



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 26TH DAY OF NOVEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE C M JOSHI

REGULAR SECOND APPEAL NO.100730 OF 2018 (POS)

BETWEEN:

SRI. KUMAR NAGESH JOGA BHAT
AGE: 57 YEARS, OCC. BUSINESS,
R/O. TRADER IN "HOLKARWADA",
COMPOUND SHOP PREMISES,
RATHABEEDI, GOKARNA,
TQ. KUMTA, DIST. UTTARA KANNADA-581326.

...APPELLANTS

(BY SRI. J.S. SHETTY, ADVOCATE)

AND:

1. SRI. KHASAGI DEVI AHLYABAI HOLKAR
CHARITIES TRUST, MANIKBHAG,
INDORE-452014 (M.P.)
REPRESENTED BY TRUSTEES.
2. SMT. MAHARANI USHADEVI HOLKAR
AGE: 75 YEARS, MANIKBHAG PALACE,
INDORE-452014 (M.P.).
3. SRI. SATISCHANDRA C. MALLAHOTRA
AUTHORIZED G.P.A. HOLDER AND
AUTHORIZED PERSON,
AGE: 83 YEARS,
MANIKBHAG PALACE,
INDORE-452014 (M.P.)
4. REPRESENTATIVE OF PRESIDENT OF INDIA
NEW DELHI,



MANIKBHAG PALACE,
INDORE-452014 (M.P.)

5. THE COMMISSIONER
INDORE DIVISION, INDORE,
MANIKBHAG PALACE,
INDORE-452014 (M.P.)
6. THE SUPERINTENDING ENGINEER
B AND R.P.W.D., INDORE CIRCLE,
MANIKBHAG PALACE,
INDORE-452014 (M.P.)
7. SRI. K.S. RATHORE
SECRETARY OF THE TRUST,
MANIKBHAG PALACE,
INDORE-452014 (M.P.)
8. SRI. M.K. PAWAR
MANAGER AND POWER OF ATTORNEY HOLDER
FOR GOKARN SASNTHAN,
"HOLKARWADA", R/O. RANGAMAHAL,
CHANDWAD, AT AND PO. CHANDWAD,
DIST. NASIK, MAHARASHTRA.

...RESPONDENTS
(BY SRI. H.R. DESHPANDE, ADVOCATE FOR R1 TO R8)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING THAT THE JUDGMENT AND DECREE DATED 20.08.2018 PASSED BY THE SENIOR CIVIL JUDGE KUMTA IN R.A.NO.19/2013 AND THE JUDGMENT AND DECREE DATED 21.03.2013 PASSED BY THE CIVIL JUDGE AT KUMTA IN O.S.NO.5/2009, MAY KINDLY BE SET ASIDE BY ALLOWING THIS APPEAL WITH THE COST THROUGHOUT IN THE ENDS OF JUSTICE AND EQUITY.

THIS RSA APPEAL HAVING BEEN HEARD AND RESERVED ON 29.10.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, COURT DELIVERED THE FOLLOWING:



CAV JUDGMENT

(PER: THE HON'BLE MR. JUSTICE C M JOSHI)

This appeal arises out of the concurrent findings of the Trial Court and the First Appellate Court in O.S.No.5/2009 dated 21.03.2013 and R.A.No.19/2013 dated 20.08.2018 whereby the suit filed by the plaintiff came to be decreed and confirmed.

2. The factual matrix of the case that is relevant for the purpose of this appeal is as below:

2.1. The respondents, who are the plaintiffs before the Trial Court, filed the suit seeking the possession of the suit schedule property by ejectment of the defendant from the suit schedule property. The plaintiff is a Trust under the name and style 'Khasagi Devi Ahalyabai Holkar Charities Trust' situated at Indore and some of its properties are situated at Gokarna. One of the properties of the plaintiff i.e., 'Holkarawada Chathra' is situated at a Rathaveedi of Gokarna, measuring about 7 guntas, and it is very near to the Mahabaleshwara Temple. The defendant was a lessee of one of the shop premises in the property belonging to the plaintiff and he was trading in puja



