

(2000) 09 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 9655 of 1999

Om Prakash and others

APPELLANT

Vs

II Addl. District Judge, Saharanpur and others

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4)

Citation : (2000) 4 AWC 3173

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Rajesh Randon, for the Appellant; S.C. and Virendra Kumar, for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the petitioners and learned counsel appearing for the contesting respondents.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the judgment and order dated 5.3.1999, whereby the revision filed by the contesting respondents was allowed by the revisional court and the suit for ejectment was decreed.

3. It appears that respondent Nos. 3 and 4 filed a suit for ejectment and recovery of rent on the ground of default and material alteration diminishing the value of the building in question. The suit was contested by the defendants-petitioners, who filed their written statements controverting the facts stated in the plaint and pleading that they were not the defaulters nor they have made any material alteration which diminished the value of the building. It was also pleaded that they were entitled to the benefit of sub-section (4) of Section 20 of

the U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. XIII of 1972), (for short the Act). Several other pleas were also taken to defend the suit.

4. On the basis of the pleadings of the parties, the trial court framed as many as eight issues. Parties produced evidence in support of their cases, oral and documentary. The trial court, after perusing the material on the record, recorded findings on material Issues in favour of the petitioner and dismissed the suit by judgment and decree dated 13.5.1997. Challenging the validity of the judgment and decree dated 13.5.1997, the respondent Nos. 3 and 4 filed a revision, before the Court below u/s 25 of the Provincial Small Cause Courts Act (for short hereinafter called "the Small Cause Courts Act"). The revisional court reversed the findings recorded by the trial court in favour of the petitioner and allowed the revision by judgment and order dated 5.3.1999, Hence, the present petition.

5. Learned counsel appearing on behalf of the petitioners vehemently urged that the Court below has exceeded its jurisdiction in reversing the findings of fact recorded by the trial court, substituting its own findings for the same and allowing the revision. It was urged that the revisional court in exercise of power u/s 25 of the Small Cause Courts Act, had no jurisdiction to reappraise the evidence and to record its own findings on the questions of fact, the judgment and order passed by the Court below were, therefore, liable to be quashed. On the other hand, learned counsel appearing for the contesting respondents submitted that the judgment and order passed by the Court below are quite legal and valid. It was urged that since, the findings recorded by the trial court were erroneous and illegal, the revisional court, in exercise of power u/s 25, had Jurisdiction to reverse the said findings, and to record Its own findings. According to him, the Court below rightly relied upon the decision of this Court in 1990 ARC 451. It was also urged that the writ petition has got no merits and the same was, therefore, liable to be dismissed.

6. I have considered the rival submissions made by the learned counsel for the parties and perused the material on the record.

7. As stated above, the suit for ejectment and recovery of rent and damages was filed by respondent Nos. 3 and 4 on the ground of default and material alteration of the building diminishing its value. The trial court on the basis of the pleadings of the parties framed following issues :

(1) Whether there was default in payment of rent of disputed property and whether the defendants are entitled to get benefit u/s 20(4) of the Act No. 13 of 1972?

(2) Whether notice dated 19.5.1992, in which particulars of property were not given is legal?

(3) Whether plaintiffs have constructed a Chatara on the terrace without the permission of landlord and due to that there has been material alteration?

(4) Whether the defendants have demolished the Chowki situated in south and whether the defendants have installed a machine in the Bailkhana by the vibrations of which damage has been caused to the building?

(5) Whether the defendants have damaged and altered the disputed property as alleged in para 6 of the plaint and diminished its value and whether the defendants are liable to be evicted?

(6) Whether in November, 1977, rent was increased from Rs. 50 to RS. 60 by the previous landlord and after that the defendants were tenant, of terrace verandah and staircase and whether the previous landlord Laxmi Chandra has constructed Chatara on terrace and also repaired verandah and given to the defendants?

(7) Whether the defendants with the permission of previous landlord stopped Halwai work and started business to make biscuits?

