
(2013) 04 AHC CK 0020

In the Allahabad High Court

Case No : Second Appeal No's. 320 and 319 of 2012 & Second Appeal No. 320 of 2012

M/s. Bharat Petroleum Corporation Ltd. and Another

APPELLANT

Vs

Smt. Indira Pandey and Another

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 15, 16, 57
Provincial Small Cause Courts Act, 1887 — Section 15, 15(2), 15(3), 23
Transfer of Property Act, 1882 — Section 111
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 20, 20(1), 20(2), 20(2)(a)

Citation : (2013) 6 ADJ 653 : (2013) 4 ALJ 452 : (2013) 99 ALR 397

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Prakash Padia and Rajeev Misra, for the Appellant; Pramod Pathak and R.P. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri Rajeev Misra and Prakash Padia for the appellants and Sri R.P. Tiwari for the respondents in both the appeals. Both these appeals have arisen from common proceedings and the orders passed by the Court below arising out of Original Suit No. 162 of 1996 and, therefore, as requested and agreed by learned counsel for the parties, have been heard together.

2. The following substantial questions of law initially were formulated by this Court:

1. Whether in the facts and circumstances of the case, the suit was not maintainable before the Civil Court being barred by U.P. Act No. 13 of 1972?

2. Whether the appellant is entitled to the benefit of Section 29-A(3) read with Section 20 whereby the suit for eviction was barred except on the grounds mentioned therein?

3. Whether the Courts below are justified in law in not considering the claim of appellants u/s 29-A(3) of U.P. Act No. 13 of 1972 despite the direction of Hon''ble Supreme Court in Civil Appeal No. 391 of 2010 dated 15.1.2010?

4. Whether the Courts below are justified in law in holding that the argument that suit is barred by U.P. Act No. 13 of 1972 is without force as the Hon''ble High Court has held that suit is maintainable in Civil Court, without appreciating that the Hon''ble Supreme Court in Civil Appeal No. 361 of 2010 filed against the said order of Hon''ble High Court directed the appellants to claim benefit u/s 29-A(3) of U.P. Act No. 13 of 1972?

3. However, after hearing learned counsel for the parties, I find that substantial questions of law formulated, need be recast, to which, learned counsel for the parties also agreed and hence, the questions which would be considered by this Court are reformulated as under:

(i) Whether the land in question is covered by Section 29-A(2) of U.P. Act No. 13 of 1972?

(ii) Whether a suit for ejectment in respect of land, covered by Section 29-A(2) of Act No. 13 of 1972 is maintainable, even if no ground, as set out in sub-section (2) of Section 20 of U.P. Act No. 13 of 1972 is available or exists?

(iii) Whether a suit for eviction in respect of a land governed by Section 29-A(2) is permissible outside Section 20 of Act 1972?

(iv) Whether the plaint in question does not show any cause of action to satisfy requirement of Section 20(2) of Act 1972, and, therefore, the suit was not maintainable and the plaint itself was liable to be rejected under Order 7 Rule 11 C.P.C.?

(v) Whether a suit for ejectment u/s 29-A(3) read with Section 20 is maintainable before a Civil Court?

4. The facts giving rise to the present dispute and useful to scrutinise the dispute in brief are as under:

5. Smt. Ramawati Devi wife of Sri Vishwanath Pandey executed a lease deed dated 18.9.1957 with M/s. Burmah Shell, in respect of land, having an area 151'' x 136'' x 147'' x 131'', situate by the side of Varanasi-Mirzapur road at Mirzapur, for a period of twenty years, with option for renewal for a further period of twenty years, on a monthly rent of Rs. 100/-. The covenants of deed permitted the lessee to use the premises as a depot for storage and sale of petroleum products, motor accessories and for the said purpose, to establish, service station/filling station etc., with full liberty to make excavation, construction, erection etc.

