
(2012) 09 AHC CK 0237

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12422 of 1998

Hukum Singh

APPELLANT

Vs

1st Additional District Judge, Shahjahanpur and Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 16, 57

Provincial Small Cause Courts Act, 1887 — Section 15, 15(2), 15(3), 23

Citation : (2013) 2 ADJ 29 : (2013) 3 ALJ 74

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : K.G. Srivastava, Rahul Srivastava and Sunita Srivastava, for the Appellant; Ramendra Asthana, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—This writ petition is directed against the judgment and order dated 12.12.1995 passed by Civil Judge, (Senior Division), Shahjahanpur decreeing landlord-respondent's suit i.e. SCC Suit No. 13 of 1988 for ejectment of petitioner-tenant from premises in dispute and recovery of rent on the ground of default in payment of rent and Revisional Court's judgment and order dated 19.1.1998 passed by Additional District Judge, Shahjahanpur, dismissing petitioner-tenant's S.C.C. Revision No. 9/1996. Learned counsel for petitioner contended that petitioner has disputed the title of plaintiff., therefore, suit was not maintainable before Small Causes Court. The plaint ought to have been returned so as to be presented in regular Court in view of Section 23 of Small Causes Court Act, 1887 (hereinafter referred to as the "Act, 1887"). He drew attention of this Court to para 6 of the writ petition, which reads as under:

6. That the Trial Court also noted the fact that suit was triable as a regular suit and not as a Judge Small Causes Court Suit and proceeded to deal it as regular suit but at the time of judgment he lost sight of this fact and decided the case as Judge Small Causes which renders his judgment wholly without jurisdiction and

illegal.

2. Learned counsel for respondents sought to support the judgments impugned in this writ petition, referring to the reasons stated therein.

3. I have heard learned counsel for the parties and perused the record.

4. Copies of plaint and written statement have not been filed by petitioner alongwith writ petition but the same are on record alongwith counter-affidavit of respondent Nos. 3 to 10. Annexure CA-1 is the copy of plaint of SCC Suit No. 13 of 1988 wherein plaintiff Tasaduk Ali Khan (now deceased and substituted by his legal representatives, namely, respondent Nos. 3 to 10) is owner of the house under tenancy of petitioner-defendant/tenant namely, Hukum Singh. The tenant raised a dispute regarding title of plaintiff-landlord Tasaduk Ali whereafter tenant filed injunction suit No. 628 of 1987 in the Court of Munsif, Shahjahanpur which was dismissed on 15.11.1989 where against tenant filed Civil Appeal No. 19 of 1990 and Appellate Court dismissed the Appeal.

5. The landlord filed SCC Suit No. 13 of 1988 for eviction and recovery of rent etc., from the petitioner-tenant. The defendant sustained the suit vide his written statement dated 1.9.1991 disputing plaintiff's title. The Trial Court proceeded to consider question of title of plaintiff-landlord and found that documentary and oral evidence prove his (plaintiffs) title while defendant-tenant, except his bare assertions, adduced no evidence to support the claim that he is owner of property in dispute. Having said so, the Court below found that tenant having not paid any rent, committed default and consequently, it decreed the suit vide judgment dated 12.12.1995.

6. The tenant thereafter filed SCC Revision No. 9 of 1996. The Revisional Court found that on the question of title, issue was decided in injunction suit, filed earlier by tenant himself, and that suit was decided by Trial Court as well as Appellate Court both in favour of plaintiff-landlord hence, the said findings attained finality and would operate as res judicata. On the question of title, i.e., whether the plaint ought to have been returned by Trial Court, the Revisional Court held, when frivolous dispute of title is raised, the Small Causes Court is not bound to return a plaint on mere denial of title since Section 23 provides that the Court, when finds that for granting relief, question of title would have to be decided necessarily, only then it may return the plaint, but, there is no any obligation at all, for that purpose, particularly, when, it finds that the issue raised is frivolous.

7. This is an interesting case where the parties have proceeded without understanding as to what has been done in this matter. A perusal of plaint itself shows that it was filed as a Regular Suit before Munsif. In para 4 of the plaint, respondent-landlord has said as under:

... Prativadi Ne Notice Prapti Ke Uprant Apne Adhivakta Sri Hari Om Srivastava Advocate Dwara Punah Galat Uttar Dekar Wadi Ke Swamitwa Se Inkar Kiya. Apna

Swamitwa Prakat Kiya. Ataeva Wadi Tatha Pratwadi Ke Madhya Vivad Swamitwa Prakat Kiya. Ataeva Wadi Tatha Pratiwadi Ke Madhya Viwad Swamitwa Ka Prashnagat Hai Aur Isi Karan Wad Nyayalaya Laghuvad Ke Sthan Par Is Nyayalaya Mein Prastut Kiya Gaya Hai.

