Narayan Ganesh Vs. Hari Ganesh

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SooperKanoon Citation : sooperkanoon.com/329785

Court : Mumbai

Decided On : Jan-21-1889

Reported in : (1889)ILR13Bom664

Judge : Jardine and; Candy, JJ.

Appellant : Narayan Ganesh

Respondent : Hari Ganesh

Judgement :

Jardine, J.

1. On a careful consideration of the pleadings and the issues originally framed, we are of opinion that the claim stated in the plaint is for the profits' of certain lands, which, the plaint says, the defendant had taken 'without right,' and 'wrongfully.' The same view has been taken by both the Court below. The Subordinate Judge remarks' that 'plaintiff claimed the profits as damages, treating defendant as a trespasser.' The Assistant Judge considered the original plaint to be a 'claim for damages for wrongful occupation, and for injury done to the property.'

2. Afterwards, the plaintiff applied for amendment, electing to treat the defendant as his tenant, and confining his claim to the profits of certain lands, which are specified in a rent-note, of which he had filed copy with his plaint. The Subordinate Judge, without making an amendment, framed two new issues in regard to the relation of landlord and tenant, on the footing of the rent-note. The Assistant Judge was of opinion that, like as the amendment if allowed would have converted the original suit into a suit of another and inconsistent character, so the Subordinate Judge had exceeded the limits of Section 149 of the Civil Procedure Code, the additional issues not being necessary for determining the controversy between the parties. It is admitted that the result was to treat the suit as one brought by a landlord against a tenant for holding over.

3. The first question to be determined is, whether the Subordinate Judge exercised a proper discretion in allowing the additional issues to be framed. The subject is discussed in Nehora Roy v. Radha Pershad I.L.R. 5 Calc. 64 to which the Assistant Judge refers as authority; as also in Damodar Mddhowji v. Purmanandas Jeewandas I.L.R. 7 Bom. 155, where most of the cases are collected by Mr. Justice Scott in his judgment. It is urged in this appeal that the mention in the plaint of the rent-note and the decree obtained thereon in a previous suit, and the answers given to the Court by plaintiff's vakil, did sufficiently raise a claim on the contract of landlord and tenant. We agree however, with the Assistant Judge, that this contract was only, incidentally introduced into the plaint: as already pointed out, the Subordinate Judge took the same view of the plaint. Plaintiff is a pleader, and if he had wished to sue defendant as his tenants it would readily have occurred to him to use clear and appropriate language. We must follow the rule deducible from the cases and thus stated in R. and N. Modhe v. S. Dongre I.L.R. 5 Bom. 609 which also was applied in Damodar Madhowji v. Puramanandas Jeewandas I.L.R. 7 Bom. 161A reasonable amendment not inconsistent with the case as it originally stood can be allowed.' Now, in Newby v. Sharpe L.R. 8 Ch. D. 39 an amendment converting a claim

on the footing of a subsisting lease into a claim on the footing of eviction was held to be an alteration of the nature of the suit. The present is somewhat the converse of that case, and in the absence of authority to the contrary, we hold that the alteration made has an equal effect, and was not authorized by Section 149. We are also of opinion that, under the circumstances of this case, the vagueness of the claim and the nature of the defence the lower Court of appeal was justified in overruling the discretion of the Subordinate Judge--Laird v. Briggs L.R. 19 Ch. D. 28.

4. For these reasons, we confirm the decree, with costs on appellant.