6. The aforesaid lease expired in 1977, but was extended/renewed upto 31.10.1996. It is also not in dispute that pursuant to the aforesaid deed, lessee constructed a retail petrol depot/filling station and made construction of building

etc. for the said purpose. Since the lease was going to expire on 31.10.1996, the plaintiff sent notices dated 15.1.1996, 17.1.1996 and 13/14.6.1996 stipulating that he is not inclined to extend period of lease further and the lessee should vacate the premises and hand over possession on or before 1.11.1996, after removing structure raised thereupon. Subsequently, a suit for ejectment of defendants from the premises in question and handing over vacant possession was instituted vide plaint dated 28.10.1996.

7. The Trial Court formulated ten issues but the relevant ones are following:

- (i) Whether the defendant is liable to be evicted from the disputed land?
- (ii) Whether the defendant has no right to use the disputed land on the strength of agreement dated 18.9.1957?
- (iii) Whether the defendant is bound by 11/C agreement?
- (vi) Whether this Court has jurisdiction to try this suit?
- (vii) Whether the suit is barred by Act No. 13 of 1972?
- (viii) Whether the suit is maintainable?
- (x) Whether the plaintiff has right to institute the suit or not?

(English translation by Court)

8. Issue Nos. 6 and 7 were taken as preliminary issues. Civil Judge (S.D.) Mirzapur vide order dated 5.9.1997 returned issue No. 6 in positive, holding that the Court has jurisdiction to adjudicate upon the aforesaid suit and issue No. 7 in negative, holding that the suit is not barred by Act 1972. There against Civil Revision No. 294 of 1997 was taken by the defendant revisionists but the same was dismissed by revisional Court vide judgment dated 17.11.1997. However, on the question, whether Section 29-A is applicable or not, revisional Court held that this question would be considered after evidence is adduced by the parties. Subsequently, it also observed that Trial Court itself has not decided the controversy, whether Section 29-A is attracted in the case in hand or not and it is in this context the revisional Court said:

Consequently abrupt finding cannot be given at this stage that Section 29-A is applicable. This question is left open for determination by the trial Court.

If the trial Court finds that Section 29-A of the Act is applicable and no ground mentioned u/s 20 of the Act exists, relief against eviction can be granted to the tenant and in that event the decree for demolition will become infructuous so also decree for permanent injunction against the sale on supply of petroleum product.

9. The Revisional Court however, held that the suit in question is cognisable by Civil Court in view of Article 4, Schedule II of Provincial Small Cause Courts Act 1887.

10. In the meantime, defendants filed an application u/s 29-A of Act 1972, before Trial Court, stating that they were ready to pay rent as fixed by the Court and, therefore, plaintiffs application be rejected. The application was rejected by Trial Court vide order dated 17.11.1997. Thereagainst defendants brought the matter to this Court in Civil Revision No. 364 of 1997. While dismissing revision on 4.1.2007, this Court observed:

.....Therefore, the mutually agreed rent upon which the revisionist places its reliance for the purposes of sub-section (4) of Section 29-A had in fact become extinct much before the present application u/s 29-A of the Act was moved before the trial Court for according its benefit to the tenant-revisionist. Therefore, to say that the suit for eviction of the revisionist tenant in the present form as has been instituted and is pending disposal is not maintainable in the face of sub-section (3) of Section 29-A of the Act, is definitely not a correct contention. In any case, the benefit of Section 29-A at that point of time when this application had been moved before the trial Court was legally not available and if such application has been rejected by the Court below even by a laconic order, this Court would not be inclined to interfere in the same in its revisional jurisdiction. The application moved u/s 29-A of the Act was actually not maintainable and if it has been rejected, the order can be said to be just and proper.

This revision does not have any strength and as such it is hereby dismissed.