articles and idols, on a monthly rent of ₹65/-. The defendant with an evil intention, stopped making the payment of the rents to the plaintiff-trust and therefore, a notice came to be issued on 19.11.2004 stating that the defendant was due in payment of rents from February-2000 to October-2004 for 58 months amounting to ₹3,770/-. The said notice was received by the defendant on 22.11.2004 but the defendant neither responded to the notice nor made the payment of the arrears of the rent. Therefore, a notice of termination of the tenancy was issued to the defendant on 04.07.2005, which was received by him on 09.07.2005. In spite of the termination of the tenancy and calling upon him to vacate and hand over the vacant premises, he failed to do so. Since there was some action by the Panchayath to widen the road and removal of the encroachment, the plaintiff-Trust with the apprehension that part or whole of the shop premises may also be demolished or the site where the shops were situated will be acquired by the government, decided to wait for some time. Ultimately, another notice was issued to the defendant on 01.11.2008 and even after receipt of the said notice on 04.11.2008, he failed to hand over the vacant possession. However, a false reply was sent by the defendant to



the plaintiff. Therefore, the plaintiff being in need of the suit schedule property, filed a suit against the defendant seeking the following reliefs:

- "i) That the Court be pleased to pass a decree directing the defendant to hand over possession of the 'schedule shop premises', to the Trust or to its authorised person.*
- ii) To pass a decree for the amounts, due for the period as mentioned in the notice dated 19-11-2004 and also for the balance of amount due from the defendant as demanded in the notice issued on 4th July 2005.*
- iii) To pass decree for ascertainment of mean profits accrued on the property during the period prior to the institution of the suit or directing an enquiry from the date of termination of tenancy i.e. from the month of august 2005; till the date of filing of the suit and further the Court be pleased to order for ascertainment of mesne profits from the date of suit until delivery of the possession of the 'schedule shop premises' to the plaintiff Trust. As provided under order XX Rule 12 of C.P.Code.*

Cost of notice issued, amount totaling to Rs 1000/- and cost of the suit be also awarded together with such other reliefs as found fit to the Hon'ble Court



at the conclusion of the trial as so to meet the ends of justice in the case, in favour of Trust."

3. On service of the summons, the defendant appeared and filed his written statement. The defendant denied the ownership of the plaintiff over the suit schedule property. He contended that the plaintiff has not approached the Court with clean hands and the suit premises, which is a shop measuring 20 ft X 18 ft was let to the elder brother of the defendant. Initially, the rent was ₹25/- and later it was enhanced to ₹65/- per month. The original lessee Dattatraya had constructed a RCC structure over the suit schedule premises and further there was a written agreement between the plaintiff-Trust and the said Dattatraya in the year 1976. The said agreement was extended from time to time and in the year 1982, Dattatraya's name was entered in the occupants' column of the property extract. There was a partition in the year 2000 in between the defendant and the said Dattatraya and accordingly the premises was allotted to the share of the defendant. After such allotment, the name of the defendant was entered in the records as occupant. Further, the defendant denied the locus-standi of the plaintiff to file the



suit and also denied that any arrears of the rent was due to be paid to the plaintiff.

4. On the basis of the above pleadings, following issues were framed by the Trial Court.

Issues

1. *Whether the plaintiff proves that the defendant was a lessee of one of the shop premises where in he was trading in pooja articles?*
2. *Whether the defendant proves that he was lessee at shop site on payment of ground rent as contended in para 2 and 6 of the w.s.?*
3. *Whether the defendant further proves that the shop building was constructed by the members of his family and that he is the owner of the building as contended in para 2 and 6 of the w.s.?*
4. *Whether the defendant further proves that the said lease was irrevocable and was permanent in nature as contended in para 2 of the w.s.?*
5. *Whether the plaintiffs prove that there was a valid termination of lease of shop premises as averred in the plaint?*



6. *Whether the plaintiff proves that, there was proper and valid termination of lease of 'premises' as averred in the plaint?*
7. *Whether the defendant proves that, there was waiver of tenancy as contended in para 4 of the w.s.?*
8. *Whether the defendant proves that he had paid entire amount of rent and that he was never in arrears, as contended in para 6 and 7 of the w.s?*
9. *Whether the plaintiff trust is entitled to get possession of the suit premises from the defendant as claimed in the suit?*
10. *Whether the plaintiff is entitled to the amounts as well as the mesne profits as claimed in the suit?*
11. *To what relief the plaintiff is entitled to?*
12. *What order or decree?"*

5. The representative of the plaintiff's Trust was examined as PW.1 and Ex.P.1 to Ex.P.14 were marked. The defendant was examined as DW.1 and Ex.D.1 to Ex.D.61 were marked.



