

Lakshmi Devi Vs. Muthralal

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Court : Rajasthan

Decided On : Apr-18-1952

Reported in : AIR1952Raj188

Judge : Wanchoo, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 144; Rajasthan Small Cause Courts Ordinance, 1950 - Schedule - Article 2; [Provincial Small Cause Courts Act, 1887](#) - Schedule - Article 2

Appeal No. : Civil Revn. No. 158 of 1951

Appellant : Lakshmi Devi

Respondent : Muthralal

Advocate for Def. : B.B. Desai, Adv.

Advocate for Pet/Ap. : Shiv Lal Porwal, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Wanchoo, C.J.

1. This is a revision by Mt. Lakshmi Devi in a Small Cause Court matter. A suit was brought by Muthra Lal for recovery of Rs. 200/- in the following circumstances. The applicant Mt. Lakshmi Devi had brought a suit against Dr. Onkar Lal and others. In that suit, she had to file security and Muthra Lal stood surety for the applicant for the sum of Rs. 200/-. Mt. Lakshmi Devi lost that suit and there was a decree of costs to the extent of Rs. 203/- against her. In execution of that decree Muthralal had to pay Rs. 200 to the decree-holders as he had stood surety for costs. After this amount had been paid, Muthra Lal wanted Mt. Lakshmi Devi to repay him the money. She refused to do so & consequently this suit was brought by Muthra Lal in the Small Cause Court, Udaipur. The suit has been decreed and hence this revision.

2. The first point that has been urged is that the amount of Rs. 200/- has been paid back. That is, however, a question of fact and the trial court came to the conclusion on a consideration of the evidence that the amount had not been paid back. I see no reason to differ from the trial court in this matter.

3. The second point that has been urged is that the decree of costs has been set aside and the applicant is taking action under Section 144 of the Code of Civil Procedure. Therefore, the suit was premature and Muthra Lal had no cause of action. I do not see how it can be said that the suit is premature and Muthra Lal has no cause of action, even if the applicant is taking action under Section 144 of the Code of Civil Procedure in view of certain orders of the appellate court. Muthra Lal's cause of action arose because the amount of Rs. 200/- was realized from him. He has not got back that money after the order of the appellate Court. Further, he cannot apply under Section 144 of the Code of Civil Procedure. Under these circumstances, Muthra Lal has a cause of action and the suit is maintainable.

4. The last point that has been urged is that the suit is not cognizable by the Small Cause Court and reliance in this connection is placed on Article 2 of the Schedule to the Rajasthan Small Cause Courts Ordinance, 1950 (Ordinance No. VIII of 1950). That article reads as follows:

'A suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his

office.'

5. The contention of the applicant is that this suit concerns an act which has been done in pursuance of an order of the court, namely, the order as to giving of security and the order as to payment of the amount secured. Stress is laid on the word 'concerning' and it is urged that that word is of very wide import and any suit which concerns in any way an act done by any person in pursuance of a judgment or order of a court is excepted from the cognizance of the Court of Small Causes.

Learned counsel for the respondent, on the other hand, urges that if the suit in any way challenges the act which is purported to have been done in pursuance of a judgment or order of a court, then only its cognizance is barred by a court of small causes. Where, however, the suit does not challenge the order, and in the present case, the plaintiff Muthra Lal does not in any way challenge the order, Article 2 does not apply and the suit is cognizable by the Court of Small Causes.

6. The first case on the point is -- 'Balwant Singh v. Har Jas', AIR 1927 All 27. That was a suit by a Supraddar and arose in the following circumstances. In execution proceedings, the crops of the judgment-debtors were attached and made over to a Supraddar. When the Amin went to sell the crops, it was found that the Supraddar had made them over to the judgment-debtors- The execution court then asked the Supraddar to deposit Rs. 75/- for having permitted the attached property to be made over to the judgment-debtors without the order of the court. The Supraddar did so and thereafter filed a suit for Rs. 75/- primarily against the judgment-debtors. But he also impleaded the decree-holder praying for relief against whichever defendant the court deemed fit. It was found that there had been a compromise between the decree-holder and the judgment-debtors in the execution proceedings and the decree-holder had been paid Rs. 75/- and the Supraddar had been told about this and, therefore, returned the crops. Subsequently the decree-holder played false and realized another sum of Rs. 75/- from the Supraddar. The Court passed a decree in these circumstances against the decree-holder. The question then arose whether the suit was cognizable by the Court of Small Causes,

The learned Judge observed that the suit undoubtedly concerned an act done by the plaintiff in pursuance of an order of a court, namely the deposit of Rs. 75/-. Learned counsel for the respondent however points out that in that case the decree-holder was a party and the order, therefore, depositing the sum of Rs. 75/- was challenged. But it must be pointed out that that was not the basis of the view taken by the learned Judge in that case and the decision turned on whether the suit concerned an act done by a person by order of the court. Article 2 appears to be very widely worded and the present suit does appear to concern an act done by the plaintiff, opposite party under the order of the court.