(8) Relief.

8. All issues, noted above, except Issue No. 2, were based on the facts of the case. After taking into consideration the evidence, oral and documentary, on the record produced by the parties in the case, the trial court decided all the aforesaid issues in favour of the defendant-petitioners and dismissed the suit. The findings recorded by the trial court were findings of fact which were based on relevant evidence on the record. In case the revisional court was of the opinion that the findings recorded by the trial court were either illegal or were vitiated by errors of law, it was at liberty to set aside those findings and to remand the case to the trial for decision afresh : but it had no jurisdiction to reappraise the evidence on the record and to substitute its own findings in place of the findings recorded by the trial court. Section 25 of the Small Cause Courts Act (as amended by U. P. Act No. 37 of 1972) reads as under :

"25. Revision of decrees and orders of Courts of Small Causes.--The District Judge, for the purpose of satisfying himself that a decree or order made in any case decided by a Court of Small Causes was according to law, may of his own motion, or on the application on an aggrieved party made within thirty days from the date of such decree or order, call for the case and pass such order with respect thereto as he thinks fit :

Provided that in relation to any case decided by a District Judge or Additional District Judge exercising the jurisdiction of a Judge of Small Causes, the power of revision under this section shall vest in the High Court."

9. Section 25 of the. Small Causes Courts Act came to be interpreted before the Apex Court and this Court in number of cases. By the Apex Court and this Court, it has consistently been held that the District Judge or the High Court, in exercise of powers u/s 25 of the Small Cause Courts Act, has got limited jurisdiction. In the revision under the aforesaid Section, the Court could see that the decree or order in any case decided by the Court of Judge Small Causes was according to law or not.

10. In *Hart Shanker and others v. Rao Girdhari Lal Chaudhary* AIR 1963 SC 698, scope of Section 35 of Delhi and Ajmer Rent (Control) Act, 1952, was considered. Section 35 of Delhi and Ajmer Rent (Control) Act, 1952, is quoted below :

"Section 35. (1) The High Court may, at any time, call for the record of any case under this Act for purpose of satisfying itself that a decision made therein is according to law and may pass such order in relation thereto as it thinks fit."

In the said case, it was held that distinction between an appeal and a revision was a real one. A right to appeal carried with it a right of rehearing on law as well as fact, unless the statute conferring the right of appeal limits the rehearing. The power to hear a revision is generally given to the superior court so that it may satisfy itself that a particular case has been decided according to law. The provisions of Section 35 of the said Act are analogous to the provisions of Section 25 of the Small Cause Courts Act. It was further held that u/s 35, the High Court cannot interfere with a finding of fact arrived at by the trial court. It cannot re-assess the evidence and substitute its own conclusions of fact in place of those reached by the trial court.

11. In *State of Kerala Vs. K.M. Charia Abdullah and Co.*, , while considering the provisions of Section 12 of Madras General Sales Tax Act, which was analogous to the provisions of Section 25 of the aforesaid Act, the Apex Court of the country was pleased to rule as under :

"There is an essential distinction between an appeal and revision. The distinction is based on difference implicit in the said two expressions. An appeal is a continuation of the proceeding : in fact the entire proceedings are before the appellate court and it has power to scrutinize the evidence subject to the statutory limitation prescribed. But in the case of a revision whatever powers the revisional authority may or may not, does not have power to review the evidence unless statute specifically conferred on it that power."

12. In *Malini Ayyappa Naicker (Now Dead) through I.R. etc. Vs. Seth Manghraj Udhavadas Firm by Managing Partner Chathurthuj Chhabildas (Dead) Thereafter by I.Ss. and Others*, , it was ruled by the Supreme Court, that while exercising the power u/s 7511) of Provincial Insolvency Act, which is analogous to the provisions of Section 25 of the Small Cause Courts Act, the High Court is by and large bound by the findings of fact reached by the District Court. It was also observed that a wrong decision on facts by a competent authority is also a decision according to law and the revisional court has no power to review the findings of fact reached by the trial court.

