

Madras High Court

M. Doraisamy Aiyangar vs K. Narayana Aiyangar And Ors. on 10 March, 1922

Equivalent citations: 68 Ind Cas 983

Bench: Coutts-Trotter, Ramesam

JUDGMENT

1. The first point in this appeal is whether the cognizance of the suit by the City Civil Court is barred by Section 3 of the City Civil Court Act (VII of 1892) The appellant relies on Section 41 of the Presidency Small Cause Courts Act (XV of 1882) and contends that, because an application to eject a tenant could be filed in the Small Cause Court, the present suit before the City Civil Court is barred. We do not thinly this contention is tenable, the present suit before the City Civil, Court is obviously not cognizable by the Small Cause Court (vide Section 19 of Act XV of 1882). What is cognizable is merely an application. o. VI, Rule 3 of the Rules for the Presidency Small Cause Courts, no doubt, says that an application under Section 41 of the Presidency Small Cause Courts Act shall be in the form of a plaint, but on this ground the application does not become a suit. We, therefore, feel that the present suit was not cognizable by the Small Cause Court as a suit and, therefore, Section 3 of the City Civil Court Act does not prohibit its being filed before the City Civil Court. The case of Abdul Rahim Sahib v. Gangathara Aiyar 37 Ind. Cas. 436 : 4 L. W. 402., has no bearing on the point before us. It decides that suits under Sections 47 and 49 of the Small Cause Courts Act should be filed before the High Court. Kalyanchand Lalchand v. Sitabai Dhanasa 23 Ind. Cas. 325 : 38 B. 309 : 16 Bom, L. Rule 5., and Venkata Chandrappa Nayanivaruru v. Venkatrama Reddi 22 M. 256 8 Ind. Dec. (N. s.) 182. deal with the construction of Section 11 of the Civil Procedure Code and, therefore, cannot help us in construing Section 3 of the City Civil Court Act. Coming to the merits, it has been contended that the evidence does not support the finding that the plaintiff is a tuna under the Official Assignee and that the firs defendant, is a sub tenant under the plaintiff. It is also contended that the title of the plaintiff is really a title to the whole lease-hold interest of the insolvent Srinivasa Aiyangar by assignment from the Official Assignee and, as he has not got a registered instrument, the plaintiff is not in a position to prove his title. It seems to us that the evidence of the plaintiff supported as it is by Exhibit E which the lower Court has found to be genuine, conclusively shows that the original arrangement entered into by the second defendant Venkatapathy Aiyangar with the Official Assignee was really on behalf of the plaintiff, that the second defendant was benamidar for the plaintiff, that the second defendant (representing the plaintiff) was a tenant under the Official Assignee aid that the first defendant was a sub tenant under the plaintiff. Whether the transaction between the Official Assignee and the plaintiff actually amounts to an assignment or only a lease of the leave hold right reed not be decided It is enough that the (sic) defendant holds as a tenant under the plaintiff and the amount of Rs. 9 8 0 which he has been paving to plaintiff is clearly a balance of rent of Rs. 30 for which he has been holding the premises under the plaintiff, he having paid Rs. 20.8.0 directly to the Official Assignee. The findings of the City Civil Judge are correct and the decree of the lower Court will be modified by giving credit to all the amounts paid by the firs defendant to the Official Assignee Otherwise the appeal fails and is dismissed with costs.