

Pukhraj Vs. Mohammed Ali

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Court : Rajasthan

Decided On : Apr-05-1957

Reported in : AIR1957Raj279

Judge : Modi, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 25 - Schedule - Article 8; Rajasthan Small Causes Courts Ordinance, 1950 - Schedule - Article 8

Appeal No. : Civil Revn. No. 98 of 1953

Appellant : Pukhraj

Respondent : Mohammed Ali

Advocate for Def. : Kedarchand, Adv.

Advocate for Pet/Ap. : Sohanlal, Adv.

Judgement :

ORDER

Modi, J.

1. This is a revision by the defendant Pukhraj against the judgment and decree of the Small Cause Court Judge, Jodhpur, by which he decreed the plaintiff's suit.

2. The plaintiff carried on business of supplying bicycles on hire. His case is that on 1-4-1952, the defendant took out a bicycle from him on hire and failed to return it. In fact, according to the plaintiff, the defendant had reported on that very day that the bicycle had been lost. Thereafter the plaintiff gave a notice on 6-5-1952, to the defendant to pay the price of the lost bicycle; but as the defendant gave an evasive reply, the plaintiff brought the present suit on 29-10-1952, in which he claimed back the bicycle or in the alternative a sum of Rs. 154 as price of the bicycle, and a sum of 0-7-6 as notice expenses and a further sum as future rent from the date of the suit to the date of delivery of the bicycle or its price at the rate of Re. 1/- per day. The defendant totally denied the claim. The Small Cause Court Judge held that the plaintiff had succeeded in proving his case and, therefore, decreed the suit for Rs. 125/- as price of the bicycle plus -7/6 by way of expenses for the notice and he further allowed two annas per day as hire from the date of the suit till the date of realisation. The defendant has come up in revision against the above judgment and decree.

3. The first and the foremost question raised by learned counsel for the defendant in this Court is that the plaintiff's suit was not of a nature cognizable by the Small Cause Court. In support of this contention he relies on Article 8 of the Schedule of the Rajasthan Small Cause Courts Ordinance (No. VIII) of 1950. This Article reads thus :

'a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly Invested by the Government with authority to exercise Jurisdiction with respect thereto.'

It is not the case of either party that the Judge of the Small Cause Court, Jodhpur, was expressly invested by the Government with any authority to exercise jurisdiction with respect to suits for the recovery of rent, and, therefore, the question for determination is whether the present suit is one for recovery of rent, and if it is of that kind, then It must stand excluded from the cognizance of the Small Cause Court.

4. Now, the word 'rent' has not been defined in the Rajasthan Small Cause Courts Ordinance or the Rajasthan General Clauses Act. Learned Counsel for the

defendant petitioner, therefore, argues that the word 'rent' must be given the widest dictionary meaning of which it is capable, and according to this meaning the word 'rent' in modern days is used not with reference to immovable properties only but is more widely employed, as for example with reference to the payment received for the use of machinery. My attention has been invited in this connection to the meaning of the word 'rent' given in the Oxford English Dictionary Vol. 8 page 451, in particular, where it is said that in modern use the term 'rent' covers a sum paid for the hire of machinery etc. for a certain time. It may, however, be pointed out that primarily the term 'rent' connotes the return or payment made by a tenant to the owner or landlord at certain specified or customary times, for the use of lands or houses, which is the meaning expressed in the aforesaid dictionary just preceding the reference on which learned counsel for the defendant relies. Turning next to the New International Dictionary, Volume 2 by Webster, Second Edition, Page 2110, we find that the meaning given to this word in the departments of commerce and law is the return made by the tenant or occupant of land or corporeal hereditaments to the owner for the use thereof. The word also bears a further meaning according to which it is used for the return made by a hirer or user of personal property, as farming stock, machinery etc. to the owner for the use thereof whether combined with rent for land or not. Wharton's Law Lexicon defines the word 'rent' at page 866 (Fourteenth Edition) as : 'a certain profit issuing yearly out of lands and tenements corporeal.'