11. The matter did not rest there and taken to the Apex Court in Civil Appeal No. 391 of 2010. The Apex Court, though did not interfere in the ultimate order of this Court dismissing the revision, but provided that it shall be open to the appellant tenant to claim benefit of Section 29-A(3) of Act 1972 in the pending suit and it shall be for the Court concerned to decide whether the appellant tenant is entitled to benefit of Section 29-A(3) or not. The relevant part of Apex Court's judgment dated 15.1.2010 reads as under:

The appellant is the tenant of the premises in dispute. The said premises was initially taken on lease as open land. But, thereafter with the permission of the landlord-respondent, the tenant-appellant made construction on the land. The respondents filed a suit for eviction of the appellant. The appellant is claiming the benefit of Section 29-A(3) of the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter for short the act") in the pending suit for eviction.

It appears that a misconceived application claiming benefit of Section 29-A(5) of the Act was filed in the suit by the appellant. A bare perusal of Section 29-A(5) of the Act shows that such an application can only be filed by the District Magistrate. In our opinion, the mention of Section 29-A(5) by the appellant in its application was wholly misconceived and irrelevant. Hence, we uphold the impugned judgment and order and dispose of these appeals with a direction that it is open for the appellant-tenant to claim the benefit of Section 29-A(3) of the

Act in the pending suit. However, it is for the Court concerned to decide whether the appellant is entitled to the benefit of Section 29-A(3) or not. We make it clear that we have not expressed any opinion on the merits of the case and direct that the hearing of suit shall be expedited.

(emphasis added)

12. Appeals were disposed of by Apex Court in terms of the aforesaid order.

13. It is then the suit proceeded with the Trial Court. On the aforesaid issue, Trial Court discussed the matter under issue No. 7. I, however, find reasoning assigned therein are extremely strange, disarrayed and totally wide off from the central issue. It {Trial Court} was supposed to first examine whether land in question satisfied requirement of Section 29-A(2) so as to attract Section 29-A. On this aspect it has not said anywhere that requirements of sub-section (2) of Section 29 are or not satisfied in the present case. The Trial Court misdirected itself, in supposing. Section 29-A, if attracted, would bar a suit, whatsoever, for ejectment. This assumption, in my view, is not correct.

14. Then in a very strange way, it has referred to Section 111 of Transfer of Property Act, 1882 (hereinafter referred to as "Act 1882") and said that benefit of Section 20 read with Section 29 would be available to the defendant, only if he had deposited rent u/s 30 of Act 1972, or deposited the entire rent on first date of hearing of the suit and not otherwise. Here also, I find this reasoning very surprising. The suit itself having not been filed on the ground of default in payment of rent, which is one of the grounds u/s 20(2)(a) of Act 1972, how the Trial Court could have looked into sub-section (4) of Section 20 or Section 30 thereof.

15. Recording totally misconceived and distorted findings, the Trial Court answered issue No. 7 in affirmance, i.e. in favour of plaintiff and against the defendants. Ultimately, it decreed the suit on the foundation that the term of lease deed had already expired and defendant appellant thereafter had no legal or otherwise right to continue in possession over the land in dispute.

16. The lower appellate Court (hereinafter referred to as "L.A.C.") has also proceeded with more serious erroneous assumption, inasmuch as, it has excluded bar of Act 1972 on the ground that the suit is maintainable in Civil Court and then to non-suit the defendant-appellants with reference to Section 29-A it has referred to sub-section (6) thereof. The only discussion made by L.A.C., i.e., Sri Kali Charan, Additional District Judge (Ex-Cadre), Mirzapur in the context of Act 1972, in particular, Section 29-A, finds place in 13 and 14 which read as under:

