
Madhavrao Moreshvar Pant Amatya Vs Rama Kalu Ghadi

Second Appeal No. 798 of 1913

Court: Bombay High Court

Date of Decision: Aug. 26, 1914

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 8 Rule 6#Maharashtra Revenue Jurisdiction Act, 1876 " Section 5

Citation: AIR 1914 Bom 238 : (1914) 16 BOMLR 746

Hon'ble Judges: Davar, J; Basil Scott, J

Bench: Division Bench

Judgement

Basil Scott, Kt., C.J.

This is a suit for the recovery by an Inamdar of sums payable by a Khatedar in respect of certain Immovable

property held by him, under the Inamdar as his superior holder. It is contended that being for an amount less than Rs. 500, and cognizable by a

Court of Small Causes, no second appeal will lie. The question is whether it is cognizable by a Court of Small Causes. We have been referred on

the part of the appellant, to Article 13 of Schedule II of the Provincial Small Cause Courts Act IX of 1887 which excepts from the cognizance of a

Court of Small Causes a suit to enforce payment of dues when the dues are payable to a person by reason of his interest in Immovable property.

Now the sums payable by an inferior holder to a superior holder in the Bombay Presidency are in another Act of the Imperial Legislature

characterised as dues (see Revenue Jurisdiction Act X of 1876, Section 5, Clause (c)). The moneys claimed, therefore, in this suit may

appropriately be described as dues payable to the plaintiff by reason of his interest in Immovable property held by the defendant, and therefore

Article 13 of the Schedule of the Small Cause Courts Act applies, and this was a suit not cognizable by a Court of Small Causes. We, therefore,

overrule the preliminary objection.

2. The defendant does not contest the right of the plaintiff to payment of his dues as superior holder, but claims to be entitled to set off the stipend

payable by the plaintiff to certain Pujaris of a temple, of whom defendant was one. That stipend was payable to the defendant and his Bhaubands.

He, therefore, claims a set-off in a different capacity, in a different category to that in which he holds as tenant or Khatedar of the plain. tiff, and he

cannot have the set off having regard to the provisions of Order viii, Rule 6. We, therefore, set aside the decree of the lower appellate Court which

allowed the set-off claimed by the defendant. The plaintiff is entitled to Rs. 41-4-10 (Rs. 39-6-8, the amount of his claim, plus Rs. 1-14-2, the

amount of costs incurred in the Revenue Court), with further interest upon Rs. 41-4-10. We do not think that he is entitled to his costs because this

suit appears to us to have been unnecessarily filed having regard to the fact that he had already obtained decree in assistance suits.

3. No order as to costs throughout.