....After receipt of notice, defendant denied plaintiff's title by giving a wrong reply through his counsel Shri Hari Om Srivastava, Advocate. He claimed his own title. Hence, raised dispute as to title. Hence, raised a dispute of title between plaintiff and defendant. So, there is a dispute of title between plaintiff and defendant and for this very reason, the case has been presented in this Court instead of Small Causes Court.

(English Translation by Court)

8. In para 4 of written statement, petitioner-tenant admitted notice but rest he denied stating that explanation has come in additional pleas but on this aspect para 14 reads as under:

14. Yeh Ki Chunki Wad Uprokt Mein Swayam Wadi Ke Hi Kathno Ke Anusar Swamitwa Ka Prashna Nihit Hai. Ataev Nyayalaya Uprokt Ko Prastut Wad Ke Nistaran Ka Kshetradhikar Bhi Prapt Nahi Hai.

14. That since as per own pleadings of plaintiff himself, in the aforesaid suit, question of title is involved, the said Court has no jurisdiction to dispose of the instant suit.

(English Translation by Court)

9. It is not disputed by learned counsel for petitioner that at the time of filing suit in question, a regular suit for same relief could have been filed in the Court of Munsif, Shahjahanpur. However, since in the cause title of plaint, it was mentioned as Small Cause, Munsif Shahjahanpur, the Court registered it as SCC Suit No. 13 of 1988, though as a matter of fact, it has proceeded to decide question of title after recording evidence from both the sides. Both the parties led evidence without any objection before Trial Court that it has no jurisdiction to decide question of title. From the judgment of Trial Court it is also evident that no such objection was raised by petitioner-tenant throughout the proceedings when evidence led by both the parties with respect to title. In substance, the plaint filed as a suit in regular Court but mistakenly, the Court regularised it as a Small Cause Suit. The parties, however, proceeded and adduced evidence as if; it was a regular suit, on the question of title.

10. At the revisional stage, however, reference of Section 23 of Act 1887 was made for the first time and the revisionist raised and advanced argument thereon which has been repelled by Revisional Court.

11. This Court, therefore, would first proceeds to consider the question, whether judgment impugned in writ petition, would suffer with any illegality if the Trial Court in the present case did not return the plaint and itself proceeded to decide

the matter, particularly in view of the fact that question of title had already been decided in Civil Suit filed by tenant himself, and, findings with respect to title, attained finality, upto the next stage also.

12. Section 23 of Act, 1887 reads as under:

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 second paragraph of Section 57 of the CPC and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1877, 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.

13. Section 23 of Act 1887 has been considered at umpteen times by this Court and on some occasions by the Apex Court also. The interpretation and mischief covered by Section 23 has been explained and clarified time and again. In my view it is now *res Integra*.. However, since substantial arguments, that too, with due seriousness have been advanced and it appears that there is some confusion among the litigating class, it would be appropriate to refer and place all the relevant aspects at one place so that misconception, if any, in respect to scope, ambit and extent of Section 23 of Act 1887, may not persist thereafter.

14. In *Ram Jiwan Misra v. Smt. Kallo and another*, 1980 ARC 522, a suit for ejectment, arrears of rent and damages for use and occupation was filed by Ram Jiwan Misra. He stated in the plaint that Smt. Allahabadni was previous owner of premises in question but executed a sale-deed on 2.4.1971 in favour of plaintiff, Ram Jiwan Misra, hence he had become owner. The defendants Smt. Kallo and another, while admitting ownership of Smt. Allahabadni, denied execution of sale-deed in favour of plaintiff, Ram Jiwan Misra. Rather they contended that alleged sale-deed is fictitious and fraudulent. They further said that daughter of Smt. Allahabadni was the owner and landlady of the building in question. An objection regarding jurisdiction was taken before trial Court but rejected by observing that question of title is not involved. This order of Trial Court was reversed by Revisional Court whereafter the matter came to this Court. The real issue therein was stated as under:

It is true that the defendants opposite parties were not setting up title in themselves and were setting up title of a third person but all the same, it was denied that the plaintiff-applicant had any title.

