

(2013) 01 AHC CK 0059
In the Allahabad High Court
Case No : C.M. W.P. No. 38510 of 2002

Moti Lal

APPELLANT

Vs

Trust Sri Thakur Kishori Raman Ji Maharaj

RESPONDENT

Date of Decision : 24-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 16, 5(2), 57
Constitution of India, 1950 — Article 226, 227
Provincial Small Cause Courts Act, 1887 — Section 13, 13(4), 15, 15(2), 15(3)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 10, 18, 20, 21, 22

Citation : (2013) 5 ADJ 672 : (2013) 98 ALR 50 : (2013) 3 AWC 2940

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Jitendra Kumar Sharma and P.K. Mishra, for the Appellant; Rahul Sahai, C.S.C., for the Respondent

Judgement

Sudhir Agarwal, J.—Heard Sri P.K. Mishra, learned counsel for the petitioner and Sri Rahul Sahai, learned counsel appearing for respondent. This is a tenants writ petition. The suit for ejectment filed by respondent-plaintiff, i.e., S.C.C. Suit No. 19 of 2000 seeking ejectment of petitioner-tenant from accommodation in question (a shop) was decreed by trial court, i.e., Khafifa Civil Judge (Junior Division), Mathura vide judgment dated 4.4.2002 and the said decision stood confirmed pursuant to dismissal of petitioner's S.C.C. Revision No. 12 of 2002 by District Judge. Mathura vide judgment dated 29.8.2002. The petitioner has assailed these two judgments.

2. Learned counsel for the petitioner admits that before courts below it has never been disputed that property in dispute does not belong to plaintiff-respondent and petitioner is not tenant of said plaintiff. However. for the first time before this Court he intend to raise a pure question of fact that property in dispute does not belong to plaintiff-respondent and my attention was drawn to the pleadings in this regard made in para 2E of the writ petition.

3. It cannot be disputed that this is a question of fact sought to be raised by petitioner for the first time before this Court though before courts below he has disputed this aspect and throughout has represented himself as the tenant of plaintiff. In effect his contention was only that the plaintiff is not a public charitable trust but a private trust and, therefore, is not exempted from application of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972").

4. A pure question of fact and that too to distort the admitted facts before courts below, for the first time cannot be allowed to be raised before this Court, in a writ jurisdiction under Articles 226/ 227 of the Constitution of India.

5. In order to interfere with the orders of subordinate courts there must be an error apparent on the face of record. Taking up a new case before the High Court that too involving a pure question of fact which was never raised before courts below and what was actually admitted before courts below, if sought to be contradicted by raising a new question of fact before High Court, is neither permissible nor within the realm of error apparent on the face of record and, therefore, cannot be allowed at this stage.

6. Scope of judicial review of this Court under Article 226 or 227 is not to permit the parties to raise a new factual aspect before this Court and thereby treating the subordinate courts' judgment to be erroneous on the face of it and decide in a particular manner or otherwise or to remand the matter. If this is permitted. it will lead no litigation to any conclusion and may result in an unending litigation. Such a situation can neither be countenanced nor can be permitted. In fact this is the gist evident from various authorities dealing with on the ambit of judicial review open for this Court while considering correctness of judgment of courts below exercising powers under Articles 226 and 227 of the Constitution.

7. The scope of judicial review in such matters where the orders of courts below are assailed before this Court in a writ petition under Articles 226/ 227 of the Constitution is very limited. This power involves a duty on the High Court to keep the inferior courts and Tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

8. In D.N. Banerji Vs. P.R. Mukherjee and Others, , the Court said:

Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Articles 226/ 227 of the Constitution to interfere."

9. A Constitution Bench of Apex Court examined the scope of Article 227 of the

Constitution in Waryam Singh and Another Vs. Amarnath and Another, and made following observations at p. 571:

This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J. in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee*, , to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors".

10. In *Mohd. Yunus Vs. Mohd. Mustaqim and Others*, . the Court held that this Court has very limited scope under Article 227 of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under Article 227 of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of Jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice.

11. For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. (See: *Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu*, ; *Rukumanand Bairoliya Vs. The State of Bihar*, : *Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others*, : *Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives*, ; *Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel and others*, ; *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, and *Virendra Kashinath Ravat and Another Vs. Vinayak N. Joshi and Others*,).