6. After hearing the arguments, the Trial Court held issue Nos.1, 5 and 9 to 11 in the **affirmative** and remaining issues in the **negative** and decreed the suit.

7. Being aggrieved by the same, the defendants approached the First Appellate Court in R.A.No.19/2013. The First Appellate Court after re-appreciating the evidence on record came to the conclusion that, there is no merit in the appeal and as such, it dismissed the appeal and the defendant was directed to vacate and hand over the vacant possession of the premises.

8. Being aggrieved, the defendant is before this Court in second appeal.

9. After hearing the learned counsel appearing for the appellant, the following substantial question of law was framed by this Court.

"Whether the Courts below without looking to the provisions of Section 9 of the Karnataka Small Causes Courts Act, which confers the exclusive jurisdiction on the Court of Small Causes, have proceeded to decree the suit even though they had no jurisdiction?"



10. The learned counsel appearing for the appellant has contended that the suit being for ejectment of the defendant from the suit premises, the Small Cause Court alone has the jurisdiction to consider the same. He contends that Section 9 of the Karnataka Small Causes Courts Act, 1964 (for short, hereinafter referred to as 'the Act') defines the jurisdiction of the Small Cause Court and when, the jurisdiction is vested with the Small Cause Court, a regular suit is not maintainable. Secondly, he contends that the notice was issued on 19.11.2004 and it was received on 22.11.2004, but the suit is filed on 01.01.2009 and therefore, the suit is barred by limitation. In other words, it is his contention that notice issued in the year 2004 is waived and therefore, the tenancy has continued. Thirdly, he contends that, earlier, the present appeal was tagged with some other regular second appeals and in the said regular second appeals, the diagonally opposite view was taken and it was held that the Court has no jurisdiction. Fourthly, he contends that only land was granted on lease and the lease was in favour of the brother of the defendant. The building was constructed by the defendant and therefore, the plaintiff cannot maintain an eviction suit.



11. *Per contra*, the learned counsel appearing for the respondents submits that there is no notification which confers jurisdiction on the Small Cause Court at Kumta. Therefore, the Act does not apply and as such the suit filed before the Regular Civil Court is maintainable. So far as the notice is concerned, he contends that a subsequent notice was issued on 01.11.2008 and it was received by the defendant on 04.11.2008. Therefore, there is no such waiver of the termination of the tenancy. He contends that after termination, the defendant has continued as a trespasser and the rents are not paid. Therefore, the judgment and decree passed by the Trial Court and the First Appellate Court are sustainable. So far as the contention that the building has been constructed by the brother of the defendant is concerned, it is submitted that presently the defendant is occupying the premises and since it is an admitted fact that there was a partition, there is no need for impleadment of the brother of the plaintiff. Moreover, the ownership of the building and lease of the ground is a settled proposition and the defendant cannot take such a defence. Hence, he prays for dismissal of the appeal.



12. It is pertinent to note that the contentions in respect of the termination of the tenancy; in the earlier suit diagonally opposite view being taken; only land was granted on lease but not the building etc., are no more available for determination in this appeal, since they are questions of fact.

13. In the second appeal, it is only the substantial question of law, which needs to be considered.

14. Therefore, the above substantial question needs to be dealt by this Court.

15. The first contention of the learned counsel appearing for the appellant is that the provisions of Section 9 of the Act do not permit the ejection petitions to be tried by any other Court than the Court of Small Causes. The provisions of Section 9 of the Act, reads as below:

"Section 9: Exclusive jurisdiction of Court of Small Causes.- *Save as expressly provided by this Act or by any other law for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable."*



16. There cannot be any doubt that a matter which falls within the jurisdiction of the Court of Small Causes cannot be tried by any other Court. The provisions of Section 2(b) defined the Small Causes Court as below:

2. Definitions.-

(b) "Court of Small Causes" means a Court of Small Causes constituted or deemed to have been constituted under this Act and includes any person exercising jurisdiction under this Act in any such Court."

