

SMALL CAUSE COURT REFERENCE.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Sale
and Mr. Justice Bodilly.*

RAJENDRA MULLICK

v.

NANDA LALL GUPTA.*

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July 14, 15.

*Small Cause Court Reference—Presidency Small Cause Court, jurisdiction of—
Title suit—Presidency Small Cause Courts Act (XV of 1882) s. 69.*

The Presidency Small Cause Court has jurisdiction to try questions of title which arise incidentally in a suit, and even if such question be the principal, though not the sole one, in the suit, the jurisdiction of the Small Cause Court is not ousted.

To oust the jurisdiction of the Small Cause Court the question of title must be the sole and only one in the suit.

THIS was a reference made by Mr. E. W. Ormond, Officiating Chief Judge, and Mr. C. D. Panioty, 5th Judge of the Court of Small Causes, Calcutta, under s. 69 of the Presidency Small Cause Courts Act.

The plaintiff, Rajendra Mullick, instituted two suits on the 11th September 1903 in the Small Cause Court against the defendant Nanda Lall Gupta, and in both plaints the plaintiff alleged that the defendant was the tenant of the plaintiff at a monthly rent of Rs. 30 under a lease, which terminated on the 31st October 1902, and that he the plaintiff on the 27th October gave the defendant notice to quit. In one suit the plaintiff sues for possession, and in the other suit for damages for wrongful use and occupation for 10 months from November 1902 to August 1903 at the rate of Rs. 30 a month.

The defendant's case was that at the end of October 1902 he had given up possession to the plaintiff, but subsequently had been put into possession of the premises by a third party (a stranger to

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the two suits) under whom he now held and the defendant produced a registered lease from this third party and swore to its execution. The two cases came up for hearing before the 5th Judge, Mr. Panioty, who, without coming to a finding as to whether or not the defendant had given up possession of the premises to the plaintiff or whether the defendant held under the plaintiff or not, ordered the two plaints to be returned under s. 19A of the Presidency Small Cause Courts Act on the ground that the defendant having raised a question of title, this Court had no jurisdiction to entertain the suit.

The two suits then came up upon an application for a new trial before the Full Bench consisting of the Officiating Chief Judge Mr. E. W. Ormond, and Mr. Panioty.

The case as stated for the opinion of the High Court by the Officiating Chief Judge, after setting out the above facts, was as follows :—

It was not suggested either at the hearing or upon the application for a new trial that although this Court might have jurisdiction to try the suit, section 19A of Act XV of 1882 gave the Court a discretionary power to return the plaints on the ground that a question of title was involved. That section apparently only applies where the Court has no jurisdiction to try the suit and gives the Court power to return the plaint instead of dismissing the suit, in order that the plaintiff should not altogether lose the costs of institution. We differed in opinion on the following question of law and consequently we now refer the question for your Lordship's decision, which is as follows :—

Is the jurisdiction of this Court ousted by the defendants raising a question of title in a suit which, according to the case as stated in the plaint, this Court has jurisdiction to try—the question of title being the principal contested matter in the suit ?

The reasons for my view, which is against the above proposition of law, are as follows :—

In my opinion it can make no difference on the question of jurisdiction whether the question of title is one of several issues or whether it is practically the sole contested matter in the case.

The above proposition is open to the objection that, until the defence is put in, a plaintiff would not know whether he is suing in a Court having a jurisdiction or not, a defendant would be inclined to raise a question of title in order to defeat or postpone the plaintiff's claim and the *bond-fides* of the defence would then have to be determined. But I think it is contrary to the intention of the legislature and against the weight of the authorities on the subject.

Courts of Small Causes both in the Mofussil and in the Presidency towns are alike debarred from entertaining "a suit for the determination of any right to or interest in immoveable property;" though the Presidency Courts are given a

jurisdiction in respect of suits for the recovery of possession of immoveable property which the Provincial Courts do not possess; and section 23 of the Provincial Small Cause Courts Act (Act IX of 1887) shows that the legislature intended that a Small Cause Court should have power to try a question of title upon the proof of which the relief claimed by the plaintiff depends:—although a decision on a question of title by a Small Cause Court is not a final determination:—because it is not *res judicata* in a subsequent suit for a declaration of title; and a plaintiff therefore cannot obtain the same relief in this Court as he could in a suit on the title in the High Court.

