
(1919) 06 PAT CK 0003

Patna High Court

Case No: Letters Patent Appeals Nos. 30 to 45 of 1918

E. Milne

APPELLANT

Vs

Jagmohan Gareri

RESPONDENT

Date of Decision: June 20, 1919

Citation: (1919) 06 PAT CK 0003

Final Decision: Dismissed

Judgement

Sir Thomas Fredrick Dawson Miller, Kt., C.J.

In this case the plaintiff brought a suit before the Munsif at Arrah claiming from a large number of defendants various sums for what is described as murtafa or house and shop-rent according to the plaint. When the case came before the learned Massif, the defendants amongst other defences contended that the ordinary Courts had no jurisdiction to try the case because the claim was for a sum under Rs. 500 and, therefore, the case was properly triable by a Small Cause Court. The question then arose whether within the meaning of Schedule II, Article 8, of the Small Causes Courts Act what was really claimed in this suit was house-rent or not, because although the Small Cause Court would have jurisdiction to try oases up to the amount claimed here, still if it was a suit for recovery of rent other than house rent, then the jurisdiction of the Small Cause Court was ousted and the case was properly brought before the Munsif. The Munsif came to the conclusion that he had no jurisdiction to try the case because according to such evidence as was before him, it seemed to him clear that the claim was in fact one for house-rent. His reasons for arriving at that conclusion were that the claim was so described in the plaint and, secondly, that the plaintiff's own Patwari in giving evidence said that the rent was realised on the houses of the tenants and that this applied whether the tenants actually built their own houses or whether they did not. The Munsif, having come to the conclusion that be had no jurisdiction to try the suits, instead of returning the plaints to the plaintiff, went on, in the event of his finding on this question being disagreed with by a higher Court, to determine the case on the merits, and eventually on the merits he dismissed the suit against all the defendants.

2. The matter then went on appeal to the Subordinate Judge and he dealt with this question of jurisdiction in a very summary manner. All he said about it was this: "It is clear that murtafa rent is rent for homestead lands which defendants occupy in plaintiff's Zamindari. Such suits are not cognizable by Small Cause Courts, unless there is an officer specially empowered to try suits for homestead rents under Small Cause Court procedure, vide Article 8, Schedule VI, of the Small Causes Courts Act. Under the circumstances I hold that the lower Court had jurisdiction to try these suits." That was all he said about it. Then he deals with the case on the merits and he allows the claim against a number of the defendants, either on the ground that they had not appeared and the plaintiff had made out a prima facie case or on the ground that the survey khatian showed that the plaintiff was entitled to recover this rent, whatever the nature of it might be. In other oases where the survey Khatians were not in favour of the plaintiff, he dismissed his claim against some of the defendants.

3. The plaintiff appealed to this Court and when the matter came before the learned Judge, he came to the conclusion that on the first point raised by the defendants, viz., that of jurisdiction, the Munsif was right and that, therefore, neither the Munsif nor the Subordinate Judge had any jurisdiction to try the case. His reasons for arriving at that conclusion were that looking at the plaint and looking at the evidence in the case, because that is all there was to go on, it was quite clear either that what was claimed was in fact house-rent or else some sort of tax leviable by the landlord on the tenants, which was neither house nor land tax but a sort of poll tax or something of that sort which he either lawfully or unlawfully demanded from them. But in the event of an appeal and his decision being overruled on that point, the learned Judge considered the merits and he came to the conclusion on the merits that the plaintiff ought not to succeed.

4. It seems to me that the learned Judge of this Court was quite right in holding as he did that the Munsif's Court had no jurisdiction to try the case. The claim is framed as one for house-rent, and the evidence in the case seems to show that this is a tax or rent leviable in the nature of house-rent and that it is imposed upon the tenants in respect to the houses which they actually occupy. They are small houses or shops occupying a small plot of land and the tenants no doubt from time to time change and new tenants come in. What exactly were the terms of the agreement between any of the individual tenants in his case and the landlord we have no evidence to show, but the only evidence there is before the Court seems to me clearly to indicate that the tax or rent demanded is either a house rent or, as the learned Judge described it, a tax. In either case the proper Court in which to institute this suit was the Small Cause Court. Therefore, we think that this appeal must be dismissed. It is unfortunate that this case should have gone through no less than three Courts before coming here, and it is unfortunate also for the defendants that they have succeeded in all three Courts on the merits but they themselves raised this question and even if they did not, it seems to me that it would have been impossible if the question were raised, to decide otherwise than that the Court had no jurisdiction. Therefore, the appeal will be dismissed with costs here and in all the Courts below. This judgment will

govern Letters Patent Appeals Nos. 30 to 45 which, although they are separate suits, have all been tried together and are before us now together and have been the subject of the present judgment. The hearing fee in respect of the whole 16 cases is assessed at double the ordinary amount. The cross-objection is dismissed.

L.C. Adami, J.

I agree.