

(1998) 10 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P No. 33143 of 1998

Ram Krishna Jaiswal and others

APPELLANT

Vs

Judge, Small Causes Court, Allahabad and others

RESPONDENT

Date of Decision : 23-10-1998

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 23

Citation : (1998) 4 AWC 309 : (1998) AWC 309

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Vimlesh Srivastava, for the Appellant;

Judgement

J.C. Gupta, J.—Heard petitioners' counsel.

2. This is tenant's writ petition filed against the order dated 26.9.98 passed by Judge, Small Cause Court postponing the disposal of petitioners' application for returning the suit for presentation before the appropriate court under the provisions of Section 23 of the Provincial Small Cause Courts Act. The trial court has opined that it would be just and proper to decide the said application at the time of final hearing.

3. It is well-established law that exercise of power u/s 23 of the Provincial Small Cause Courts Act is discretionary. This section does not oust the jurisdiction of the Court of Small Causes from trying suits involving question of title to immovable property, if that question is involved incidently. After the amendment in Article (4) of the Act in the Second Schedule. Courts of Small Causes are the only competent Courts to try suits relating to eviction of tenants after determination of lease. The only issue in such suits is as to whether there exists any relationship of landlord and tenant between the parties and while deciding the said issue, the said Court can also go into Incidental question of title. It is not obligatory for the Court to order for return of the plaint for presentation to an appropriate Court whenever a plea relating to title is raised by the defendant in

such suits, it is only where the Court, at any stage of the proceedings, finds that the right of the plaintiff and the relief claimed by him depend upon proof or disproof of title and the question cannot be answered appropriately without having recourse to a full trial before a regular court having competent jurisdiction to decide the intricate question of title may exercise the power u/s 23 of the Act. In the case of Gopal Chandra Singh Roy v. District Judge, Varanasi, 1996 (2) ARC 68, a learned single Judge of this Court, Hon"ble D. K. Seth, J. observed in para 8 of the report as follows :

"It is an established principle of law that as soon the question of proof or disproof of title to Immovable property is involved, Small Cause Court loses its jurisdiction and is bound to return the plaint u/s 23. But it does not preclude the Small Cause Court to look into the dispute as to whether it is necessary to return the plaint after satisfying that the right of the plaintiff and the relief claimed by him is dependent on such proof or disproof of title to immovable property. The said section empowers the Small Cause Court to return the plaint at any stage of the proceedings."

4. It is thus clear that the Court of Small Causes is also competent to go into the question of title if such a question arises only incidently. Where, however, the Court finds that the question of title is intricated one and the right of the plaintiff and the relief claimed in the suit are dependent upon proof or disproof of title to immovable property, it is just and proper for such a Court to return the plaint for being tried on regular side by a Court competent to decide the question of title. A great care and caution should be taken before exercising jurisdiction u/s 23 of the Act.

5. In the present case, it appears that the Court below in the absence of evidence was unable to decide whether the relief claimed in the suit is dependent upon proof or disproof of title to the immovable property involved, and this view of the Court below cannot be said to be manifestly erroneous or arbitrary especially in view of the facts pleaded by the parties in their pleadings. The trial court has not yet rejected the prayer of the petitioner to return the plaint u/s 23 of the Act and 11 may be that after having whole or part of the evidence of the parties, the Court may find it convenient to exercise powers u/s 23 of the Act or it may proceed to decide the suit on merit. Therefore, at present, this Court is not inclined to make interference in the impugned order at this stage of the proceedings.

6. Writ petition is accordingly disposed of.