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**(2002) 09 SC CK 0017**

**In the Supreme Court Of India**

**Case No :** CaseNo : C. A. No. 1655 of 1999

Mohd. Shahnawaz Akhtar and Another

APPELLANT

Vs

Ist ADJ Varanasi and Others

RESPONDENT

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**Date of Decision :** 05-09-2002

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2003) 1 AWC 126 Supp : (2003) 1 JCR 241 : (2002) 8 JT 69

**Hon'ble Judges :** S. N. Variava, J;Brijesh Kumar, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

1. This appeal is directed against an order dated 30.4.1997 by which the High Court has allowed the writ petition filed by respondent No. 4 herein.

2. Briefly stated the facts are as follows:

The appellant who is the landlord of the premises filed a suit for eviction of respondent No. 4 from shop No. D-50/128 situated in Mohalla Kajipura Kala, Nai Sarak, Varanasi city. The suit was filed on various grounds. One of the grounds was that the 4th respondent had sublet the premises to other parties. The trial court decreed the suit on this ground. The revision filed by the 4th respondent was dismissed. The respondent then filed a writ petition under Article 226 of the Constitution.

3. At this stage, the limits of jurisdiction of the High Court in issuing a writ of certiorari under Article 226 of the Constitution needs to be kept in mind. It has been held by a constitution bench of this Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, as follows:

"The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can

be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or insufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

4. The trial court, as well as the revisional court, had on appreciation of evidence come to the conclusion that the 4th respondent had sublet the premises. In coming to the conclusion, they had relied on a report of a commissioner appointed by the trial court to visit the premises. The commissioner had found that somebody else was carrying on business of selling ready-made garments inside and around the premises. Admittedly, the 4th respondent was not carrying on this business. The 4th respondent had also not produced any licence to carry on any business nor produced any documents like bills, vouchers, sale receipts etc. to show that he had been carrying on any business in the suit premises. It is on appreciation of this evidence that the suit had been decreed and the revision dismissed. The High Court, however, reversed the findings of the trial court and the revisional court on the reasoning that even if the entire evidence is accepted, this would still not amount to a case of subletting. The High Court held that at the most it would be a case of casual licence allowing persons to temporarily store their goods inside or to do some business outside the shop by using the

patra and also on a chowki. On this reasoning, the High Court allowed the writ petition.

5. In our view, the High Court has transgressed the limits of the jurisdiction under Article 226 of the Constitution of India by purporting to re-appreciate the evidence and coming to its own conclusion. The High Court has nowhere stated or concluded that the lower courts had committed an error of jurisdiction or that they had acted illegally and improperly. Further the High Court failed to notice that a case of casual licence was not pleaded or proved by respondent No. 4. Therefore, it was not open to the High Court to make out a new case on behalf of the party in its writ jurisdiction under Article 226 of the Constitution.

6. In our view, the impugned judgment cannot be sustained and is hereby set aside. The decrees passed by the trial court and the revisional court are restored.

7. The appeal is, accordingly, allowed. There shall be no order as to costs.