15. Referring to an earlier decision of this Court in *Noola Vs. L. Chimman Lal*, , this Court in *Ram Jiwan Mishra (Supra)* said that to attract Section 23 of Act

1887, it is not necessary that there must be dispute of title between the parties in the sense that both of them are claiming, title among themselves. Under the section the enquiry is limited only to the right of the plaintiff and to the relief claimed by him. The Court accordingly upheld objection that the suit was not maintainable.

16. Then in *Smt Kela Devi and others v. Rameshwar Dayal*, 1982 ARC 149, this Court said:

A complicated question of title was involved in the present case. The Small Cause Court has no jurisdiction to adjudicate upon it.

17. In *Virendra Prasad Shukla v. Ram Swarup and others*, 1983 ARC 179, suit for ejectment was filed by Ram Swarup and another, against Virendra Prasad Shukla. The plaintiff claimed that defendant No. 1 in the suit was tenant in chief in the disputed accommodation, since 1950, and, had taken Virendra Prasad Shukla as subtenant in the aforesaid building. The defendant No. 1 accepted all the allegations in his written statement but Virendra Prasad Shukla filed a written statement claiming that plaintiffs were not owners of disputed house nor the defendant No. 1 was his landlord nor he was sub-tenant of defendant No. 1. He claimed that disputed house belongs to his father Brij Mohan and he was residing in the house alongwith his father. This Court held, since a question of title is involved, the matter could not have been decided by Small Cause Court and hence while setting aside the judgment and decree passed by Courts below, this Court directed Small Cause Court to return plaint to the plaintiff for presentation to the regular Court.

18. In *Smt. Krishna Devi v. District Judge, Mathura and others*, 1984 (1) ARC 506, she (plaintiff) claimed herself to be the landlady of premises No. 643 Mohalla Golpara, Mathura and one Ballabh Das, defendant as her tenant pursuant to an allotment order dated 18.12.1968. The tenant having committed default in payment of rent, tenancy was terminated and a suit for eviction was filed. Ballabh Das contested the suit asserting that Smt. Krishna Devi was not the owner of property in suit and he was not her tenant. This Court said:

Under Section 23 of the Provincial Small Cause Court Act it is provided that when the right of a plaintiff and the relief claimed by him in the 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. The Small Cause Court is not expected to decide intricate questions of title. It should, if it found some substance in the plea of the defendant that Smt. Krishna Devi was not the owner of the property, have directed the return of the plaint for presentation to proper Court. It should not have proceeded to determine the question itself in summary proceedings.

(emphasis added)

19. In *Jiya Lal v. XIth Additional District Judge, Meerut and others*, 1994 (1) ARC 280, in paragraphs 7 and 9 of the judgment the Court held:

7. A suit by a landlord against a tenant is cognizable by Judge Small Causes Court on limited questions. The Judge, Small Causes Court cannot decide the question of title. He has to decide the limited question as to whether there is a relationship of landlord and tenant between the plaintiff and defendant. The right of the plaintiff is based on the relationship of landlord and tenant. In case the plaintiff has based his rights on the basis of a title, then the Court has to return the plaint as provided u/s 23 of the Provincial Small Causes Courts Act, 1887.

9. The Judge, Small Causes Court has to decide the only question as to whether the defendant was let out the disputed shop and his possession at the time of letting was that of a tenant. The controversy as to whether the plaintiff or the father of the defendant and his uncle are owners of the property in dispute is outside the Jurisdiction of the Judge, Small Causes Court The possession of a tenant is the possession of his landlord.

(emphasis added)

20. In *Smt. Sughra Begum Vs. Additional District Judge XIIth, Lucknow and others*, , this Court in paragraphs 11 and 12 said as under:

11. In my opinion, under the facts and circumstances of the present case, the provisions of Section 23 of the Act referred to above were fully attracted. Otherwise also to avoid multiplicity of proceedings and to cut-short the litigation, it was necessary either to return the plaint for presentation to a Court of competent jurisdiction or to transfer the suit giving rise to the present petition to the Court of Civil Judge, Mohanlalganj, as the Judge Small Causes Court has no jurisdiction to decide the question of title.

12. It is settled law that when in a suit in Small Causes Court, the question of title is raised, it is expedient for the Court to return the plaint for presentation before a Court competent to decide such a question. It is not necessary that plaintiff-defendant should be rival claimants to the immovable property. The object of Section 23 is to meet cases in which Judge is satisfied that the question is so intricate that it should not be decided summarily and that it should return a plaint for presentation to a proper Court. A reference in this regard is made to a decision in *Noola Vs. L. Chimman Lal*, .

