

TOPIC

QUESTION OF TITLE IN SCC SUITES

Presentation by:- Arun Vohra
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THE PROVINCIAL SMALL CAUSE COURTS ACT, 1887

ACT NO. 9 OF 1887

An Act to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

Whereas, it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay; It is hereby enacted as follows:

Section 1. Title, extent and commencement.

- (1) This Act may be called the Provincial Small Cause Courts Act, 1887.
- (2) It extends to the whole of India except 2 [the territories which, immediately before the 1st November, 1956, were comprised in Part B States]; and
- (3) It shall come into force on the first day of July, 1887.

Section 23. Return of plaints in suits involving questions of title.

(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the **proof or disproof of a title to immovable property or other title which such a Court cannot finally determine**, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the **Order VII, Rule 10 of the Code of Civil Procedure, 1908** (Act 5 of 1908) and make such order with respect to costs as it deems just, and the Court shall for the purposes of the Indian Limitation Act, 1963 (36 of 1963), be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of **defect of jurisdiction**.

Hon'ble Supreme Court while dealing with the provisions of Section 23 of the Provincial Small Cause Courts Act, 1887, in **Budhu Mal v. Mahabir Prasad & Ors.**, AIR 1998 SC 1772, has held as under:-

"It is also true that in a suit instituted by the landlord against his tenant on the basis of contract of tenancy, a question of title could also incidentally be gone into and that any finding recorded by a Judge, Small Cause in this behalf could not be res judicata in a suit based on title. It cannot, however, be gainsaid that in enacting S. 23 the Legislature must have had in contemplation some cases in which the discretion to return the plaint ought to be exercised in order to do complete justice between the parties."

Hon'ble Supreme Court while dealing with the provisions of Section 23 of the Provincial Small Cause Courts Act, 1887, in **Rameshwar Dayal vs Banda (Dead) Through His Lrs. (1993) 1 SCC 531**, has held as under:-

The expression “ The Court may at any stage of the proceedings..... suggests that an option is given to the Small Causes Court to use its discretion whether it would proceed to decide the title itself or refer the question to the Court having jurisdiction to do so.

Hon'ble Supreme Court while dealing with the provisions of Section 23 of the Provincial Small Cause Courts Act, 1887, in **Shamim Akhtar vs Iqbal Ahmad & Anr on 18 October, 2000** has held as under:-

The question of title of the plaintiff to the suit house could be considered by the Small Causes Court in the proceedings as an incidental question and final determination of the title could be left for decision of the competent Court. In such circumstances, it could not be said that for the purpose of granting the relief claimed by the plaintiff it was absolutely necessary for the Small Causes Court to determine finally the title to the property. The tenant-respondent by merely denying the relationship of landlord and tenant between himself and the plaintiff could not avoid the eviction proceeding under the Rent Control Act. That is neither the language nor the purpose of the provisions in Section 23(1) of the Small Causes Court Act.

Thank you for your time and attention

Regards 😊