

(2005) 01 AHC CK 0091
In the Allahabad High Court
Case No : C.M.W.P. No. 50357 of 2002

Mewa Lal and Another

APPELLANT

Vs

A.D.J. Court No. 5 and Others

RESPONDENT

Date of Decision : 28-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2005) 1 ARC 563 : (2005) 1 AWC 932

Hon'ble Judges : Mukteshwar Prasad, J

Bench : Single Bench

Advocate : Shri Kant, for the Appellant; H.N. Tripathi, S.C., for the Respondent

Final Decision : Allowed

Judgement

Mukteshwar Prasad, J.—By means of this petition under Article 226 of the Constitution of India, the tenants-petitioners have prayed for issuing a writ in the nature of certiorari quashing the order dated 8.11.2002, passed by respondent No. 1 in S.C.C. Revision No. 5 of 1998, Thakur Ram Lakshman Janki Mandir v. Mewa Lal and Anr., (Annexure-4 to the writ petition) whereby the revision was allowed and the decree passed by J.S.C.C. on 28.3.1998 was reversed and the suit of the plaintiffs was decreed.

2. Heard Sri Shri Kant, learned counsel for the petitioners, Dr. H. N. Tripathi, learned counsel for respondents No. 2 and 3 and learned standing counsel and with the consent of the parties, this petition is being disposed of finally at this stage.

3. Respondent Nos. 2 and 3 filed a suit in the court of Civil Judge (S.D.), Fatehpur (J.S.C.C.) for recovery of arrears of rent due from August, 1969 to October, 1981 and for eviction of the tenants from the shop in dispute. It was alleged in the plaint that Thakur Ram Lakshman Janki Mandir is a public charitable trust and the provisions of U. P. Act No. 13 of 1972 are not applicable.

The defendants occupied the shop in question as partners of the firm "Mewa Lal and Om Prakash" and paid Rs. 65 per month as rent. The tenancy commenced from the first day of each English calendar month and ended on the last day thereof. The tenants committed default in payment of rent from August, 1979 to August, 1984 and the suit was filed after serving a composite notice of demand and determining tenancy.

4. The suit was contested on the grounds, inter alia, that Rs. 18.75 p. was rent of the shop in question and the tenants committed no default in payment of rent. No notice was served on the tenants. The provisions of U. P. Act No. 13 of 1972, were applicable.

5. After having considered the entire oral and documentary evidence on record led by the parties and hearing their counsel, learned J.S.C.C. held that the plaintiffs was not a public charitable trust and the provisions of U. P. Act No. 13 of 1972, were applicable to the shop in dispute. It was further held that the rent of disputed shop was Rs. 18.75 p., as alleged by the tenants, and they committed no default in payment of rent. It was further held that no notice was served on the tenants and the suit was dismissed with costs.

6. The plaintiffs filed S.C.C. Revision No. 5 of 1998 u/s 25 of the Provincial Small Cause Courts Act (in short the Act), which was allowed and the suit was decreed vide judgment and decree dated 8.11.2002. While reversing the finding of learned trial court, the revisional court found after thorough discussion of the oral and documentary evidence on record that the tenants agreed to pay rent of the disputed shop at the rate of Rs. 65 per months, as claimed in the plaint.

7. I have heard learned counsel for the parties and have also perused the record of the case. Learned counsel for the petitioners has pressed this petition mainly on the ground that the revisional court committed illegality in reversing the finding of learned J.S.C.C. on the question of rent of the disputed shop. The dispute regarding rate of rent between the parties was a pure question of fact and could not be disturbed by the revisional court in exercise of its power u/s 25 of the Act. According to him, the revisional court had no authority to substitute its own finding in respect of monthly rent of the shop and erred in reversing the decree passed by the court below. There are several decisions of this Court in which it has been laid down in clear words that the revisional court has no power/ Jurisdiction u/s 25 of the Act to reappraise the evidence and to reverse the findings recorded by the trial court on the question of fact and substitute its own finding. A Court exercising the power of revision u/s 25 of the Act can only interfere on the question of law.

8. Reliance was placed by the learned counsel for the petitioners on the following decisions :

(1) Smt. Bina Devi Pandey v. IInd Additional District Judge, Ballia and Anr. 1992 AWC 18.

(2) Laxmi Kishore and Ors. v. Har Prasad Shukla 1979 ACJ 473.

(3) Rafat Ali Khan, Petitioner v. District Judge, Banda and Ors., Respondents 1996 ALJ 594.

9. On the other hand, learned counsel for the plaintiffs-respondents has supported the impugned judgment and decree passed by the revisional court and contended that the learned revisional court had authority to reappraise the evidence on record provided the trial Judge overlooked some evidence or erred in considering the evidence on record led by the parties.

10. After having considered the submissions made on behalf of the parties and the material on record as well as the decisions of this Court, including the decision rendered in Laxmi Kishore's case (supra), by a Division Bench, I find force in the contention of the learned counsel for the petitioners. In the present case, learned J.S.C.C. framed point No. 4 in respect of rent of the shop in question and after detailed scrutiny and appraisal of oral and documentary evidence on record led by the parties found that the rent of the disputed shop was not Rs. 65 per month, as alleged in the plaint. However, learned revisional court reversed the finding and substituted its own finding in respect of rent. Admittedly, the rate of rent is a pure question of fact and not even mixed question of law and fact. A Division Bench of this Court in Laxmi Kishore's case (supra), has laid down in clear words that a wrong decision on fact by a competent court of law is also a decision according to law and any Court exercising power u/s 25 of the Act has no right to de novo examine the findings of fact reached by the trial court. It was also held that if revisional court finds that a particular finding of fact is vitiated by an error of law it has power to pass such order as the justice requires ; but it has no jurisdiction to reappraise the evidence in order to determine an issue of fact for itself. It was also laid down that if it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guidelines. It cannot enter into evidence, assess it and determine an issue of fact.

11. Therefore, in view of the decisions of this Court laying down the law on the point involved in this petition, I find that this petition has merits and it must succeed and the judgment and decree impugned in this petition passed by respondent No. 1 is not sustainable and is liable to be quashed.

12. No other point was pressed in this petition.

13. The writ petition succeeds and is allowed with costs. The impugned order dated 8.11.2002, is quashed and the case is remanded to respondent No. 1 for a fresh decision in the light of the observations made above.