21. In *Pratap Singh Vs. IXth Additional District Judge, Fatehpur and others*, , in paragraphs 5, 6 and 7 of the judgment the Court said:

5. The object of the Section is to enable the Small Cause Court to decline to exercise its jurisdiction in small causes suit when the right of the plaintiff and the relief claimed by him depend upon the proof or disproof of a title to an immovable property or other title which the Small Causes Court cannot finally determine and to return the plaint to be presented to a Court having jurisdiction to determine the title. In effect, the rights to, or interests in immovable property

are elaborately excluded, but as questions of this character may arise incidentally in Small causes suits, a facultative provision is made by Section 23 enabling the Small Causes Court to send the matter to ordinary Civil Court but not obliging it to do so.

6. A Small Causes Court is expected to try suits of a comparatively simple character and, therefore, suits involving question of title should not be entertained by that Court. Section 23 is intended to enable the Courts of Small Causes to save their time by returning the complaints in suits which involve enquiry into the question of title. This Section is designed to meet the cases in which Judge, Small Causes Court is satisfied that the question of title raised is so intricate and difficult that it should not be decided summarily but in ordinary Court in which evidence is recorded in full and the decision is open to appeal. The underlying principle u/s 23 seems to be that where it is considered advisable by a Small Causes Court that a final decision on a question of title, which decision would, if given by an Original Court, ordinarily be subject to appeal and even to second appeal and which decision would ordinarily be res judicata between the parties, should be given in the particular case before a Small Causes Court, by an Original Court, the Small Causes Court though competent to decide incidentally the question of title in that particular case might exercise with discretion, the power of returning the complaint to be presented to the Original Court which would have jurisdiction to so decide on that title finally. Obviously, the section is designed to meet the cases in which the Judge, Small Causes Court is satisfied that the question of title raised is so intricate and difficult that it should not be decided summarily but in an ordinary Court in which evidence is recorded in full and decision is open to appeal.

7. Section 23 is framed in optional terms giving discretion to the Court to Act in the matter or not, and therefore, in suits involving question of title, the Small Causes Court has a discretion either to decide the question of title or to Act under this section and return the complaint. It is not always bound to return the same. Nevertheless, when any complicated question of title arises, it would be the wiser course for Small Causes Court in the exercise of its discretion to Act u/s 23 and return the complaint.

(emphasis added)

22. In Mahendra Pal Singh and Others Vs. District Judge and Another, , this Court said:

since intricate question of title is involved in the present case, the revisional Court, had rightly exercised its discretion u/s 23 of the Act in directing the trial Court to return the complaint for presentation to the proper Court.

23. The Apex Court also had occasion to consider Section 23 in Budhu Mal Vs. Mahabir Prasad and Others, . It held that Section 23 does not make it obligatory on the Court of Small Causes to invariably return the complaint once a question of title is raised by the tenant but if the suit cannot be construed to be one between

landlord and tenant, they would not be cognizable by the Court of Small Causes, and, it is for these reasons, in such cases, the plaint ought to have been returned for presentation to appropriate Court so that none of the parties are prejudiced.

24. Coming to other decisions where it has been observed that question of title if incidentally had arisen may be gone into by the Small Causes Court, I find that in *Ram Sevak v. Pramod Kumar*, 2011 (84) ALR 634, a suit for arrears of rent and ejectment was filed by one Ram Krishna Agarwal against Ram Sevak which was decreed ex-parte. The restoration application was allowed and the suit was restored. During pendency of suit, Ram Krishna Agarwal, the plaintiff died. Based on a Will of Ram Krishna Agarwal his wife Smt. Gomti Devi was substituted who also died issue-less. Consequently, one Hari Narain, brother of Ram Krishna Agarwal succeeded the property and after his death, Pramod Kumar, the respondent in that writ petition was substituted on the basis of the Will. The petitioner Ram Sevak in his written statement stated that property belongs to a Trust and Ram Krishna Agarwal was merely Sarvarakar of the Trust and not owner of the suit property. He was paid rent regularly in the capacity as Manager of the Trust, Ram Sevak also challenged the Will executed by Ram Krishna Agarwal. The suit was decreed holding that the property in question originally belonged to Ram Krishna Agarwal and ultimately got transferred to Pramod Kumar. Therein tenant did not dispute that he was tenant in the building in question and also to the effect that Ram Krishna Agarwal was collecting rent. He only tried to dispute capacity in which Ram Krishna Agarwal was collecting rent. In these circumstances, this Court referring to Apex Court's decisions in *Shamim Akhtar Vs. Iqbal Ahmad and Another*, , and this Court's decision in *Bashir Ahmad v. 1st Additional District Judge, Saharanpur and others*, 2000 (40) ALR 741, observed, the question of title could also have gone incidentally. The mere denial by a tenant-respondent about relationship of landlord and tenant would not oust eviction proceeding before the Small Cause Court.

