

RAJASTHAN HIGH COURT

Alimuddin

Vs.

Mohammad Ishak

Civil Revn. No. 576 of 1970

(C.M. Lodha, J.)

12.07.1973

ORDER

C.M. Lodha, J.

1. This is a plaintiff's revision from the order of the Judge Small Causes Court Jaipur City dated 22-9-1970 by which the learned Judge directed return of the plaint as it involved a serious question as to the title of immovable property. The facts in brief are these :-

2. Smt. Fatma and Md. Sadig obtained a decree for arrears of rent against the non-petitioner Md. Isaff from the Court of Small Causes on 30-7-1968 and thereafter sold the property in question to the present plaintiff Alimuddin on 26-11-1968. Alimuddin filed the present suit for arrears of rent from 26-11-1968 to 28-2-1960. The suit was resisted by the defendant on the ground that Smt. Fatma and Md. Sadie were not the landlords but his landlords in fact were Smt Meena and Muktrar who had previously obtained a decree for arrears of rent against him on 2-8-1968. It further appears that there was some litigation between Alimuddin on the one hand and Fatma and Md. Sadig on the other (Suit No. 45/68 decided on 16-9-1968).

3. On an objection raised by the defendant that the suit was not triable by the Court of Small Causes the learned Judge held that a *bona fide* question of title to immovable property was involved in the case and the determination of the question as to who is really the landlord in the peculiar circumstances of the case, depended upon the proof or disproof of the title to immovable property, in this view of the matter he directed the

return of the plaint for presentation to a Court competent to determine the title.

4. I have heard the learned counsel for the petitioner ex parte, and have come to the conclusion that the discretion exercised by the Court below in returning the plaint appears to be correct. Learned counsel for the petitioner is no doubt right in his contention that if a question of title is incidentally involved for determination of relationship of landlord and tenant, a Court of Small Causes can certainly try such a suit. However under Section 23 of the Provincial Small Cause Courts Act, 1887, a Small Cause Court is given a considerable discretion to return the plaint to be presented to a Court having jurisdiction to determine the title if it considers that the right of the plaintiff and the relief claimed by him in the Court of Small Causes depends upon the proof or disproof of a title to the immovable property or other title which such a Court cannot finally determine. I too, am of the opinion that the present case is a case of that type and the learned Small Cause Court Judge cannot be said to have acted without Jurisdiction or illegally or with material irregularity in exercise of the jurisdiction which he certainly had in returning the plaint No case for interference is made out. The revision is dismissed.

Revision dismissed.