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**(1928) 12 BOM CK 0024**

**Bombay High Court**

**Case No:** None

Anandsing Suratsing

APPELLANT

Vs

Lakhesing Pratapsing

RESPONDENT

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**Date of Decision:** Dec. 12, 1928

**Citation:** 117 Ind. Cas. 447

**Hon'ble Judges:** Amberson Marten, C.J; Murphy, J

**Bench:** Division Bench

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### **Judgement**

1. The plaintiff sued to recover Rs. 279 as rent due on a lease executed by the defendant on April 29, 1921. The defendant contended that, though he had executed the lease, it had been obtained from him fraudulently, and that he was not liable for the amount claimed by the plaintiff.

2. The learned Subordinate Judge held that the plaintiff had proved the lease, and ordered the defendant to pay the plaintiff the amount claimed and costs, and further interest at six per cent. per annum on Rs. 225 from the date of the suit until payment, by annual instalments of Rs. 75 each, to be paid from the January, 1928. The point taken in this revision application is that the defendant in the suit had, in fact, pleaded that he had been induced to execute the lease by fraud, and the principal piece of evidence he relied on to prove the fraud was that the two survey numbers which he is said to have leased were actually his own property, and it was argued that if he had been allowed to show that this was so, it would prove the fact of fraud, for no sane person is likely to execute a lease of his own land in favour of another person.

3. The learned Subordinate Judge had held on the point that the issue sought to be raised by the defendant involved questions of title and that as the suit before him was being tried as a Small Causes Court one, he had no jurisdiction to go into such questions. He, therefore, refused to consider the defendant's plea as to the ownership of the land, and holding that the lease had been duly executed, and that the defendant had failed to prove any fraud practised on him, passed the decree in question. We think, however, that

in so thinking the learned Subordinate Judge was wrong. It does not necessarily follow that because a Small Causes Court has no jurisdiction to decide questions involving a right to Immovable property, it is bound to refuse to consider any question of title which is raised before it. It has been held, in the case of Bapuji Raghunath v. Kuvarji Edulji Umrigar 15 B. 400, that when a suit is brought in a form cognizable by a Court of Small Causes, that Court cannot decline jurisdiction, because a question of title to Immovable property is incidentally raised. It is true that that case is not quite on all fours with this one, but there is another case of Puttangowda v. Nilkanth 37 B. 675 where the plaintiff sued to recover Rs. 12 being the price of trees felled by the defendant on land which was claimed by the plaintiff. The defendant contended that he was the owner of the land and that the trees belonged to him. The Subordinate Judge held that the land was plaintiff's and decreed his claim. On appeal the District Judge decided that the land belonged to the defendant and, therefore, the plaintiff's claim for the value of the trees failed. The plaintiff applied to the High Court contending that the suit being of a Small Cause nature, the District Judge had no jurisdiction to entertain an appeal. On a reference being made to the Full Bench to decide the question whether the suit was cognizable by a Court of Small Causes or not, it was held that in the circumstances of the case the suit was one cognizable by a Court of Small Causes. A Court of Small Causes, the head-note states, can entertain a suit, the principal purpose of which is to determine a right to Immovable property, provided the suit in form does not ask for this relief, but for payment of a sum of money.

4. In the case, with which we are now concerned, the question of title was incidental, for the defendant wished to go into it merely in order to prove that he had been induced to sign the lease by means of fraud, and not to prove his actual title to the land. We think that the learned Subordinate Judge's refusal to consider the question of title, even incidentally, has prejudiced the defendant, who has not been allowed to make out the plea on which his defence depended, and consequently that the learned Subordinate Judge's decree must be set aside.

5. The revision application is, therefore, allowed, the Rule is made absolute, the original Court's decree is discharged, and the case is remanded to the lower Court to be decided according to law, with liberty to the applicant to adduce evidence in support of his alleged title to the land and for the plaintiff to call rebutting evidence. The Subordinate Judge will decide on the whole evidence in the ease new and old. Costs of the suit up to the original trial will be costs in the cause. The opponent to pay the costs of this application.