25. In *Smt. Girja Shanker and others v. Krishna Kumar Jaiswal*, 2011 (85) ALR 116, also a similar observation has been made that mere denial of relationship is not sufficient to oust jurisdiction of Court constituted under Provincial Small Causes Courts Act. This Court relied on the decisions in *Ram Ashere Savita Vs. IInd A.D.J. and Others*, and *Shrimati Devi (D) through L.Rs. Vs. IVth A.D.J. and Others*, .

26. In *Punet Kumar Agrawal v. Jhunjhunwala Charity Trust*, 2011 (85) ALR 780, the question was slightly different as to whether a co-trustee can file a suit for arrears of rent and ejectment and, therefore, the same has no application to the facts of this case.

27. In *Majati Subbarao Vs. P.V.K. Krishna Rao (Deceased) by Lrs.*, , the Apex Court observed that title of landlord, if denied, and ownership is renounced in the written statement in an eviction suit, the Trial Court, in the same suit, can decide that question and if finds that such renouncement or denial of title is not founded on valid and bona fide reasons, it can pass decree of eviction on the ground of

Section 20(2)(f) of Act, 1972.

28. In *Majati Subbarao* (supra) a contention was raised that denial of title in a written statement shall not provide a ground for ejectment of tenant in the same proceedings but may give another reason to initiate ejectment proceedings afresh, by landlord. It was contended that denial of title must be anterior to filing of eviction petition and that denial of title in the course of eviction petition would not constitute a ground for eviction. The Apex Court, repelling the above contentions, held, it is well-settled that the Court hearing a suit or appeal can take into account events which are subsequent to the filing of suit in order to give appropriate relief or mould the relief appropriately. Referring to a Constitution Bench judgment in *V. Dhanapal Chettiar Vs. Yesodai Ammal*, , the Court held, in the matter of determination of tenancy, the State Rent Acts do not permit a landlord to snap his relationship with the tenant merely by serving on him a notice to quit as is the position under Transfer of Property Act. The landlord can recover possession of property only on one or more of the grounds, enacted in the relevant sections of Rent Acts. Even after termination of contractual tenancy, the landlord, under the definitions of "landlord" and "tenant", contained in the Rent Acts, remains a landlord, and, a tenant remains a tenant, because of the express provision made in the enactments that a tenant means "a person continuing in possession after the termination of the tenancy in his favour". The difference between the position obtaining under Transfer of Property Act and the Rent Acts in the matter of determination of a lease is that under the former Act, in order to recover possession of leased premises, determination of lease is necessary because during continuance of lease, landlord cannot recover possession of the premises while under the Rent Acts, the landlord becomes entitle to recover possession only on fulfilment of conditions laid down in the relevant sections. He cannot recover possession merely by determining tenancy. Nor can he be stopped from doing so on the ground that it has not terminated contractual tenancy. The Court thereafter referred to and affirmed several decisions of various other High Courts namely, *Sada Ram and Others Vs. Gajjan Shiyama*, ; *Shiv Parshad Vs. Smt. Shila Rani*, and *Machavaram Venkata Narayana Rao v. Sarvepalli Narayana Rao Sarada*, (1978) 1 RCJ 368 (AP) and confirmed the view that even a denial of landlord's title by a tenant in a written statement in an eviction petition under the Rent Act concerned, furnishes a ground, for eviction and can be relied upon in the very proceedings in which a written statement containing the denial has been filed. The Apex Court also said that any other view would only lead to unnecessary multiplicity of legal proceedings as the landlord would be obliged to file a second suit for ejectment of tenant on the ground of forfeiture entailed by tenant's denial of his character as a tenant or the landlord's status as owner or about his title in his written statement, which must be avoided.

