

(1999) 07 AHC CK 0077

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 723 of 1982

Shafi Ahmad and Others

APPELLANT

Vs

IInd Additional District Judge Bareilly and Others

RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1999) 07 AHC CK 0077

Hon'ble Judges : A.K.Yog, J

Judgement

A. K. Yog, J.—This petition arises out of judgment and order dated 30th November, 1981 (Annexure4 to the Writ Petition) passed by Respondent No. 1 (II Additional District Judge, Bareilly) whereby the said Court allowed Revision No. 264 of 1979 (Qamar Uddin v. Shaft Ahmad and others) under Section 25, Provincial Cause Courts Act (for short called the "Act"). The said revision arose from judgment and order dated 21st August, 1979 passed by Judge, Small Causes Court, Bareilly, whereby said Court dismissed J.S.C.C. Suit No. 459 of 1969 (Qamar Uddin v. Shaft Ahmad and others).

2. Respondent No. 1 has decreed the suit by means of the impugned judgment and order dated 30th November, 1984 (Annexure4) and hence, feeling aggrieved Defendanttenant has filed this petition.

3. List has been revised. Learned Counsel for the petitioner is present.

4. Heard learned Counsel for the petitioner and Sri Manish Goyal, holding brief of Sri R.P. Goyal, Senior Advocate on behalf of plaintiffrespondent No. 3 and he states that he has no instructions and that his client has not responded in spite of letter being sent in the year 1987. Sri R.P. Srivastava also appears for the said respondent No. 3, but he is not present.

5. Learned Counsel for the petitioner submitted that Revisional Court in exercise of its" powers under Section 25 of the Act was not justified in decreeing the suit

on its own, particularly when it was upsetting the findings of fact recorded by the Judge, Small Causes Court.

6. Have gone through the judgments of the two Courts below and on perusal it is apparent that the Revisional Court (respondent No. 1) has given reasons for the conclusions arrived at and for setting aside the findings recorded by the Judge, Small Causes Court. Revisional Court in exercise of power under Section 25 of the Act could upset findings of fact and record its own finding. In the instant case no findings have been recorded by the Revisional Court on its own.

7. Learned Counsel for the petitioner in support of his contention relied upon following decisions:

1. 1981 ARC 545 (DB)Laxmi Kishore v. Har Prasad Shukla.

2. 1999 (1) AWC 302Kailash Chandra v. IIIrd Additional District Judge, Jalaun.

8. I am in conformity with the ratio laid down in the aforesaid two decisions.

9. In View of the above judgment and order dated 30th November, 1981 (Annexure4 to the Writ Petition) passed by II Additional District Judge, Bareilly (Respondent No. 1) as well as judgment and decree dated 21st August, 1979 (Annexure 3 to the Writ Petition passed by Judge, Small Causes Court, Bareilly are set aside with direction that the Judge, Small Causes Court, Bareilly shall decided J.S.C.C. suit No. 459 of 1969 (Kamruddin v. Shaft Ahmad and 4 others) in accordance with the observations contained in the order of Revisional Court in accordance with law,

10. The Writ Petition is allowed. There will be no order as to costs.