12. It is well-settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (See: *Mrs. Rena Drego Vs. Lalchand Soni, Etc.*, ; *Chandra Bhushan (Deceased) by Lrs. Vs. Beni Prasad and Others*, ; *Smt. Savitrabai Bhausahab Kevate and Others Vs. Raichand Dhanraj Lunja, and M/s. Savita Chemicals (Pvt.) Ltd. Vs. Dyes and Chemical Workers Union and Another*,).

13. Power under Article 227 of the Constitution is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. (See: *Union of India and Others Vs. Himmat Singh Chahar*,).

14. In *Ajaib Singh Vs. The Sirhind Co-Operative Marketing Cum-Processing Service Society Limited and Another*, . the Court has held that there is no

justification for the High Court to substitute its view for the opinion of the Authorities/Courts below as the same is not permissible in proceedings under Articles 226/ 227 of the Constitution.

15. In Mohan Amba Prasad Agnihotri and Others Vs. Bhaskar Balwant Aher (D) Through I.Rs., , the Court said that jurisdiction of High Court under Article 227 of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by courts below unless there is no evidence to support findings or the findings are totally perverse.

16. In Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, , the Court observed that it is impermissible for the Writ Court to reappreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court cannot interfere.

17. In Union of India and Others Vs. Rajendra Prabha and Another, , the Court observed that the High Court, in exercise of its extraordinary powers under Article 227 of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

18. Similar view has been reiterated in State of Maharashtra Vs. Milind and Others, : M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., and Ouseph Mathai and Others Vs. M. Abdul Khadir, .

19. In Surya Dev Rai Vs. Ram Chander Rai and Others, , it was held that in exercise of supervisory power under Article 227, High Court can correct errors of jurisdiction committed by subordinate Courts. It also held that when subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law: or, a grave injustice or gross failure of justice has occasioned thereby.

20. In Jasbir Singh Vs. State of Punjab, , the Court said:

...while invoking the provisions of Article 227 of the Constitution, it is provided

that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of superintendence exercised over the subordinate courts and Tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions.

21. In *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, . the Court said that power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the Tribunals and Courts subordinate to High Court. The above authority has been cited and followed in *Kokkanda B. Poondacha and Others Vs. K.D. Ganapathi and Another*, and *Bandaru Satyanarayana Vs. Imandi Anasuya and Others*, .

22. In *Abdul Razak (D) through L.Rs. and Others Vs. Mangesh Rajaram Wagle and Others*, , Court reminded that while exercising jurisdiction under Article 226 or 227, High Courts should not act as if they are exercising an appellate jurisdiction.

23. In *T.G N. Kumar Vs. State of Kerala and Others*, . the Court said that power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and Judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within. the bounds of their authority.

24. In *The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar*, , Apex Court referring to its earlier decision in *Union of India and Others Vs. R.K. Sharma*, , observed that only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226/ 227.

25. In the circumstances, the petitioner cannot be permitted to make a statement of fact for the first time that too contrary to his stand before courts below raising a pure issue of fact before this Court.

26. The second aspect is, whether a trust is a public or private, could not have been decided by Small Cause Court and the matter should have been referred for adjudication by civil court and regular suit. To support, the learned counsel for petitioner, placed reliance on a decision of this Court in *Shri Bajrang Bali Ji Maharaj Virajman v. Rent Control and Eviction Officer and another*. 1998 (1) ARC 29. Learned counsel for the petitioner submitted that the dispute, whether a charitable trust is a public trust or private trust, involves civil dispute like that of determination of title and, therefore, cannot be decided by the authorities under Rent Statute. The Court of Small Cause is also one of such authority, hence it is

barred and the impugned judgments, therefore, are wholly without jurisdiction.

27. In my view the submission is thoroughly misconceived.

28. There are two types of authorities before whom proceedings under Rent Statute, i.e., Act, 1972, can be initiated. The first, executive authorities, i.e., the District Magistrate or an officer authorised by him as defined in Section 3(c). The second, a Prescribed Authority which means a Civil Judicial Officer or Judicial Magistrate authorised by District Judge to exercise, perform or discharge all or any of power and functions or duties of Prescribed Authority under the Act. Besides two, there is a third forum where a dispute relating to landlord and tenant can be taken by filing a suit and that is "the Court".

