

(1926) 02 BOM CK 0040

Bombay High Court

Case No: None

Ayub Haji Suleman

APPELLANT

Vs

Jainuddin Gulamalli Maulvi

RESPONDENT

Date of Decision: Feb. 10, 1926

Acts Referred:

- Provincial Small Cause Courts Act, 1887 - Section 35

Citation: AIR 1926 Bom 362 : 95 Ind. Cas. 270

Hon'ble Judges: Macleod, C.J

Bench: Division Bench

Judgement

Macleod, C.J.

The plaintiff sued to recover compensation for his mango trees unlawfully cut by the defendant, valuing the claim at Rs. 100. The defendant alleged that he was the owner of the trees and the plaintiff was not the owner, and had never been in possession. He admitted that he had cut the trees. The issues were:

1. Does the plaintiff prove his title to the trees in dispute? 2. Does he prove that he was in possession of them within twelve years before suit? 3. What amount, if any, is he entitled to recover for damages in respect of the same?

2. No issue was raised whether the Court had jurisdiction to try the case, and there is no dispute with regard to the facts. The plaintiff purchased the trees without the land, in 1898, by a registered sale-deed. Three years before suit the defendant, who had recently come to reside in the village, purchased the land on which these trees stood by a registered sale-deed. He made no enquiry by searching the Sub-Registrar's office to see whether the trees had been sold to anybody before. In ordinary circumstances, a purchaser will not be put on notice to discover whether the trees on the land which he intends to buy have been sold already to somebody else. The general rule is that the trees go with the land.

3. But, apparently in some districts in this Presidency, it is recognized that owners of land, including the trees thereon, part with the ownership of the trees without parting with the ownership of the land, with the result that disputes arise with regard to the ownership of the trees, and litigation follows as in this case. The plaintiff was able to prove that he used to take the fruit of the three trees in suit up to the time that they were cut by the defendant. Therefore, on the evidence, it is clear that however unlawfully the defendant cut down plaintiff's trees so that he would be liable to an action for damages, the question would be whether the Small Cause Court had jurisdiction to try such an action.

4. Reference has now been made to the Full Bench decision in *Puttangowda v. Nilkanth Kalo Deshpande* [1913] Bom. 675 where it was held that a Court of Small Causes could entertain a suit, the principal purpose of which was to determine a right to immovable property, provided the suit in form did not ask for that relief but for payment of a sum of money. That decision will be binding upon me if it is still pertinent to the facts of the case and has not been affected by the alteration brought about by Act VI of 1914 by the adding in Article 35 of the Provincial Small Cause Courts Act, 1887, item (ii), excluding from the jurisdiction of the Small Cause Court a suit for compensation for an act which is, or save for the provisions of Chapter IV of the Indian Penal Code, would be, an offence punishable under Chapter XVII of the said Code.

5. The petitioner, therefore, urges that plaintiff was really complaining of an act which would either amount to theft or mischief in that the defendant had removed or caused damage to the plaintiff's trees. There is some substance in the point because the plaintiff admits that he seeks to recover compensation on account of the defendant's unlawful action.

6. In my opinion, it is not desirable to extend the jurisdiction in the Small Cause Court to cases relating to immovable property by giving a limited interpretation to suits mentioned in the second schedule to the Act. It is quite true that the decision in this suit would not be *res judicata* in a suit, on a title. But in a suit where rights to immovable property are in question, it is not desirable that the right of appeal which a party ordinarily has should be taken away from him if the suit can be brought directly within the suits included in the Second Schedule to the Act. In my opinion, therefore, the Small Cause Court had no jurisdiction to try this suit and the proper order to make is that the rule is made absolute, that the decree of the lower Court be set aside, and that the plaint be returned so that it may be filed in the proper Court. There will be no order as to costs as the defendant did not take the point of jurisdiction in the lower Court.