17. It is pertinent to note that Section 8 of the Act defines the suits that may be taken cognizance of by the Court of Small Causes and it reads as below.

"8. Cognizance of suits by Courts of Small Causes.—

(1) A Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exception specified in the Schedule and to the provisions of any law for the time being in force, all suits of a civil nature of which the value does not exceed [two lakh rupees] in Bangalore city, and



[one lakh rupees] in other places, shall be cognizable by a Court of Small Causes."

18. The Schedule is couched in negative sense and it defines the exceptions. Article 4 of the Schedule reads as below:

"(4) A suit for the possession of immovable property or for the recovery of an interest in such property but not including a suit for ejectment where,—

(a) the property has been let under a lease or permitted to be occupied, by a written instrument or orally; and

(b) the Court of Small Causes would be competent to take cognizance of a suit for the rent of the property, and

(c) the only substantial issue arising for the decision is as to whether the lease has been determined by efflux of the time limited thereby or has been determined by a notice in accordance with the law for the time being in force in respect of such lease, or the permission to occupy has been withdrawn;"

19. Therefore, if a suit falls within Article 4 of the Schedule, then such suit cannot be taken cognizance of by a Court of Small Causes.



20. In this regard, the learned counsel appearing for the appellant places reliance on the judgment in the case of **Abdul Wajid v. A.S. Onkarappa**¹. The said judgment of this Court decided whether the earlier judgment of the High Court in the case of **Smt.Sarojamma vs. K.M. Venkatesh**² continued to be good law or not. The following question was referred to the full Bench.

- (i) *Whether the Court of Small Causes constituted under KSCC Act has jurisdiction to take cognizance of suit filed for ejectment by the land lord against the tenant in respect of the premises to which KR Act does not apply, and the lease of which has either come to an end by efflux of time limited thereby or has been duly determined by issuing notice in accordance with law or the permission to occupy has been withdrawn?*
- (ii) *Whether the decision of the division bench in Sarojamma's case (supra) lays down correct law?*

21. The above questions were answered in paragraph No.104 and 116 as below:

¹ ILR 2011 KAR 229

² ILR 2004 KAR 4931



*"104. It is also necessary for us to clarify one another aspect while we are on this question, namely, that having regard to the object and purpose of enacting the KSCC Act and creating a special class of Civil Courts known as 'Courts of Small Causes' which are nevertheless Civil Courts but with a limited jurisdiction and also relieved from the rigors of procedure as contemplated under the Code of Civil Procedure, particularly, in providing for trial of suits in a summary manner, a suit which is triable before a Small Causes Court and could result in a decree either for eviction in an ejectment suit or for any other purpose including recovery of money, **if should have been tried by a regular Civil Court and which Court otherwise also has the jurisdiction to try all disputes of civil nature, notwithstanding the provisions of Sections 8 and 9 of the KSCC Act, we are of the definite view that a suit which could have been otherwise required to be tried before a Small Causes Court but had been tried before a regular Civil Court and had culminated in a Judgment and decree, such a decree following a full course trial by the regular Civil Court cannot be and should not be characterized as a decree without jurisdiction for the purpose of examining the correctness or otherwise of the decree but based solely on the question of jurisdiction.***

xxxxxx

116. *For the same reason, I am of the view that the provisions of the Karnataka Court fee & Suits*



Valuation Act, 1958 are also not one that can guide or control interpretation or the understanding of the provisions of Clause-[4] of the schedule to the KSCC Act. Even here, the meaning to be given to sub-Clause [b] of Clause-4 of the schedule to the KSCC Act and to the word 'rent' and use of the word 'rent' in this sub-clause is only in the context of determining the pecuniary jurisdiction of the Court of small causes and is not so much concerned with the question of the nature of payment made or that has to be made by a tenant holding over, to his landlord, for use and occupation beyond the period of lease/authorization and such payment while is not to be characterized as rent, is to be characterized as 'compensation/damages'. The use of the word 'rent' in this sub-Clause is only for the purpose of arriving at the valuation of the suit for ejectment before the Court of small causes and no more significance or importance needs to be attached to the word 'rent' in this sub-Clause. But for this elucidation, I am in full agreement with the conclusion as opined by my Learned colleague Justice K.N. Keshavanarayana.

