Mohammad Ali Khan vs Suraj Prakash And Ors. on 1 April, 1952

Equivalent citations: AIR1952ALL874, AIR 1952 ALLAHABAD 874

JUDGMENT

Desai, J.

1. This is a plaintiff's application against an order of a Court of Small Causes directing the plaint to be returned to him for presentation to a regular Court on the ground that its jurisdiction is excluded by item (8) of Schedule 2, Small Cause Courts Act.

2. The suit is for the recovery of Rs. 500 on account of use and occupation of land. It is stated in the plaint that on 4-11-1948, the applicant gave certain plots of land to the defendants for three years. The defendants were allowed to use the land, to excavate it and prepare bricks and were to pay in return Rs. 500 per annum. The suit was for the last year's rent. The Small Cause Court in which the suit was instituted held that it was a suit for rent and as such beyond its jurisdiction. It is urged before me that the suit was not for rent but for the price of clay or earth.

3. The suit was undoubtedly for rent and not for price of earth or clay. What the applicant had done is that he had leased out the land for three years to the defendants and not merely sold the earth. No quantity of earth had been mentioned; the defendants had not been asked to excavate only so much earth and carry it away. So it cannot be said to be a case of sale of earth. Nor were the defendants merely permitted to go upon the land in order to carry away the earth they had been put in possession of the land for three years. They could use it for any purpose and also dig earth from it and prepare bricks. Thus it is not a case of mere license or profit a prendre. When the defendants had been put in possession of the land, it was a demise of land and the suit was clearly one for rent of the demised land.

4. In B. & N, W. Rly. v. Bandhu Singh, 31 All. 342, the railway authorised the defendant in writing to enter upon part of the railway embankment and cut grass therefrom and a suit by it for the price of the grass was held to be not a suit for rent. There the defendant was not put in possession of the land. He was simply licensed to enter upon the land for the purpose of cutting and carrying away grass. It was, therefore, a case of a profit a prendre. That case is to be distinguished from the present case where the land had been let out for three years to the defendants. The present case is governed by Manohar Lal v. Gauri Rautain, 12 ALL. L. J. 36, where the defendant executed a qubuliat taking on lease grass of a certain tank for five years on an annual rent. The defendant was held to be a tenant and the suit for the arrears of rent was held to be beyond jurisdiction of the Court of Small Causes. Auseri Lal v. Mullhan, 22 ALL. L. J. 339 is a similar case. There the land was let out to a defendant who was entitled to use it and the grass growing on it for grazing purposes during the period of lease. It makes no difference in law whether a person is to use grass growing on the land or to remove the earth; the nature of the transaction is unaffected by the difference in fact. Just as it

could not be said in that case that the grass had been sold to the defendant, so also it cannot be said in the pre-sent case that the earth had been sold to the defendants.

5. The view taken by the learned Judge is correct and I dismiss this application.