13. In *Dr. D. Sankaranarayanan v. Punjab National Bank* 1995 14 SCC 675. It was held as under :

"We are of the view that the learned counsel for the appellant is right when he contends that the revision petition was treated by the High Court as if it were a second appeal and upon a reassessment of the evidence, the findings of facts of

the first appellate court were reversed."

"Thus, in our view, the revisional power of High Court u/s 25 of the Act not being an appellate power. It is impermissible for the High Court to reassess the evidence in a revision petition filed u/s 25 of the Act."

14. In Rafat Ali Vs. Sugni Bai and Others, the Apex Court taking into consideration the decision in Sri Raj Laxmi Dyeing Works v. Rangaswami JT 1998 (4) SC 46 , as well as in Sarla Ahuja Vs. United India Insurance Company Limited, ruled that the High Court should not interfere with the findings of fact merely, because it does not agree with the findings of the subordinate authority and that it was not open to the High Court to substitute the findings of the lower courts with its own findings in exercise of its limited supervisory jurisdiction.

15. Similar view has been taken by the Supreme Court in Ramdoss Vs. K. Thangavelu, wherein while considering the scope of Section 25 of the T. N. Buildings (Lease and Rent Control) Act, 1960, which is analogous to the provisions of the Act, it was ruled as under :

"The High Court, u/s 25 of the Act, can call for and examine the record of the appellate authority in order to satisfy itself as to regularity of such proceedings or the correctness, legality or propriety of any decision or orders passed therein."

16. Beginning with Ram Narain v. K. L. S. Vishwakarma 1965 ALJ 989 (DB) and another Division Bench's decision in Laxmi Kishore and another v. Har Prasad Shukla 1981 ARC 545, this Court has consistently taken the view that in exercise of powers u/s 25 of the Provincial Small Cause Courts Act, the revisional court has got no jurisdiction to re-appraise the evidence and to substitute its own findings on the questions of fact in place of findings recorded by the trial court. A reference in this regard may be made to the decisions in Prayag Narain Gaur v. Muneshwar Das and another. 1979 ARC 341 ; Gopal Krishna Andley u. Vth Additional District Judge, Kanpur and others. 1982 (1) ARC 45 ; Fakir Chand v. IInd Additional District Judge. Aligarh and others 1984 (1) ARC 68 ; Jagdish Prasad v. Angoori Devi 1984 (1) ARC 679 : Manmohan Dixit v. Additional District Judge/Special Judge (E. C. Act). Jalaun at Orai and others 1996 121 ARC 561 ; Smt. Fatima Begum and others v. IVth Additional District Judge, Jhansi and others 1997(2) ARC 107 and Durga Prasad and others v. VIIth Additional District Judge, Kanpur Nagar and others 1998(1) ARC 470.

17. Even in Kailash Chandra and another v. IIIrd Additional District Judge, Jalaun at Orai 1998 (2) ARC 451, upon which implicit reliance has been placed by the Court below, it was held by the learned single Judge, that the revisional court's power is supervisory and while exercising such powers, the revisional court cannot assume the function of a court of appeal and reappraise the evidence. The revisional court is bound by the findings of fact reached by the trial court as even a wrong decision on fact by a competent authority is also a decision according to law and the Court has no power to examine de nova findings of fact reached by the trial court, it has no power to examine and scrutinize the

evidence meticulously to decide whether finding of fact arrived at by the Courts below is justified by the evidence on record or not. It is open to the revisional court to make interference with the finding of fact, if it is not found to be according to law, but it is not open to it to substitute its own findings on questions of fact already determined by the trial court. The revisional court though can point out the legal errors committed by the trial court, while recording finding of fact, if the legal position has been totally misconceived, the revisional court can rectify the defect and interference in a finding of fact is permissible, if it suffers from the defect of non-consideration of vital and material evidence, or is based on consideration of irrelevant and extraneous material. The revisional court, although can make an interference in the finding of fact on the above noted ground but it has got no jurisdiction to substitute its own finding of fact for the finding recorded by the trial court unless of course, the evidence was all the one way and there has been no assessment of the same by the trial court. In any view of the matter, the revisional court has got no jurisdiction to re-assess or reappraise the evidence in order to determine an issue of fact for itself.

