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Ashok Kumar Vs. Sant Singh

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Court : Chhattisgarh

Decided On : Feb-07-2008

Reported in : AIR2008Chh44

Judge : Dilip Raosaheb Deshmukh, J.

Appellant : Ashok Kumar

Respondent : Sant Singh

Disposition : Appeal dismissed

Judgement :

Dilip Raosaheb Deshmukh, J.

1. In this appeal, the appellant/defendant is aggrieved by the judgment and decree dated 4-4-1989 passed by the Second Additional Judge to the Court of District Judge, Raigarh in Civil Appeal No. 9-B/1985 reversing the judgment and decree dated 22-10-1988 passed by the First Civil Judge Class II, Raigarh in Civil Suit No. 80-B/1984 whereby the suit for recovery of Rs. 2,000/- was dismissed.

2. Although, appeal has been admitted on two substantial questions of law, it appears that this second appeal itself is not maintainable in view of the provisions contained in Section 102 of CPC as it stood on the date of filing of appeal i.e. 21-10-1989 and Section 15 of the Provincial Small Cause Courts Act, 1887.

3. Learned Counsel for the appellant was asked to argue. Shri G. D. Vaswani, learned Government Advocate was requested to act as amicus curiae.

4. Arguments were heard.

5. Section 102 of CPC as it stood on 21-10-1989 i.e. the date of filing of second appeal was as under:

102. No Second Appeal in Certain Suits --No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees.

6. Section 15 of the Provincial Small Cause Courts Act, 1887, reads as follows:

15. Cognizance of Suits by Courts of Small Causes--(1) a Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that Schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

7. A plain reading of Section 102 of CPC leaves no room for any doubt that the nature of the suit as disclosed by the plaint is the determining fact. Even though, the present suit for recovery of Rs. 2,000/- is not excepted in the second schedule of the Provincial Small Cause Courts Act, 1887, it remains a suit of the nature cognizable by the Court of Small Causes, but for its valuation.

8. In Venna Padda Kasireddy alias Kasi Reddy v. Yeruva Rami Reddy : AIR 1995 AP332 , S. Parvatha Rao, observed in para 5 as under:

The nature of the suit as disclosed by the plaint is the determining factor. Mr. Sreeramachandra Murthy does not dispute that the present suit is of civil nature and does not fall under any of the items in the second schedule to the Provincial Small Cause Courts Act, 1887 and that its value does not exceed Rs. 3,000/-. Then, I have to hold that it is a suit of the nature cognizable by a Court of Small

Causes. The language used in Section 102, CPC is not that it should be a suit cognized or decided by a Court of Small Causes. It is enough if the suit is cognizable by a Court of Small Causes.

9. In B. Sreeramulu v. K. Venkateswar Rao : AIR 1959 AP92 , the Division Bench of the High Court of Andhra Pradesh held as follows:.It is the nature of the suit and not of appeal that is material for purposes of Section 102, CPC. It is the character of the suit as it was originally framed and presented to the Court and not which it may assume in the course of or after the trial by virtue of the findings of the Court or in the appeal that may eventually be brought that determines the nature of the suit for purposes of Section 102, CPC.

10. A similar view was taken by High Court of Madras in Bapyayya v. Viswa Sundara : AIR1929 Mad389 .

11. In Shah Vardhilal Amritlal v. Bhuralal 0043/1987 : AIR1987 Guj50 . A.M. Ahmadi as His Lordship then was held as follows (para 4):

Section 102 (as it is now) reproduced earlier clearly provides that no Second Appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter thereof does not exceed Rs. 3,000/-. The suit must, therefore, be of the nature cognizable by a Court of Small Causes, the value or subject matter whereof does not exceed Rs. 3,000/- to attract the provision of Section 102 of the Code. It is the nature of the suit that is decisive, no matter whether it is tried by the Court having jurisdiction as a regular suit. The key words are any suit of the nature cognizable by Court of Small Causes which clearly mean that the suit must be one of which the Court of Small Causes could take cognizance; it does not matter that it ultimately came to be tried as a regular suit and not in accordance with the procedure laid down for the disposal of such Small Cause Suits. Merely because the suit was tried in the ordinary manner as a regular suit, it will not cease to be a suit of the nature cognizable by the Courts of Small Causes, for what is important is the nature of the suit and not the procedure employed for the disposal thereof. (See Digambar Mandi v. Valubai : AIR1961 Bom221 . There is no dispute before me that the suit in question being a money suit for a sum not exceeding Rs. 3,000/- would be cognizable by a Court of Small

Causes.

12. In this view of the matter, merely by reason of the pecuniary jurisdiction of the Small Causes Court having been curtailed the nature of suit as one triable by a Small Cause Court, does not change. It is here that the prohibition under Section 102 of the CPC comes into play. Applying the above mentioned principles, the second appeal does not lie.

13. As a result, the appeal is dismissed as not maintainable.

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