29. This decision has been followed and applied under Act, 1972 by this Court in *Shyam Sunder v. IXth Additional District Judge, Aligarh and others*, 2000 (1) ARC 165, where, in para 6, the Court has said:

The tenant says that he has not denied the title of the landlord and even if he has denied the title the advantage cannot be taken in the same suit. The plaintiffs have to file another suit because the cause of action must arise before the suit is filed. The cause of action to evict the tenant in the present case, if any, on the ground of denial of title has arisen after filing of the written statement. It is subsequent to the institution of the suit. The tenant cannot be evicted in the same suit. He also cited a Privy Council decision reported in (1919) L.R. 46 I.A. 109 (Privy Council) . It is true that this Privy Council decision supports the petitioner. But in the present case the landlord- respondents after the death of Smt. Shanti Devi have filed an application for amendment. They got their plaint amended and have also sought the eviction of tenant on the ground that he has denied the title of the landlord in the written statement. The tenant has filed his objection and additional written statement. The tenant knew the case of the plaintiff. An issue was also framed on this question. Both the Courts below have decided the same. The tenant now cannot say that landlord should file another suit. Apart from it there is no justification for driving the landlord to file another suit. The eviction of the tenant can and should be considered in the same suit if the ground exists. This will avoid the multiplicity of the proceeding and unnecessary litigation. It is for this reason that this approach has been accepted by the Apex Court in Majati Subbarao Vs. P.V.K. Krishna Rao (Deceased) by Lrs., . The Apex Court after referring to the Privy Council decision has approved the decision of the High Court taking the similar view.

30. A reading of Section 15 of Act 1887 of Provincial Small Causes Court Act shows that sub-section 1 of Section 15 is exclusive in nature namely, it says what not shall be entertained by a Court of Small Causes. In other words, it talks of suits which are not cognizable by the Court of Small Causes. Second Schedule has 44 entries dealing with different kinds of suits which would not be cognizable by Court of Small Causes. Sub-section (2) thereof runs in positive language and provides that except what has been excluded in the Second Schedule and also subject to provision of any enactment for the time being in force, suits of civil nature would be cognizable by a Court of Small Causes subject to pecuniary jurisdiction, of two thousand rupees namely, if the valuation of the suit or the value of the dispute raised in the suit exceeds two thousand rupees, it shall not be cognizable by a Court of Small Causes. Sub-section (2) of Section 15 thereof excludes three more kinds of civil suit from the jurisdiction of Court of Small Causes namely, those as are barred or made non-cognizable under the provisions of any enactment for the time being in force. Sub-section (3) empowers the State Government to enhance pecuniary jurisdiction of the Court of Small Causes up to R. 3,000/-. The proviso to Section 15(3) raises pecuniary jurisdiction of a Court of Small Causes in respect of suits by the lessor for eviction of a lessee from a building after determination of his lease and for recovery of rent from him in respect of period of occupation during the continuance of lease or for compensation for use and occupation thereof after determination of lease to the extent of Rs. 5,000/-. The language of provisions of statute makes it clear that

the Legislature has laboured to specify the cases which shall not be cognizable by Courts of Small Causes as ordinary suits when there is already a Court having jurisdiction to try such suits but in view of the Scheme of Act, 1887 and Sections 15 and 16 of Code of Civil Procedure, it is clear that the Court of Small Causes is a Court of preferential jurisdiction and not of an exclusive jurisdiction. It cannot be said that a Civil Court on regular side lacks inherent jurisdiction to try suits of nature specified in Section 15(2) of Act 1887. Section 15 of Act 1887 came to be considered before a Full Bench in *Manzural Haq and another v. Hakim Mohsim Ali*, ALR 1970 All 604. Though it was in the context of the question whether a decision given by a Court of Small Causes in a suit for arrears of rent will operate as *res judicata* in a suit filed later in the Court of Munsif for recovery of arrears of rent for a different period for ejection but in the context thereof Court also considered the question whether the Court of Small Causes is a Court of exclusive jurisdiction and answered it in negative. In para 21 of the judgment of Hon'ble S.D. Khare, J. and para 52 of concurrent judgment of Hon'ble Jag Mohanlal Sinha, J., it has been clearly said that Court of Small Causes is not a Court of exclusive jurisdiction but it is Court of "preferential jurisdiction." This decision has been noticed and approved in respect of above legal proposition by Apex Court in *Smt. Gangabai Gilda Vs. Smt. Chhabubai Gandhi*, .

31. Considering the facts as discussed above and exposition of law as enshrined in various authorities, I have no manner of doubt that here is not a case where it can be said that the Courts below lacked patent jurisdiction to entertain the dispute in the present matter and to decide the same. The arguments advanced in respect of lack of jurisdiction is patently erroneous and misconceived. Issues raised by the counsel for petitioner, therefore, are answered against him.

32. In view of the above discussion, I find no merit and the writ petition is, accordingly, dismissed. Interim order, if any, stands vacated.