CONCLUSIONS:—

- 1) The opinion of the Division Bench that Court of Small Causes can take cognizance only of such suits which are filed seeking ejectment of tenants of the premises to which KR Act applies runs contrary to the provisions of said Act as such it does not lay down correct law. In respect of the*



premises to which KR Act is applicable, only the 'Court' specified under Clause (c) of Section 3 of KR Act alone is competent to make order for recovery of such premises on the landlord proving any one or more grounds enumerated therein.

- 2) In the context of jurisdiction of Small Causes Court, a suit for recovery of possession of immovable property does not include a suit for ejectment as such, a suit for ejectment is distinct and different from suit for recovery of possession of immovable property or for recovery of any interest in such immovable property.*
- 3) In the context of jurisdiction of Court of Small Causes to take cognizance of a suit for ejectment, recovery of mesne profits would not amount to either recovery of an interest in the immovable property or determination or enforcement of any other right or interest in the immovable property, and the Court of Small Causes is competent to consider prayer for mesne profits against non-statutory tenant after termination/determination of lease subject to its pecuniary jurisdiction. The contrary view expressed by the Division Bench in this regard does not lay down correct law.*
- 4) Courts of small Causes have jurisdiction to take cognizance of not only a bare suit for Ejectment but also a suit for Ejectment with a prayer for recovery of mesne profits or damages, subject to*



its pecuniary limits, in respect of the premises to which KR Act is not applicable. The interpretation placed by the Division Bench in Sarojamma's case, on Clause (b) of Article 4 of Schedule to KSCC Act does not lay down the correct law.

- 5) *The suits for ejectment with or without prayer for rent, mesne profits or damages, pending before the Civil Courts, either upon re-presentation of complaints pursuant to decision in Sarojamma's case or presented afresh after Sarojamma's case, the value of the subject matter of which is within the pecuniary limits of the Courts of Small Causes, shall be transferred to the Court of small Causes, which on receipt of such records shall proceed from the stage at which they were pending before Civil Court and dispose them of in accordance with law.*

In the light of the above and since we have not considered the petitions referred to the Full Bench on merits, and as we have only interpreted the law, the Registry is directed to place all the Civil Revision petitions before the Bench having roaster for disposal on merits in the light of the law declared hereinabove."

[emphasis supplied]

22. Thus, it is evident that the judgment of the full Bench in **Abdul Wajid** (supra) does not approve the exclusivity of the Court of Small Causes to consider a claim for possession post the



trial and judgment by regular Court. It is pertinent to note that in the case of ***Manzoor Ul Haq vs. Hakeem, Mohsin Ali***³, it was held that the Section is only enabling provision and it does not say that no other Court than the Court of Small Causes have jurisdiction to take cognizance of the suits of the nature specified. A Court of Small Causes have the jurisdiction to try all the suits of civil nature, of which the value does not exceed the specified value and which are not accepted from cognizance of Small Causes, as contained in a schedule.

23. A plain reading of Sections 8 and 9 coupled with the schedule, which is reproduced (supra) would indicate that if a suit for possession of immovable property or for recovery of an interest in such property, but not including a suit for ejectment is filed and if it falls in any of the seven categories mentioned in sub-Articles 4(a) to 4(c), then the suit is permissible to be filed before the Small Causes Courts. It is pertinent to note that it is an enabling provision for the Small Causes Court, but it does not constitute exclusive jurisdiction. It is also relevant to note that in yet another decision of Allahabad High Court, in the case of

³ AIR 1970 Allahabad 604



Abdul Hamid vs. IIIrd Additional District Judge, Mainpuri and another⁴, Allahabad High Court had held in paragraph No.15 as below:

"15. Thus, in the circumstances it is held that the small causes courts are courts of preferential jurisdiction and not exclusive jurisdiction and as Section 15 (1) of the Provincial Small Causes Court Act confers jurisdiction upon Small Causes Courts to try a suit for possession based on contract of tenancy of a building, it enables the small causes courts to take cognizance of a suit between lessor and lessee, but it did not exclude the jurisdiction of civil court to try the case as a regular civil suit and therefore a decree passed by civil court in a suit of small causes court nature will be valid and not a nullity."