13. Further the argument of learned counsel for the appellant that the suit was barred by Act No. 13 of 1972 has been rendered without force, because learned counsel for the respondents has invited the Court's attention to peruse High Court's judgment Paper No. 73-C. In it, Hon'ble High Court has clearly held that

the suit is maintainable in Civil Court itself. It is incorrect to say that it should have been instituted in Small Cause Court. It is also held that the original suit is not barred by Act No. 13 of 1972. 14. So far as the argument that an application in the matter u/s 29-A(6) of U.P. Act No. 13 of 1972, is pending before the Collector, and without considering this aspect, the lower Court has passed the judgment, and on this ground the judgment of the Court below is liable to be set aside, (is concerned), in this regard, it has been held by Hon''ble High Court in para 2 of Paper No. 73-C/6, that the appellant could take benefit of this claim. But aforesaid provision of Section 29-A(6) of U.P. Act No. 13 of 1972 was pointed out to the Court by respondent's learned counsel, wherein it has clearly been laid down that within three months from the date of insertion of the Section by amendment the tenant ought to have moved such an application, whereas, in the present case, no such application was made before the Trial Court by the appellant within three months. Since the aforesaid Section 29-A of the Act came into force on 5.7.1976, while the application has been given in 2010, which is not maintainable according to this Section. The discussion made by the lower Court, in my opinion, has correctly been made. In this regard, Hon''ble High Court has recorded a clear finding also, in Paper No. 76/C, on record. And it has been said clearly in paper No. 76C/6 that benefit of Section 29-A(6) cannot be extended to the tenant. And has also made a reference of Sardar Gurcharan Singh in its decision. Benefit of Section 29-A can be given, where the status of parties is that of tenant and landlord. Since in this case, there existed no status of tenant and landlord, after 31.10.1996, for this reason too, benefit of the aforesaid Section cannot be extended to the appellant

(English translation by Court)

17. To my mind, the entire approach and understanding on the part of the Courts below is clearly erroneous. It shows a serious misconstruction and misunderstanding of the inter-relationship of Section 29-A and Section 20 of Act 1972.

18. In order to answer the question as formulated, it would thus be necessary to examine whether the land/premises in question satisfies the requirements, laid down in Section 29-A(2) of the Act 1972, so as to attract the aforesaid provision, i.e. Section 20 to the case in hand.

19. There is no doubt that Act 1972, as enacted, was applicable only to certain buildings, existing in urban areas of the State of Uttar Pradesh. Certain buildings are exempted from operation of the Act by virtue of Section 2, with which, this Court is not concerned here at. However, by U.P. Act No. 28 of 1976, Section 29-A was inserted, w.e.f. 5.7.1976. The apparent purpose of enactment/insertion of Section 29-A, appears to be that the legislature extended benefit of restrictions imposed under Act 1972, to such tenants also, to whom, only land was let out, but they were permitted to erect permanent structure(s) thereon, with the consent of landlord, by incurring their own expenses. This provision covers all such cases, as above, of letting out of land only, either before or after the

commencement of Section 29-A. In order to attract, Section 29-A, and to bring a premises/land within the ambit of Section 29-A(2), three things are required to be satisfied: (i) only land is/was let out (ii) tenant has/had erected a permanent structure incurring his own expenses and (iii) aforesaid permanent structure raised by the tenant must be with the consent of landlord. If these three conditions are satisfied, Section 29-A(2), or in other words, the aforesaid Section itself shall apply to such land.

20. It has not been disputed before this Court that in the present case a vacant piece of land was let out to the defendant appellants vide lease deed dated 18.9.1957. The landlord also specifically permitted lessee to raise permanent construction over the land, so let out, for the purpose of running filling station/service station etc., for which the lease was executed. It is also not disputed that pursuant thereto the tenant had raised substantial permanent structure on the land in question. This is also evident from the notice dated 13.6.1996 whereby the landlord required defendant-appellants to remove all structures and installations from the disputed land. This is also evident from the relief sought in the plaint whereby the plaintiff-landlord required the tenant through a decree of mandatory injunction that he should remove all his constructions, machinery etc., from the disputed land and make the level of the land plain. This is also the finding recorded by revisional Court in Civil Revision No. 294 of 1997, in its order dated 17.11.1997, as under:

It is, therefore, clear from the allegations made in the plaint as well as from the reliefs sought in the plaint that it was a suit for eviction of the lessee and also the dealer occupant from the open land let out to defendant No. 1 by demolition of structures raised thereon.

