

Shiladevi Vs. Bharosilal and ors.

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SooperKanoon Citation : sooperkanoon.com/499702

Court : Madhya Pradesh

Decided On : Jan-07-1977

Reported in : AIR1977MP269; 1977MPLJ186

Judge : C.M. Lodha, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 15 - Schedule - Article 11

Appeal No. : Civil Revn. No. 147 of 1972

Appellant : Shiladevi

Respondent : Bharosilal and ors.

Advocate for Def. : M.A. Shah, Adv. for Opposite Parties Nos. 1 and 3

Advocate for Pet/Ap. : A.R. Naokar, Adv.

Disposition : Application partly allowed

Judgement :

ORDER

C.M. Lodha, J.

1. This revision application by the plaintiff is directed against the order of the Second Additional District Judge, Gwalior empowered to exercise the powers of

Small Cause Court. By the said order, the learned Judge held that the suit was not triable by the Small Cause Court as it was a suit for recovery of interest due on a mortgage and in this view of the matter he dismissed the suit.

2. The plaintiff's case is that the house in question was mortgaged with him by the defendants and the possession of the same was also delivered to him. He goes on to state that after taking possession of the house he leased it out to the defendants on a monthly rent of Rs. 200 after getting a rent note Ex. P-1 executed in his favour. The defendant is alleged to have paid the rent up to Feb. 1970 but not thereafter. Consequently the plaintiff brought the present suit for the arrears of rent from Feb. 1970 to June 1970.

3. The defendants resisted the suit inter alia on the ground that the suit was not triable by the Small Cause Court. The learned lower court relying on AIR 1961 Madh Pra 152 dismissed the suit as being not triable by the Small Cause Court.

4. The learned counsel for the petitioner has urged that the plaintiff has not prayed for enforcement of any right to or interest in immovable property but the suit is for arrears of rent pure and simple. From the contents of the mortgage deed I find that the possession of the mortgaged house was handed over to the plaintiff and it was agreed that the plaintiff would not be entitled to get any interest on the mortgage money but he may recover the rent of the house. Thus it is clear that it was a mortgage with possession. Consequently, the plaintiff was entitled to lease out the house to anybody and recover rent of the same. I am, therefore, unable to understand how the suit is being construed as one for enforcement of any right to or interest in immovable property. The learned counsel for the petitioner has relied on 1964 Jab LJ (SN) 79 where the mortgage deed did not provide for interest being payable by the mortgagors to the mortgagee and it was specifically said that the mortgagors had given possession to the mortgagee and were not liable to pay interest. In such a case where there was a lease back to the mortgagor, it was held, that a suit for recovery of the rent was maintainable in Small Cause Court, which had jurisdiction to entertain a suit for recovery of rent in respect of a house. This ruling undoubtedly supports the petitioner.

5. In AIR 1961 Madh Pra 152 relied upon by the lower court it was held that as the suit was in respect of interest due on mortgage of immovable property, Article 11 of Schedule II of the Provincial Small Cause Courts Act was a bar to the cognizance of the suit by Small Cause Court. With great respect, I am unable to subscribe to this view. The judgment does not contain any discussion on the subject. It is true that the plaintiff in that case came forward with a plea that he was the owner of the house and was forced to state the truth in his deposition that he was a mortgagee with possession. But that does not make any difference as to the nature of the suit brought by him. For the purpose of decision of the question of jurisdiction of the Small Cause Court to entertain the suit it is wholly immaterial whether the amount of rent was in lieu of interest on the mortgage money, I am, therefore, clearly of the opinion that the present suit was entertainable by the Small Cause Court and the court below had wrongly dismissed it. Since it has not dealt with the merits of the suit at all, the case will have to be remanded.

6. Accordingly I partly allow this revision application, set aside the judgment and decree by the court below and send the case back to the Small Cause Court, Gwalior for disposal of the suit on merits. The costs of this revision will be easy. Costs hereafter will abide the result.