned trial Judge has no jurisdiction to embark upon an enquiry as to title even in deciding the question

whether there was a contractual relation of landlord and tenant, between the plaintiffs and the defendant; and in support of that contention Mr. Shah has referred me to a judgment of this Court reported in - '*Hari Bai v. Nathubhai Prabhubhai*<sup>1</sup>', In that case it was held that in a suit to recover possession of land on the expiration of a lease, which was maintainable in the Court of Small Causes only by reason of the amendment made to

<sup>1</sup> AIR 1939 Bom 353

the Provincial Small Cause Courts Act, 9 of 1887 by the Provincial Small Cause Courts (Bombay Amendment) Act 6 of 1930, could not, be tried by the Court of Small Causes when it was sought to be resisted by the defendant on the ground that the lease which was relied upon by the plaintiffs was a hollow one. Mr. Shah says that the principle of that case applies to the facts of the present case, and the learned Judge in the Court below had therefore no jurisdiction to proceed with the hearing of the suit once the defendant raised a contention as to the title of the plaintiffs.

4. I am unable to agree with that contention. The case in - '*Hari Bai v. Nathubhai Prabhubhai*', was expressly decided on the meaning of the expression 'substantial issue' which was found in the Provincial Small Cause Courts (Bombay Amendment) Act 6 of 1930. Prior to the amendment of the Provincial Small Cause Courts Act of 1887 by the Bombay Act 6 of 1930 suits in ejectment by landlords against tenants were not cognizable by the Courts of Small Causes. But by Bombay Act 6 of 1930 an amendment was made to schedule II clause (4) of the Provincial Small Cause Courts Act, 1887, and the Courts of Small Causes were empowered to entertain suits in ejectment where the property has been let under a lease made by a written instrument and the Court of Small Causes was competent to entertain suits for the rent of the property and the only substantial issue arising for decision was as to whether the lease has been determined by efflux of time limited thereby or has been determined by a notice in accordance with clause (h) of Section 111. T. P. Act, 1882. In '*Hari Bai*'s case' the Court took the view following an earlier judgment of this Courts in - '*Jivkore Bai v. Himatlal Girdharlal*<sup>2</sup>', that if an issue was raised by the defendant, which was a substantial issue the lease had been determined by efflux of time limited thereby or has been determined by a notice in accordance with clause (h) of Section 111, T. P. Act, the Court of Small Causes had no jurisdiction to proceed with the hearing of the suit.

5. In the present case the suit is for recovery of the debt due as a result of the contractual obligation; and the principle of '*Hari Bai*'s case' can have no application to the facts of the present case.

6. In - '*Puttangowda v. Nilkanth*<sup>3</sup>', a Pull Bench of this Court took the view that a Court of Small Causes is entitled to decide even questions of title relating to immoveable property provided the suit in form does not ask for a relief relating to title to immoveable property, but for payment of a sum of money. The present case falls precisely within the principle laid down in the judgment of

the Full Bench. in the above case.

7. The rule is therefore discharged with costs.

Rule discharged.

<sup>2</sup>AIR 1936 Bom 98

<sup>3</sup>37 Bom 675 (FB)