(emphasis added)

21. Learned counsel for plaintiff-respondent also could not dispute that there exists a petrol pump etc., over the land in question. There existed permanent structures, which include machines etc. on the land in dispute. This structure has been raised by defendant-appellants by incurring their own expenses. The consent of landlord is obvious. It is for this reason, prayer in the plaint also included that of a mandatory injunction, directing the defendants to remove entire structure from the land in dispute. That being so, there is no scope but to say that the land in dispute clearly comes within the ambit of Section 29-A(2) and satisfies all the requirements thereunder.

22. This by itself would mean neither bar of suit as such, nor any permanent protection to the tenant from ejectment. The scheme of Section 29-A applies in a slightly different manner. A "land" covered by Section 29-A(2) cannot be asked to be vacated by a landlord, by filing an application u/s 21 of Act 1972. This is one of the illustrations, to show that mere application of Section 29-A, by itself, would not attract all the provisions of Act 1972 to such land.

23. The first restriction may be available to a land which is within the ambit of

Section 29-A(2), is that Section 20 of Act 1972 shall apply to such land, in the same manner, as it is applicable to a building to which Act 1972 is applicable.

24. It takes us to Section 20 of Act 1972, a perusal whereof, shows that there is a complete bar of any ejectment proceeding against a tenant, by instituting a suit, except, to the extent, it is so permissible, as provided in Sub-section (2) of Section 20. sub-section (1) of Section 20 also gives overriding effect to Section 20 as such, aforesaid provision, inasmuch as, it contains the words "notwithstanding the determination of his tenancy by efflux of time or on the expiration of notice to quit or in any other manner".

25. A bare reading of Section 20(1) shows that no suit for eviction of a tenant from the building can be instituted, even if the tenancy rights have come to an end, either by efflux of time, or after determination or as a result of determination of tenancy, by giving him notice to quit by the landlord, or in any other manner. The last phrase "in any other manner" is very wide and covers all residuary situations and circumstances, in which, a landlord may require a tenant to be evicted from a building by instituting a suit. The only permissible way in which such a suit can be instituted is only when it satisfies the requirements of sub-section (2) of Section 20. In other words, if suit is instituted for ejectment of a tenant, if he has suffered or incurred liability and satisfies any of the grounds mentioned in Clauses (a) to (g) of sub-section (2) of Section 20, in such a case, on such ground(s) a suit for ejectment/eviction of a tenant from the building may be instituted by the landlord in respect of a land which is covered by Section 29-A. A cumulative reading of sub-sections (1) and (2) of Section 20 make it clear that, where tenancy rights comes to an end, either by efflux of time or otherwise, still a tenant cannot be evicted from the building, or let out premises, by instituting a suit for eviction, unless the ground(s) mentioned in clauses (a) to (g) of sub section (2) of Section 20 is/are available to the landlord. The status of tenant in such a case has been recognized in various authorities of this Court, as that of a "statutory tenant".

26. In the light of Section 29-A(1) the term "building" will be read as land and, therefore, what is applicable to a building u/s 20, equally applies to "land" if such "land" satisfies requirements of Section 29-A(2). This is one crucial benefit conferred by Section 29-A to a lessee/tenant of a land over which, of course, with consent of the landlord, he has raised a permanent structure by incurring his own expenses.

27. The legislature, however, simultaneously has not left the landlord in lurch but he is also provided some consolation. For his benefit, sub-section (4) provides that the tenant shall continue to pay such rent as mutually agreed upon between parties and in absence of such an agreement, rent as determined in accordance with sub-section (5) of Section 29-A. Sub-section (5) gives a right to get annual rent determined in respect of a land that falls under sub-section (2) of Section 29-A by making an application before the District Magistrate. The application can be filed by either of parties, namely, lessor/landlord or the lessees/tenant. The

only restriction under sub-section (5) is that such application could have been entertainable by the District Magistrate, either after expiration of the term of the agreement, for which, the land was let out or from the commencement of Section 29-A, i.e. 5.7.1976, whichever is later. Meaning thereby, if the term of agreement expires before 5.7.1976, application for determination of rent under sub-section (5) would not be admissible for a period before 5.7.1976, but where the term of agreement has expired subsequently and, there is no other agreement, the rent shall/can be determined for the period subsequent to the expiration of the term of the agreement.