18. It was also held that the revisional court could ignore the finding of fact recorded by the trial court and could record its own finding where the finding of the trial court is based on no evidence or there is absolutely no evidence on record to sustain a particular finding of fact, or it is based on inadmissible evidence or the same is perverse in the sense that no reasonable man could have ever reached to the conclusion arrived at by the Court below.

19. In Kailash Chandra's case (supra), the view taken by the learned single Judge to the effect that the revisional court after ignoring the findings of fact recorded by the trial court can record its own findings, in view of the decisions of the Apex Court and of the Division Benches of this Court is per incuriam, A reference in this regard may be made to the decisions in the cases A.R. Antulay Vs. R.S. Nayak and Another, ; Municipal Corporation of Delhi Vs. Gurnam Kaur, ; Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, ; State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, and Krishna Chandra Dallai v. Union of India and another. AIR 1992 Ori 291 (FB).

20. Thus, if the findings recorded by the trial court are based on no evidence or there exists no evidence to sustain the finding on the record or finding is solely based on inadmissible evidence or is perverse in the sense that no reasonable person could have ever reached to the conclusion arrived at by the Court, may be a good ground for setting aside the findings recorded by the trial court but the same cannot be grounds for re-appraising the evidence or to record its own findings on the questions of fact contrary to the findings recorded by the trial court, in the present case, both parties produced evidence in support of their cases on each issue referred to above, therefore, it was not a case in which it could be said that there was absolutely no evidence or that the findings were based on any inadmissible evidence or that on the basis of the evidence on the

record, no reasonable person could have reached to the conclusion arrived at by the trial court. The Court below has, thus, acted illegally in observing that:

"In view of the above the evidence taken into consideration by the lower court to be scrutinized and it is to be seen that the jurisdiction which is vested in them has been exercised properly or not, whether the evidence has been taken into consideration or not, whether inadmissible evidence have been taken into consideration or not. In view of above pronouncements, the evidences which have been adduced by the parties and taken into consideration by the Court and keeping in view the contention of learned counsel for parties that will be examined."

21. After making the abovenoted observation, the Court below has reassessed the entire evidence, oral and documentary, on the record and wrote judgment spreading over 52 (typed) pages substituting its own findings for the findings recorded by the trial court. Legally, if in the opinion of the Court below the findings recorded by the trial court were not legal, after setting aside the said findings, it could at the best remand the case to the trial court for decision afresh. It has acted illegally and in excess of its jurisdiction in allowing the revision and decreeing the suit for ejectment on the ground of material alteration and structural changes.

22. In 1998 (2) ARC another Judgment of the same learned Judge is at p. 575, Muni Shri Laxman Ji Maharaj v. Panna Lal Sahu and another, wherein it was ruled as under :

"If the revisional court was of the view that the finding of the trial court suffered from any infirmity, legal weakness or otherwise was erroneous, it had the power to remand the case to the trial court for recording a fresh finding after laying down appropriate guidelines but it was not within the competence of the revisional Judge to assess the evidence himself and record his own finding of fact in place of the one recorded by the trial court which was based on appreciation of evidence."

23. The Court below has not noticed the abovenoted decision in the impugned judgment. In view of the aforesaid discussion, the judgment and order passed by the Court below is liable to be quashed.

24. The writ petition succeeds and is allowed. The judgment and order dated 5.3.1999 passed by IInd Additional District Judge, Saharanpur is hereby quashed. The case is remanded to the Court below for decision afresh in the light of the observations made above.