The present state of the authorities on the question of the jurisdiction of this Court in suits involving questions of title, is shortly as follows:—

They all agree that this Court has jurisdiction to try questions of title that arise incidentally in the suit.

In *Davidas Harjivandas v. Tyabally Abdulally*(1) it is laid down that a defence resting upon an adverse title would oust the jurisdiction of a Presidency Small Cause Court. The case of *Jamnadas v. Bai Shivkor*(2) decided that a Provincial Small Cause Court (which was then governed by Act XI of 1865) had no jurisdiction in a suit for money where the plaintiff's sole object was manifestly to try the title to immoveable property.

In the case of *Vinayak v. Krishnarao*(3) a suit in which the defendant raised an adverse title:—it is laid down that according to the authorities a Small Cause Court can entertain a suit, the principal purpose of which is to determine a right to immoveable property; provided the suit in form does not ask for this relief, but for payment of a sum of money:—even though the effect of a Small Cause Court having such jurisdiction would be to deprive a party of his right to have his claim to immoveable property determined in the High Court upon second appeal. Thus it would seem that the earlier authorities referred to above are no longer law.

But in *Amrita Lal Kalay v. Nibaran Chandra Nayek*(4) it was held that this Court had no jurisdiction to entertain a suit for the recovery of money which had been paid into Court by the plaintiff in order to have a wrongful attachment upon his tiled hut removed;—on the ground that the sole object of the plaintiff in filing his suit was manifestly to try the title to the attached hut and following the case of *Jamnadas v. Bai Shivkor*(2) that it was not a case in which the real object of the suit was to obtain a remedy which the Small Cause Court might properly give and on which a question of title to immoveable property only incidentally cropped up for decision.

The decision of this Court was based upon the case of *Jugdeo Narain Singh v. Raja Singh*(5) and the above case of *Vinayak v. Krishnarao*(3); but neither of these authorities was referred to in the High Court.

The case of *Dina Nath Batabyal v. Adhor Chundra Sett*(6) decided that this Court has no jurisdiction in execution proceedings to entertain a claim for the removal of an attachment upon a tiled hut, being immoveable property.

(1) (1885) I. L. R. 10 Bom. 32.

(2) (1881) I. L. R. 5 Bom. 572.

(3) (1901) I. L. R. 25 Bom. 625, 628.

(4) (1904) I. L. R. 31 Calc. 340.

(5) (1888) I. L. R. 15 Calc. 657.

(6) 4 C. W. N 470.

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The law therefore applicable to this Court is, I think, as follows:—

The character of a suit is to be determined according to the nature of the relief asked for in the plaint, except that if the plaintiff's sole object in instituting the suit is to litigate a title to immoveable property, the suit is to be deemed to be a suit for the determination of a right to immoveable property; and this Court is debarred from entertaining a claim suit in respect of a tiled hut.

I do not think it follows from the decision of *Amrita Lal Kalay v. Nibaran Chundra Nayek*(1) that a defendant can oust the jurisdiction by raising a question of title and making it the principal contested matter in the suit.

The case as stated for opinion of the High Court by the learned 5th Judge, Mr. Panioty, was as follows:—

The reasons for my view, that a defendant can oust the jurisdiction of this Court by raising a question of title which becomes the principal contested matter in the suit, are as follows:—

Practically the only question in issue in the two cases was one of title, *i.e.*, whether the defendant held under the plaintiff or not:—the principle enunciated in *Vinayak v. Krishnarao*(2) making the relief asked for in a plaint the sole criterion of the character of the suit has not been followed by the Calcutta High Court; but on the other hand the recent decisions—of *Dino Nath Batabyal v. Adhor Chundra Sett*(3) and *Amrita Lal Kalay v. Nibaran Chundra Nayek* (1), I think, show that a suit in which the only real contention is a question of title, is not cognisable by this Court and that such question does not arise incidentally only in the suit. The question of title can only be put in issue by the action of the defendant and to my mind the same principle as to the character of the suit must apply:—whether the plaintiff, knowing that the defendant will contest his title institutes the suit with the object of getting a decision on the question of title; or, whether the plaintiff is forced by the defendant into a contest solely on a question of title. In these cases I am unable to say that the sole object of the plaintiff in bringing these suits was to have the title litigated, nor am I able to say whether the defence raised was or was not *bonâ fide*.