28. Sub-section (5) of Section 29-A excludes such matters, where before commencement of Section 29-A, any suit or appeal or other proceedings were pending. It is a transitional provision, permitting a tenant of a land, to which, Section 29-A applies, to protect his eviction, provided the same is not founded on one or more grounds mentioned in sub-section (2) of Section 20. It further provides a benefit to such a tenant by satisfying that within three months from the date of commencement of Section 29-A, i.e., 4.10.1976, he can make an application to the Court, unconditionally offering to pay to landlord, the enhanced rent for the entire period of the suit and onwards @ 10% per annum of the prevailing market value of the land together with cost of the suit, or as the case may be, the cost of appeal, or execution or other proceedings.

29. In cases covered by Section 29-A(6), rent shall have to be determined by the Court which is seized of the matter. Sub-section (6) clearly has no application in the case in hand, again being a transitional provision, applicable for a limited period, commencing from the date of commencement of Section 29-A.

30. Then I find, sub-section (7) of Section 29-A giving an overriding effect over entire Section 29-A as well as anything to the contrary, contained in any contract or instrument, or any other law, for the time being in force. In view thereof, the provisions of Section 29-A shall prevail over any provision of contract, agreement or even any other statutory provision, like Transfer of Property Act, 1882 etc.

31. The above discussion leaves no doubt that a suit for eviction in respect of a land, which falls within the ambit of sub-section (2) of Section 29-A, having satisfied the requirements thereof, would not lie for eviction of the tenant from such land, unless one or more grounds specified in sub-section (2) of Section 20 exist(s), available, and invoked, by the landlord and for that purpose only a suit would lie and not otherwise.

32. A bare perusal of plaint in the case in hand clearly shows that no such ground, as provided in sub-section (2) of Section 20 of Act 1972 has/have been pleaded or made the basis for seeking eviction of defendant appellant from the land in dispute. Ex face, the suit in question was not maintainable, in view of Section 29-A(3) read with Section 20(1) of Act 1972. Both the Courts below having completely failed to appreciate the above provisions as also the import thereof, render the judgments and decree of lower Courts, patently without

jurisdiction and a nullity in law.

33. Coming to another aspect of the matter, whether the suit could have been instituted in a Civil Court (Regular Court) or before Small Causes Court. Mere application of Section 20 to a land which satisfies requirement of Section 29-A, per se, would not attract the provisions of Provincial Small Cause Courts Act, 1887 (hereinafter referred to as Act 1887"), and to the extent, the suit which otherwise would lie in Civil Court, can be instituted or cognisable by a Provincial Small Causes Court. A suit for ejectment of a tenant from the building by virtue of Section 15, read with Schedule to Act 1887, and Section 23 thereof would lie in a Small Causes Court but unless the premises, from which eviction is sought, satisfies, the requirement(s) of the provisions of Act 1887, the question of filing a suit in the Small Causes Court, would not arise. Further if a relief, sought in a suit, is not within the province of Small Causes Court, the suit would lie in a regular Civil Court. Jurisdiction of Small Causes Court is not exclusionary, but preferential.

34. The civil nature of Court of Small Cause can be examined by looking in detail Sections 15 and 23 of Act, 1887. Construing Section 15 of 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 cognisable by a "Civil Court" but the suits of civil nature are cognisable by Small Cause Court subject to exclusion provided u/s 15 of Act 1887 or to some extent where Section 23 thereof is applicable.

35. I may clarify scope of Sections 15 and 23 of Act 1887 to make the things more explicit.

36. Section 15 of Act 1887 deals with the matters in respect whereof, a suit would be cognisable by the Courts of Small Causes. In sub-section 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 sub-section 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.