29. There are certain provisions which obliges executive authorities, i.e., the District Magistrate or any officer authorised by him to ensure implementation and observance of Act, 1972. The provisions like Section 21 bring in a judicial officer as Prescribed Authority to entertain a dispute and adjudicate the same. Then there are provisions under Act, 1972 which have conferred appellate/revisional power upon courts, i.e., the District Judge or any Additional District Judge authorised by him". Here the orders, whether passed by executive authorities or judicial authorities like the Prescribed Authority are subject to review. The relevant provisions in this respect are Sections 10, 18 and 22. These are the forums referred to specifically by Act, 1972. For the purpose of procedure, Section 34 read with Rule 22 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 (hereinafter referred to as the "Rules, 1972") import certain provisions of CPC applicable to all the above authorities, i.e., the District Magistrate or Prescribed Authority or appellate authority or Revisional Authority. It goes without saying, while these authorities would be exercising powers under Act, 1972, they would have to follow the provisions of Act, 1972 and the procedure prescribed therein, meticulously and rigorously. To that extent. Act, 1972 has been given overriding effect over CPC vide Section 38 of Act, 1972.

30. A civil suit in certain respect is not completely ousted but to some extent it is restricted by Act. 1972. Section 20 permits filing of suit in certain matters, provided certain conditions and grounds existed or satisfied. A suit can be filed in appropriate court, provided conditions mentioned in Section 20 are satisfied. Thereupon for the purpose of procedure etc., the court would be governed by common law i.e., the procedural statute. Then one. issue here would be, what a "Court" or "civil court" means.

31. The term "civil courts" and classes of such courts is find in Bengal, Agra and Assam Civil Courts Act, 1887 (hereinafter referred to as the "Civil Courts Act, 1887"). Section 3 thereof talks of classes of "civil courts" as under:

3. Classes of Courts.--There shall be the following classes of civil courts under this Act, namely:

(1) the Court of the District Judge:

- (2) the Court of the Additional Judge;
- (3) the Court of the Subordinate Judge; and
- (4) the Court of the Munsif.

32. The Court of Small Causes are established vide Section 5 of S.C.C. Act, 1887. By Section 15 thereof all suits of civil nature are cognizable by it except as specified in Second Schedule or exceeding pecuniary limit provided in sub-sections (2) and (3) of Section 15.

33. A Judge of Small Cause Court by virtue of Section 13(4) is also a subordinate Judge or Munsif within the meaning of Section 13. By Section 40, certain provisions of Civil Courts Act, 1887, i.e., Sections 15, 32, 37, 38 and 39 have been applied to Small Causes Court. It further says that except to the extent provided by Provincial Small Cause Courts Act, 1887 (hereinafter referred to as the "S.C.C. Act, 1887") the other provisions of Civil Courts Act, 1887 shall not apply to Small Causes Courts.

34. The above provisions lead no manner of doubt that Small Cause Court is a "civil court", competent to adjudicate civil disputes by entertaining suits of civil nature. It is not a "Revenue Court" as defined in Section 5(2) of Code of Civil Procedure, 1908 or a "Criminal Court" established under Chapter II, Code of Criminal Procedure, 1973.

35. The civil nature of Court of Small Cause can further be examined by looking in detail Sections 15 and 23 of Civil Courts Act, 1887. Construing Section 15 of S.C.C. Act, 1887 it has been held that a Small Cause Court is not such which has been conferred with a new jurisdiction other than that cognizable by a "civil court" but the suits of civil nature are cognizable by Small Cause Court subject to exclusion provided u/s 15 of S.C.C. Act, 1887 or to some extent where Section 23 thereof is applicable.

36. I may further clarify scope of Sections 15 and 23 of S.C.C. Act, 1887 to make the things more explicit.

37. Section 15 of SCC Act, 1887 deals with the matters in respect whereof, a suit would be cognizable by the Courts of Small Causes. In subsection (3) of Section 15, as enacted originally, an amendment in the State of U.P., for the first time was made in 1970 by "The Uttar Pradesh Civil Laws (Amendment) Act, 1970" (U.P. Act No. XIV of 1970) w.e.f. 8th April, 1970. Then came another amendment vide U.P. Act No. XXXVII of 1972, w.e.f. 20th September, 1972, whereby a proviso and explanation was added in sub-section (3) of Section 15. There was a minor amendment made in subsection (2) and sub-section (3) of Section 15 by U.P. Act 57 of 1976 with respect to valuation. Lastly, there is one more amendment made by U.P. Act No. XVII of 1991 w.e.f. 15th January, 1991 whereby the existing sub-sections (2) and (3) have been substituted.