5. From the dictionary meanings cited above, it seems to me to be more or less clearly established that although the use of the word 'rent' in modern times is not confined to payment received for the use of immovable property only and it is used in connection with movables also, the primary meaning of the term is properly referable to a payment for the enjoyment of immovable property only. I am disposed to think that it is in this latter sense that the term has been used in Article 8 in the Provincial Small Cause Courts Act (No. IX of 1887) or its counterpart in this State, namely, the Rajasthan Small Cause Courts Ordinance 1950. To my mind, the precise place of this article in the Schedule is not without significance and also furnishes some indication of the sense in which the word 'rent' has been used by the Legislature in this article. Article 8 occurs in the series of articles which provide for the exclusion of certain suits relating to immovable property from

the cognisance of Small Cause Courts. Thus, when we look at the schedule we find that Article 5 relates to a suit for the partition of an immovable property, and Article 6 refers to a suit for the foreclosure or sale or redemption of immovable property. Then follows Article 7 which relates to suits for the assessment, enhancement, abatement or apportionment of the rent of immovable property, and then follows Art, 8 with which we are concerned, which deals with suits for recovery of 'rent' other than house-rent. The next Article 9 relates to a suit concerning the liability of land to be assessed to land revenue. In the context in which Article 8 appears in the Schedule, therefore, I am inclined to come to the conclusion that although the word 'rent' has been used therein without any qualifying phrase such as indicating its connection with immovable property unlike the preceding article No. 7, what the Legislature obviously intended was that the word 'rent' as used in Article 8 was to bear the same meaning which that word carries in Article 7. If this is the sense in which the word 'rent' has been used in Article 8, it must follow that what that Article rightly excludes from the purview of the Small Cause Court is a suit for the recovery of rent relating to immovable property other than house-rent; and suits for rent, or as I might preferably put it, 'suits for hire' relating to movables rightly fall within the Jurisdiction of a Small Cause Court.

6. It may not be illegitimate in this connection to draw attention to the meaning attached to the word 'rent' in Section 105 of the Transfer of Property Act also. After defining the term 'lease of immovable property' the section goes on to say that the money, share, service, or other thing to be rendered periodically or on specified occasions by the transferee to the transferor is called the 'rent'. This again shows that the word 'rent' is primarily used with reference not to movables but to immovable property.

7. Lastly, if we turn to the Indian Limitation Act, we have Article 50 which prescribes a three years' period of limitation for suits for hire of animals, vehicles, boats or household furniture while the Legislature has enacted Article 110 to provide separately the same period of limitation for suits in connection with arrears of 'rent'. The important thing to note is that the Legislature did not consider it necessary to qualify the word 'rent' by saying that the Article is concerned with rent

in respect of immovable property. This Article admittedly refers to a suit for rent, that is, money payable by a tenant to a landlord with respect to certain land or building or other immovable property. I am of opinion that the manner in which the Legislature has used the word 'rent' in the Limitation Act lends considerable support to the conclusion at which I have arrived above.

8. Learned counsel for the defendant has referred me to *Sri Ram v. Nand Kishore*, AIR 1925 Lah 196 (A), *Indal v., Debt*, AIR 1926 Nag 174 (B) and *Bandi All Fakir v. Amud Sarkar*, AIR 1915 Col 135 (C), in support of the wider meaning which he seeks to place on the word 'rent'. A perusal of these cases clearly shows, however, that all of them related to immovable property and the precise question which was debated in those cases was as to the character of the dues claimed that is, whether they amounted to rent or something else, e. g., a license fee or damages for use and occupation or for breach of a contract. These cases, therefore, do not throw any light on the question canvassed before me. There are two cases on the other side which have relevance to the point for decision before me, and these are *Mg. Kywe v. Mg. Kala*, AIR 1927 Rang 94 (D) and *Radhakishen v. Sona Khandi*, AIR 1952 J & K 15 (E). Both these cases have adopted the view which I have felt persuaded to accept. My conclusion, therefore, is that the word 'rent' as used in Article 8 of the Schedule, properly speaking, relates to rent for immovable property only and has not been used to cover suits relating to hire for movables.

In this view of the matter, the present suit which relates to the recovery of hire for a bicycle apart from other reliefs does not fall within the four walls of the article in question, and consequently, I hold that the Small Cause Court Judge had jurisdiction to try it.

9. It was next contended before me that the learned trial Judge had come to a wrong conclusion on the facts that the defendant had hired out a bicycle as alleged by the plaintiff. This is a question of pure fact, and all I need say is that no case whatsoever has been made out for any interference with the conclusion of the trial Court which was in a far better position to Judge the credibility of the oral evidence having had an opportunity to hear and see the witnesses, which

opportunity is denied to this Court. I consequently overrule this contention.

10. The third and the last point raised is that the trial Court was wrong in passing a decree for future hire from the date of the suit till the date of realisation. This decree, to my mind, was not warranted in the circumstances of the case, and it is not necessary for me to pursue the point as learned counsel for the plaintiff respondent frankly concedes that he is not prepared to press and support this part of the decree awarded by the trial Court.

11. The result is that I partially allow this revision, modify the decree of the Court below and hereby direct that that part of the decree which relates to the award of future rent shall stand dismissed but the rest thereof is affirmed. I leave both parties to bear their own costs in this Court.

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