24. In view of the above propositions laid down, it is evident that a Court of Small Causes can take the cognizance of a matter which is fundamentally an ejectment claim. It does not mean that it is in the exclusive domain of the Small Causes Court. If a suit for possession is filed, then the regular Court is not ousted of the jurisdiction as concluded by the full Bench of this Court. Therefore, when the plaintiff has chosen the forum of

⁴ 1999 SCC Online All 827



regular Court and the question of jurisdiction was not raised by the appellant at the first instance, it cannot be held that the judgment is bad in law. It is also pertinent to note that complicated questions of law like the partition among the appellant and his brother, construction of the superstructure by the lessee are all raised by the appellant. In the case on hand, the prayer of the plaintiff is for possession, balance of the rent due and for mesne profits also. Obviously, the mesne profit requires an enquiry, if a decree has to be passed to that effect. Therefore, when we examine the pleadings of the parties, it is evident that the nature of the prayer and the nature of the defence raised by the defendant traverse the scope of the suit, beyond the limited jurisdiction of the Small Causes Court. Definitely, it can be held that the prayers and the defence do not fall within the four corners of clause 4 of Schedule 1 of the Small Cause Court Act. Thus, no fault can be found in respect of the findings given by the Trial Court and the First Appellate Court.

25. The reliance placed by learned counsel appearing for the appellant on the judgment in the case of **Abdul Wajid** (supra) is of no relevance. As held in the afore cited case and it



being the settled position of law, the question of jurisdiction has to be raised by the defendant at the first instance. He cannot be allowed to raise the same without showing the prejudice caused to him. The appellant has not shown as to how his interest are put to prejudice. The Civil Court is not ousted of the jurisdiction otherwise than the jurisdiction of the Court of Small Causes.

26. In the result, the substantial question of law raised by this Court is answered in the ***negative***.

27. So far as the other contentions urged by learned counsel for the appellant is concerned, it may be noted that the first notice terminating the tenancy was issued on 19.11.2004 and subsequently, another notice was issued on 01.11.2008. Therefore, the contention that the first notice is waived is not tenable. The tenancy, even if it is held that had continued after the termination notice dated 19.11.2004, stands terminated by the second notice dated 01.11.2008. Therefore, there is no such waiver, which can be deciphered.

28. The contention that in other appeals a diagonally opposite view is taken cannot be a ground in the present appeal.



Such judgments are not cited. Such view might have been taken in the circumstances that were available and obtained in that appeal. Therefore, this contention of the learned counsel for the appellant is also not sustainable in law.

29. The last contention insofar as the dual tenancy of the superstructure and the land is concerned, it is no more *res integra*. The building was constructed by the defendant at his own costs and consequences. Therefore, the defendant cannot contend that he owns the superstructure and he constructed the superstructure and as such he cannot be evicted is unsustainable. There is no such concept of the ownership of the superstructure and tenancy of the land beneath it. Obviously, this contention was not at all raised either before the Trial Court or the First Appellate Court.

30. The First Appellate Court in paragraph No.16 has considered the effect of Sections 106 and 107 of the Transfer of Property Act, 1882 and has dealt with the matter in accordance with law. There cannot be any doubt about the tenancy of the defendant, as has been noticed by the First Appellate Court. On examining Ex.D.18 and Ex.D.19, it was held that the shop of



premises was in existence in the year 1976 itself, when the defendant and his brother entered into a tenancy agreement. Therefore, the defendant cannot take up the contention that there was no such agreement between them, but it was only a letter of trust.

31. For aforesaid reasons, this Court does not find any cause to interfere with the impugned judgment. Hence, the appeal is bereft of any merits and the same is liable to be dismissed.

32. Accordingly the appeal is ***dismissed with costs.***

SD/-
(C M JOSHI)
JUDGE

YAN: Para 1 to 3
SSP: Para 4 to 13
CT:PA List No.: 1 SI No.: 63