38. In nutshell. Section 15 as applicable in State of U.P. in 2000, when the suit in

question was filed, reads as under:

15. Cognizance of suit by Courts of Small Causes.--(1) A Court of Small Causes shall not take cognizance of the suits specified in the Second Schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that. Schedule and to the provisions of any enactment for the time being in force all suits of civil nature of which the value does not exceed five thousand rupees shall be cognizable by a Court of Small Causes:

Provided that in relation to suits by the lessor for the eviction of a lessee from a building after the determination of his lease or for recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease. Or of compensation for use and occupation thereof after the determination of the lease, the reference in this sub-section to five thousand rupees shall be construed as a reference to twenty-five thousand rupees.

Explanation.--For the purposes of this sub-section, the expression "building" has the same meaning as in Article (4) in the Second Schedule.

39. A reading of the above provision shows that sub-section (1) of Section 15 is exclusionary 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 five thousand rupees namely, if the valuation of the suit or value of the dispute raised in the suit exceeds five thousand rupees, it shall not be cognizable by a Court of Small Causes.

40. Sub-section (2) of Section 15, therefore, excludes some more civil suits from the jurisdiction of Court of Small Causes, namely, those barred or made non-cognizable under the provisions of any enactment for the time being in force, based on the valuation of suit.

41. 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/damage etc. 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.

42. The language of provisions of statute as noticed above, makes it clear that the Legislature has laboured to specify the cases which shall not be cognizable by Courts of Small Causes when there is already a Court having jurisdiction to try

such suits but in view of the Scheme of S.C.C. 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 a 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 S.C.C. Act, 1887.

43. Section 15 of S.C.C. Act, 1887 came to be considered before a Full Bench in *Manzurul Haq and Another Vs. Hakim Mohsin Ali*, . 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 ejectment. In this context, the Court considered the question whether 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 said explicitly 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 to above legal proposition, by Apex Court in *Smt. Gangabai Gilda Vs. Smt. Chhabubai Gandhi*, .

44. Having said so, I proceed to consider Article 4 Schedule II of S.C.C. Act, 1887 as amended in U.P. A suit for possession of immovable property is barred but there is an exception again to bring a particular species of cases, namely, suits filed by a lessor for eviction of a lessee" from a building after determination of his lease and for recovery from him, of compensation for the use and occupation of that building, after such determination of lease.

45. Now I come to Section 23 of S.C.C. Act, 1887. It reads as under:

23. Return of complaints 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 complaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a complaint 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.

46. Section 23 of S.C.C. 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 no more *res integra*.

47. 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.

48. 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 S.C.C. 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.

49. 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.

50. 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 sub-tenant 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.

51. 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)

52. 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)

53. 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, Mohanlal Ganj, 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, .

(Emphasis added)

54. 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 plaints 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 plaint 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 plaint. 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 plaint.

(Emphasis added)

55. 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 plaint for presentation to the proper Court

56. 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 plaint 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.

57. The aforesaid discussion leaves inescapable conclusion that a Small Cause Court is a civil court and has jurisdiction over suits of civil nature. Since the procedure to be followed is slightly summary in nature than that followed by civil courts in regular suits, on the intricate questions of civil nature, the law requires, to some extent, that they should be decided by civil courts following detail intricate procedure. But one thing cannot be disputed that a Small Cause Court is a civil court.

58. That being so and particularly when a suit for eviction is filed by landlord against the tenant it would lie In a Court of Small Cause and like the issue of title, other aspects like, whether a trust Is a public or private one can also be decided by it as an incidental issue. It cannot be said that it has no jurisdiction at all in such matters.

59. The authority cited by Sri P.K. Mishra, learned counsel for the petitioner has not excluded "civil courts" under Rent Statute from considering this aspect. It only talks of the Rent Control and Eviction Officer. This is how the Court in para 2 of the judgment says, "the Rent Control and Eviction Officer, in my view, was not the competent authority to decide such an intricate question of law notwithstanding whether the Act applied or not." The judgment in Shri Bajrang Bali Ji Maharaj Virajman (supra), therefore, has no application to the case in hand.

60. In view of above, the arguments advanced lack any substance. The writ

petition is devoid of merit.

61. Dismissed. Interim order, if any, stands vacated.