7. The next case is -- 'Kuthala Mudaliar v. Venkata Reddiar', AIR 1927 Mad 253. That was a suit by an auction-purchaser for refund of the purchase money by reason of his dispossession under the orders of the Collector. The suit was apparently filed on the regular side. There was an appeal to the District Judge and a second appeal to the High Court. It was urged that there could be no second appeal in view of Section 102 of the Code of Civil Procedure as the suit was of a Small Cause Court nature. It was, however, held that the suit fell under Article 2 of the Schedule and therefore, a second appeal lay. There is some discussion in the judgment as to whether the first defendant was a party to the suit or not and it appears as if something might have turned on this fact. But the Court held that the first defendant was a party and Article 2 applied and therefore, the second appeal lay. There is nothing in this case, however, to support the contention of the learned counsel for the opposite party that the order has to be challenged before Article 2 applies.

8. The next case is -- 'Mangal Singh v Bishen Singh', AIR 1928 Lah 515. That was a suit for refund of money paid as price for goods by a purchaser of stolen property who had been deprived of the goods by the police under the orders of the Sessions Judge for returning them to the owner. It was held that the suit could be tried by a Court of Small Causes. In that case, the defendants had sold certain ornaments to the plaintiff. Later those ornaments were found to be stolen property. They were then ordered to be returned to the real owners. The plaintiff then filed a suit against those who had sold the ornaments and also against the real owners for recovery of the amount which he had paid to those who had sold the

ornaments. The suit was decreed and there was an appeal by the real owners and the question arose whether the appeal could be dealt with by the senior Subordinate Judge. He could only do so if the suit was of a Small Cause Court nature; otherwise the appeal would lie to the District Judge.

The senior Sub-judge held that Article 2 applied and he could not hear the appeal. Thereupon there was a revision to the High Court. Though Article 2 is mentioned in the judgment, the discussion is all about Article 3. However, Article 3 also is in the same words as Article 2 and Article 3 was not held to apply to this case. It is difficult to see how the suit did not concern an act or order purporting to be done or made by an officer of the Government in his official capacity. Obviously the suit concerned such an order as it arose out of the delivery of the ornaments to the real owners in pursuance of an order of the Sessions Judge. The learned judge observed that 'the suit did not in any way intend to alter or set aside any judicial decision'. But the words in Article 2 or Article 3 are not 'altering or setting aside any judicial decision' but only 'concerning an act or order'. The word 'concerning' is much wider than the words 'altering or setting aside'. Further as the real owners were made, it could also be said that the suit challenged the order.

9. The next case is -- 'Ram Anand Singh v. Kheedoo Singh', AIR 1933 Oudh 146. That was a suit filed in the Small Cause Court. The defendant of that suit and another person had purchased a certain Zamindari which was subject to a mortgage in favour of the defendant and a third person. It was arranged that the other purchaser should pay half the purchase price partly to the third person who was the other mortgagee and partly to the vendors. The defendant, as he was also one of the mortgagees, retained out of his half share of the money the part due on the mortgage and was to pay the remainder to the vendor. Then there was a pre-emption decree and also a mortgage decree. This mortgage decree was put into execution and a sum of money was realized from the pre-emptors. Thereupon the pre-emptors filed a suit in the Court of Small Causes for refund of the interest which had been realized from them in execution in respect of the period preceding the date on which their possession began. It was urged that such a suit did not lie in a Small Cause Court in view of Article 2. The learned Judge, however, held that Article 2 did not apply as the suit was one for damages for money paid by the

plaintiffs for which the defendant was liable. There was, however, no consideration of the terms of Article 2 in this judgment and it is, therefore, not very helpful.

10. The last case is -- 'Subraya Bhatta v. Govinda Bhat', AIR 1950 Mad 33. That was a suit in which the plaintiff wanted to recover back the amount paid by him under a decree passed against him in a former suit. It is argued when the matter came to the High Court that no second appeal lay as it was barred under Section 102 of the Code of Civil Procedure as the suit was of a Small Cause Court nature. It was, however, contended on behalf of the appellant that the suit was covered by Article 2 of Schedule II, Provincial Small Cause Courts Act which is in the same terms as Article 2 of the Rajasthan Ordinance and, therefore, a second appeal lay. It was held that that article did not govern cases of parties to previous decrees but referred only to cases concerning orders to ministerial officers or third persons. This case is, therefore, not relevant because the plaintiff Muthra Lal was not a party to the litigation but was a third person.

11. On a review, therefore of these authorities and taking into account the wide language of Article 2, it seems to me that the intention of the legislature is that suits which concern acts purporting to be done by any person who is not a party to the suit in pursuance of a judgment or order of a court are excepted from the cognizance of Small Cause Court. The present is a suit of that kind and is therefore, excepted under Article 2 and should have been filed on the regular side. I, therefore, allow the revision, set aside the decree of the trial court and order that the plaint will be returned for presentation to proper court. Parties will bear their own costs of this Court. Costs of the trial court will abide the final result.