
(1985) 04 AHC CK 0030
In the Allahabad High Court
Case No : Writ Petition No. 2100 of 1980

Ram Mohan and others

APPELLANT

Vs

Sri Sisheshwar Lal alias Goda and others

RESPONDENT

Date of Decision : 08-04-1985

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1985) 04 AHC CK 0030

Hon'ble Judges : K.N.Goyal, J

Final Decision : Allowed

Judgement

K.N. Goyal, J.—This is plaintiffs' Writ Petition arising out of a decision in a Small cause court suit for rent and ejectment which was brought by them against defendants/respondents on the ground of subletting in respect of a shop under Section 20(2) (c) of U.P. Act No. 13 of 1972. The suit was decreed by the trial court which held that the defendant No. 2 (who is nephew of defendant No. 1) was subtenant of defendant No. 1 the tenant in chief. Admittedly no permission for subletting had been obtained from the plaintiffs/landlords". The defence was that the two defendants constituted a Joint Hindu Family and that the business of that family was being carried on in the shop. This was disbelieved by the trial court which relied on a statement of defendant No. 2 in sales tax proceedings in which he had said that the business belonged to himself. The revisional court found that the trial court had not taken into consideration an admission of the plaintiff/petitioner in an earlier proceedings under Section 3 of U.P. Act No. 3 of 1947 in which it had been alleged that the defendants were carrying on joint family business. The revisional court reversed the finding and held that there was no subletting. On this view the suit was dismissed.

2. I have heard learned counsel for the parties.

3. It is true that the trial court did not refer at all to the admission of the plaintiffs in the earlier proceedings, which has been relied on by the revisional court. The finding of the trial court on the question of subletting was thus,

vitiated by nonconsideration of relevant and material piece of evidence. The revisional court was, therefore, justified in holding the finding to be illegal. It is, however, well settled that a revisional court under Section 25 of the provincial small cause court Act cannot reassess the evidence though it may point out, any legal error Committed by the: trial court in arriving at a finding of fact. A reference in this connection may be made to the decision in Babu Ram v. The Addl. District Judge. (1983(1) Allahabad Rent Cases 15). In that case it was held that if the trial court chooses to admit additional evidence it should remit the case to the trial court as the function of appreciation of evidence is more properly undertaken by the trial court as held by the Hon''ble Supreme court in Balai Chandra v. Sheodhari Jatav AIR 1978 SC 1062). Learned counsel for the respondents has relied on jagdish Prasad v. Angoori Devi (AIR 1984 SC 1447 : 1984(2) LCD 189) in which case the revisional courts contrary finding was upheld. The facts of that case are distinguishable. The trial court had arrayed at an inference of subletting merely on the basis of the circumstance that the alleged subtenant was found sitting on the shop of the tenant. As there was no other material on the record to support the finding of subletting the revisional court was held justified in reversing the finding. It was, however, clarified bythe Hon''ble Supreme Court that ?this was not an attempt to reassess the evidence.? In the instant case we are faced with conflicting admissions, one of the plaintiff and the other of the defendant in different earlier proceedings. It is therefore, for the trial court, to reassess the evidence after taking into account both the sets of admissions which may or may not be consistent with the case setup in the instant case by the parties.

4. In this view of the matter the Writ Petition is allowed and the judgment and order of the revisional court contained in annexure 4 are hereby quashed. At the same time the judgment and order passed by the trial court, annexure3, are also quashed. The trial court shall now readmit the suit at its original number and decide it afresh in accordance with law. No order is made as to costs.