On the 15th July 1904 the Reference came on for hearing before the High Court.

Mr. S. P. Sinha for the plaintiff. The question which came before the Small Cause Court for decision was whether the plaintiff was not entitled to maintain his suit under the provisions of s. 41 of the Small Cause Court Act. I submit it is quite clear that the Small Cause Court can go into questions of title. The case of *Mohesh Mahto v. Sheik Piru*(4) goes into the

(1) (1904) I. L. R. 31 Calc. 340.

(3) 4 C. W. N. 470.

(2) (1901) I. L. R. 25 Bom. 625, 628.

(4) (1877) I. L. R. 2 Calc. 470.

question as to whether the question of title is cognisable by the Small Cause Court. All the cases on title are given in the case of *Vinayak Gangadhar Bhat v. Krishnarao Sukharam Adhikari* (1).

The fact that the question of title is raised does not oust the jurisdiction of the Small Cause Court.

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Mr. Garth (*Mr. Chakravarti* with him) for the defendant. I am entitled to have the question of title tried in this Court, and I submit the question of title does not arise incidentally at all.

The question to be tried in the Small Cause Court proceedings was merely, whether he was the owner of the premises. I deny that he is. The suit is on the face of it mainly concerned with the fact that he is the owner. If that is so, it cannot be said that this case arises incidentally. The Small Cause Courts Act, s. 19, cl. 9, says that the Small Cause Court has no power to try any suits relating to land. If the plaintiff can show that he is the owner of the land he can eject the defendant, but he must bring his suit in the High Court. The recent case of *Amrita Lal Kalay v. Nibaran Chundra Nayek* (2) is in all respects the same as the present case. The question of ownership to this land does not arise incidentally: if it did, then the Small Cause Court would have jurisdiction to try the suit.

Mr. Sinha in reply.

MACLEAN C.J. The question submitted to us is this: "Is the jurisdiction of this Court," that is the Small Cause Court, "ousted by the defendant's raising a question of title in a suit which, according to the case as stated in the plaint, this Court has jurisdiction to try, the question of title being the principal contested matter in the suit." It is quite clear that, looking at the plaints, the Court had jurisdiction to try these two suits. It is established by authority that the Court has jurisdiction to try questions of title, which arise incidentally in the suit. It was also apparently the view of *Mr. Ormond*, and this is in favour of *Mr. Garth's* client that, if the question of title is the sole contested matter in the suit, then the jurisdiction of the Small

(1) (1901) I. L. R. 25 Bom. 625.

(2) (1904) I. L. R. 31 Calc. 340, 342.

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Cause Court is ousted. But in this case Mr. Panioty says:—"In these cases," that is the cases under discussion, "I am unable to say that the sole object of the plaintiff in bringing these suits was to have the title litigated, nor am I able to say whether the defence raised was or was not *bond fide*." The question is whether these suits ought to be nipped in the bud as they have been or ought to be tried out. Apparently if the question of title was the sole question in the case, then both the Judges agree that the jurisdiction of the Small Cause Court would be ousted: and in this view we concur. But it has been found that that was not the sole object of these suits. If that is so, although the question of title may be a principal one, if it be not the sole one, I do not think the jurisdiction is ousted. One must bear in mind that it is an easy thing for a defendant to set up a question of title, with a view to ousting the jurisdiction and driving the plaintiff to another tribunal. In the circumstances of the case before us the question referred must be answered in the negative. The costs of this reference will, after taxation in the usual manner, be costs in the cause.

SALE J. I agree.

BODILLY J. I also agree.

Attorney for the appellant: *G. C. Chunder & Co.*

Attorney for the respondent: *Morgan & Co.*

R. G. M.