

(1999) 07 AHC CK 0116

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1813 of 1982

Kanhaiya Lal and Others

APPELLANT

Vs

Vth Additional District and Sessions Judge, Varanasi and Others

RESPONDENT

Date of Decision : 08-07-1999

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1999) 07 AHC CK 0116

Hon'ble Judges : A.K.Yog, J

Final Decision : Allowed

Judgement

A.K. Yog, J.—A suit, being Suit No. 57 of 1973, for ejectment was filed by petitioners before Judge, Small Cause Court, Varanasi and the same was decreed vide judgment and order dated 621976 (Annexure1 to the writ petition). The case of the plaintiff was that Arjun Prasad (Respondent No. 3) was tenant in the shop at Rs. 20 per month. He failed to pay arrears of rent since August 22, 1971 to December 21, 1971 which were not deposited in spite of notice. The said tenant had sublet the accommodation to one Gopal (Opp. Party No. 2).

2. Feeling aggrieved the tenant filed revision under Section 25 of Provincial Small Cause Act (Registered as Revision No. 44 of 1976). The said revision was allowed by Vth Additional District and Sessions Judge, Varanasi (Annexure2).

3. In para 6 of the writ petition it has been stated that above mentioned judgment of Vth Addl. District Judge and Sessions Judge (Annexure2) was set aside vide judgment and order dated 20th December, 1976 passed by this Court in revision. Learned Counsel for the petitioners has produced a copy of the said judgment and order dated 20121979 passed in Civil Revision No. 1609 of 1978, Said judgment of High Court dated 20121979 was set aside by the Supreme Court vide judgment and order dated March 13, 1980 (Annexure3) on the ground that the second revision was not maintainable and hence the order of the High Court dated December 20, 1979 was without jurisdiction. The Supreme Court in

its order, however, in the circumstance of the case directed that 'We give liberty to the respondents to file a petition for the issuance of writ petition under Art. 226 of the Constitution of India before the High Court which shall take into consideration the question of condoning the delay liberally'. In the aforesaid facts, the present writ petition has been filed by the landlord challenging the order dated 25/11/78 passed by IVth Addl. District and Sessions Judge, Varanasi (Annexure2) shows that the Court below has not exceeded in exercise of its jurisdiction under Section 25, Provincial Small Cause Court Act. It has acted as if it was exercising jurisdiction as trial Court.

4. In support of his contention, the learned Counsel for the petitioners has placed reliance on a decision reported in 1996 (2) Allahabad Rent Cases 532 Om Prakash Gupta v. V Addl. District and Sessions Judge, Aligarh and Another. and other cases reported in 1996 (2) Allahabad Rent Cases 561 Man Mohan Dixit v. Addl. District Judge Jalaun at Oral and Others., Special Judge (B.C. Act), Learned Counsel has also placed reliance on the decision reported in 1995 (2) A.R.C. 436, Rafat Ali Khan v. District Judge, Banda. Similar views have been taken as in the case of Om Prakash Gupta (supra).

5. I find no reason to disagree with the above decisions.

6. The question involved in the case, according to the revisional Court itself, was whether or not the defendant/revisionist had, at any point of time, been recognised and treated as a chief tenant. The Revisional Court in its judgment (Annexure2) observed that 'Obviously, the crux of the problem round the determination whether or not the defendant revisionist had at any point of time been recognised and treated as a chief tenant by the landlord Ram Das.'

7. The said question is a question of fact on which the Court of Judge Small Cause had given an elaborate reasoned order. The revisional Court pointed out no error or illegality in the said order and decided the suit on his own as a Court of original jurisdiction. The revisional Court could not do so.

8. In view of the above, the impugned judgment and order dated 25/11/78 (Annexure2) is set aside. The judgment and order dated 6/2/76 passed by Vth Addl. Civil Judge, Varanasi in JSCC Suit No. 57 of 1973, Ram Das v. Arjun Prasad and Anr., is hereby affirmed. The writ petition is allowed. No order as to costs.