37. In nutshell, Section 15 as applicable in State of U.P. in 2000, when the suit in question was filed, read as under:

15. Cognisance of suit by Courts of Small Causes.--

(1) A Court of Small Causes shall not take cognisance of the suits specified in the Second Schedule as suits excepted from the cognisance 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 cognisable 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.

38. 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 cognisable by the Court of Small Causes. Second Schedule has 44 entries dealing with different kinds of suits which would not be cognisable 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 cognisable 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 cognisable 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-cognisable under the provisions of any enactment for the time being in force, based on the valuation of suit.

40. 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/-.

41. 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 cognisable by Courts of Small Causes 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 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 Act 1887.

42. Section 15 of 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 ejection. 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 Mohan Lal 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*, .

43. Having said so, I proceed to consider Article 4 Schedule II of 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.

44. Now I come to Section 23 of 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.

45. 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 no more *res integra*.

46. In *Ram Jiwan Misra and Another Vs. Ram Janki and Others*, , a suit for ejection, arrears of rent and damages for use and occupation was filed by Ram Jiwan Misra. He stated in the complaint 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.

47. 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.

48. 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".

49. 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.

50. 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.

51. 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 cognisable 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.

52. 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*, .

53. In *Pratap Singh Vs. IXth Additional District Judge, Fatehpur and others*, , in paragraphs 5, 6 and 7 of the judgment the Courts (2) *Pratap Singh Vs. IXth Additional District Judge, Fatehpur and others*, ; aid:

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.

54. 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".

55. 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 cognisable 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.

56. 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.

57. 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 issue of title or 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.

58. Looking to the above discussion and the issues engaging attention in the present case, the suit in question was instituted for delivery of possession in respect of land and, therefore, the plaintiff in his wisdom decided to approach the regular Civil Court instead of invoking jurisdiction of small cause Court. Once the land in question qualifies to be governed by Section 29-A(2) of Act 1972, thereby bringing in Section 20 of Act 1972, the suit in question could have been instituted before Small Cause Court for ejectment/eviction of defendant appellants, in view of the fact that for the purpose of Section 29-A, whatever applicable to a "building" under Act 1972, the same is also applicable to "land", whereupon permanent structure has been raised with the consent of the landlord. It is not the case of plaintiff respondent that there was any title dispute with respect to the land in question, therefore, Small Cause Court could have exercised jurisdiction in the case in hand. However, where some of the reliefs are/ is such which could not have been granted by Small Cause Court, in such a case, suit would lie in regular Civil Court. In the present case, one of the reliefs sought by the plaintiff was that the defendant appellants be directed to demolish and remove the structure of the land in question. This relief could not have been granted by the Small Cause Court. Hence, I return the question with regard to jurisdiction of Civil Court in affirmative, i.e., that the Court below has rightly held that the suit instituted before it was cognizable and triable by it.

59. In view of above, question Nos. 1, 4 and 5 are answered in affirmative. It is held that the land in question is covered by Section 29-A(2) of Act, 1972, the plaint in question does not show any cause of action to satisfy requirement of Section 20(2) of Act 1972 and, hence, the suit was not maintainable and plaint was liable to be rejected under Order 7 Rule 11 C.P.C.; and, the suit in question was maintainable before Civil Court.

60. Further, question Nos. 2 and 3 are answered in negative. It is held that the suit for ejectment with respect to land covered by Section 29-A(2) of Act is not maintainable on a ground outside Section 20(2) of Act 1972.

61. Cumulative effect of discussion made hereinabove, is, that the judgments and decree passed by both the Courts below, impugned herein, are patently illegal, without jurisdiction and unsustainable. Both the appeals, accordingly, are allowed. The impugned judgments and decree are set aside. The original suit of the plaintiff accordingly stands dismissed. The defendant-appellants shall be entitled to costs throughout.