

In Re: Ramaswamy Mudaliar

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Court : Chennai

Decided On : Dec-07-1956

Reported in : AIR1957Mad673

Judge : Somasundaram, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 3 and 15 (3) - Schedule - Articles 11 and 35; Madras Civil Court Act, 1873 - Sections 28

Appeal No. : Civil Revn. Petn. No. 1570 of 1956

Appellant : In Re: Ramaswamy Mudaliar

Advocate for Pet/Ap. : R. Krishna Ayyar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Somasundaram, J.

1. This is a revision against the decree passed by the Subordinate Judge of Cuddalore in S. C. S. No. 251 of 1955. The suit was for recovery of damages being the price for the purchase of property from the defendant, as he had been dispossessed by the rightful claimant, the claim being recognised by a decree of court. This is a plain and simple suit for damages and the lower court has given a

decree in favour of the plaintiff. It is against this decree that this revision has been filed by the defendant

2. The point, that is raised before me, is that the Small Cause Court has no jurisdiction, because under Article 11 of the 2nd schedule of the Provincial Small Cause Courts Act, 9 of 1887, the Small Cause court has no jurisdiction to entertain a suit of this nature. Article 11 of the 2nd schedule is as follows:

'A suit for the determination or enforcement of any other right to or, interest in immoveable property.'

In plain language the suit must be one to determine the right or to enforce the right or interest in any immoveable property. In this suit there is no prayer to determine the right or enforce the right, or interest in any immoveable property. The right has been enforced and determined in the previous suit as a result of which this suit has been filed for damages. This does not therefore involve the determination or enforcement of any other right to or interest in immoveable property. In support of his contention the learned counsel, who appears for the petitioner, relies on the decision in *Tirupaliraju v. Vissam Raju*, ILR 20 Mad 155 (A). That is a suit where the land was compulsorily acquired under the Land Acquisition Act for the purpose at the East Coast railway and the compensation was fixed at a certain amount. A conflict arose as to the right to receive the compensation, and the District court having declined to determine it under the Land Acquisition Act, Section 15, an inter-pleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif. A Bench of this court consisting of Subramania Aiyar and Davies JJ. held that the inter-pleader suit was not within the jurisdiction of a Provincial Small cause court. In my opinion this decision has no bearing on this case. The other decision that is relied upon by the learned counsel is *Ayub Haji v. Jainuddin* : AIR1926 Bom362 . There the suit was for compensation for cutting the trees. It was a suit filed under Article 35 of the second schedule to the Provincial Small Cause Courts Act 9 of 1887. Article 35 of the Second Schedule is as follows:

'A suit for compensation (a) for loss occasioned by the death of a person caused by actionable wrong, (b) for wrongful arrest, restraint or confinement, (c) for

malicious prosecution, (d) for libel, (e) for slander, (f) for adultery or seduction, (g) for breach of contract of betrothal or promise of marriage, (h) for inducing a person to break a contract made with the plaintiff, (i) for obstruction' of an easement or diversion of a water course.....' I do not see how the compensation for cutting trees could ever fall under Article 35 of the second schedule and how that case has any bearing on this case. The contention of the learned counsel for the petitioner that the small cause court has no jurisdiction to entertain the suit under Article 11 or Article 35 of the second schedule of the Act fails.

3. Another point that was not taken in the trial court at all but is taken here for the first time in this court. That is the Madras Government has no jurisdiction to raise the pecuniary jurisdiction of the small cause court to a sum above Rs. 1000. as under Section 15(3) of the Provincial Small Cause Court Act no provincial Government shall enhance the pecuniary jurisdiction of the court above Rs. 1000. The Provincial Small Cause Courts Act is an Act of 1887, whereas the Civil Court Act of the State is one of 1873. Under Section 3(c) nothing contained in the Provincial Small Cause Courts Act should be construed to affect any local law or any special law other than the Code of Civil Procedure. Therefore, what is contained in the Provincial Small Cause Courts Act of 1887 does not affect the power that is given to the local Government to raise the jurisdiction. As already pointed out, this point was not taken in the trial court. In the grounds in the petition also it has not been taken in this form. It is said to be covered by the general ground that the decision of the trial court is without jurisdiction. It need hardly be stated that this is an after-thought for the purpose of getting this revision petition admitted. I do not find any substance in it the civil revision petition is dismissed.