

(1977) 12 AHC CK 0016
In the Allahabad High Court
Case No : Civil Revision No. 1857 of 1976

Sheo Shanker alias Shanker Lal and Another	APPELLANT
Vs	
Ratan Chand Jain and Another	RESPONDENT

Date of Decision : 20-12-1977

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 25, 25(3)
Civil Procedure Code, 1908 (CPC) — Section 24, 24(1)
Uttar Pradesh Civil Laws (Amendment) Act, 1972 — Section 5

Citation : (1978) AWC 94

Hon'ble Judges : M.P. Saxena, J

Bench : Single Bench

Advocate : R. Dwivedi, for the Appellant; S.K. Mukherji, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Saxena, J.—This is a Defendant's revision application against the order dated 28-5-1976 passed by the learned District Judge Mirzapur.

2. Briefly stated the facts are that on 1-8-1973 the Plaintiff opposite party filed a suit in the Court of the District Judge, Mirzapur. As it was a suit for ejectment of the Defendants revisionists from a house and for the recovery of arrears of rent, it was filed as a Small Cause Court suit. Its valuation was Rs. 6,616/-. There was some deficiency in the court fees which was made good on 7-8-1973. As valuation of the suit was above Rs. 5,000 the learned District Judge was of opinion that it could not be tried by him as a Small Cause Court suit. Therefore, on 9-9-1973 he passed an order returning the plaint for presentation to the proper court. The plaint was taken back on 12-9-1974 and on the same day it was again presented in the same court as a regular suit.

3. On 31-5-1975 the learned District Judge transferred it to the Civil Judge, Mirzapur, for disposal. It was registered as an original suit and it remained pending there upto 3-5-1976 when it was realised that the suit was wrongly

transferred to him because it was triable by Small Cause Court. He sent a report to this effect to the District Judge on which he passed the following order on 28-5-1976:

Recall from the court of Civil Judge Mirzapur Register in this Court as S.C.C. suit. Fix 22-7-1975 for final disposal.

The Defendants revisionists have impugned the validity of the said order mainly on the ground that the learned Civil Judge should not have made a report but should have returned the plaint for presentation to the proper court and that the learned District Judge was not competent to recall it or to pass an order that it may be registered as a S.C.C. Suit and tried as such. There can be no manner of doubt that the impugned order was passed by the learned District Judge u/s 24 of the Code of Civil Procedure. The question for consideration is whether the learned Civil Judge should have returned the plaint for presentation to the proper court or was justified in making a report to the District Judge so as to invoke his powers u/s 24 Code of Civil Procedure. In my judgment there was no error on the part of the learned Civil Judge. In the case of *Narain Das Gopal Das v. Firm Khunai Lal Laxmi Narain* AIR 1934 All. 569, it has been held:

The power of transfer vested in the High Court or the district Court by Section 24 is untrammelled by any conditions. Section 24 is general in its terms and the power of transfer and withdrawal defined by that section can be exercised even with respect to suits which can be entertained by one court alone. All that is necessary to bring into play the jurisdiction of the High Court or the district Court to exercise the power of transfer and withdrawal given u/s 24 is that the suit, appeal, or other proceeding sought to be transferred should be pending before it or pending in any court subordinate to it. The mere fact that the suits, appeal or other proceeding is pending in a court not having jurisdiction to dispose of the same cannot oust the jurisdiction of the High Court or the district court to withdraw or transfer that suit, appeal or other proceeding from the court in which it is pending, to some other court competent to try the same.

4. The aforesaid makes it clear that even if the learned Civil Judge had no jurisdiction to try the suit and he had brought this fact to the notice of the learned District Judge, the latter was competent to recall it u/s 24(1)(b) of the CPC and to dispose of the same himself.

5. Another question which crops up for consideration is whether after recall, the learned District Judge was competent to try it as a Small Cause Court suit. In this connection it may be stated that the U.P. Civil Laws (Amendment) Act, 1972 (No. 37 of 1972) came into force on September 20, 1972. This Act amended certain provisions of the Provincial Small Cause Courts Act, 1887, the Bengal Agra and Assam Civil Courts Act, 1887, the Code of Civil Procedure, 1908 and U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. By virtue of the amendments, suits by lessors for the eviction of lessees from buildings after determination of the lease became suits cognizable by Courts of

Small Causes.

6. Section 5 of Act 37 of 1972 amended Section 25 of the Bengal, Agra And Assam Civil Courts Act to the effect that the State Government was empowered to confer powers upon Civil Judges and Munsifs to entertain suits for eviction from buildings and for rent and compensation for use and occupation upto such value as it thought fit not exceeding five thousand rupees in the case of a Civil Judge and one thousand rupees in the case of a Munsif. The State Government was further empowered to confer upon any District Judge or Additional District Judge (by notification in the Official Gazette) the jurisdiction of a judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887, for the trial of all suits irrespective of their value by the lessor for the eviction of a lessee from the building after the determination of his lease or for the recovery of rent. Sub-section (3) added to Section 25 by the U.P. Act 37 of 1972 permitted the State Government to delegate to the High Court its power of conferring the jurisdiction of a Court of Small Cause upon District Judges and Additional District Judges, Civil Judges and Munsifs. By notification dated 22-9-1972 the State Government delegated its power under Section 25 of the Bengal, Agra and Assam Civil Courts Act to the High Court. Thereafter the latter issued certain notifications. By notification No. 525 issued on 25-10-1972 the jurisdiction of a judge of a court of small causes for the trial of all suits irrespective of their value, which were for eviction from a building or for the recovery of rent or for compensation for use and occupation was conferred upon all District Judges and Addl. District Judges. These amendments and notifications are prospective and as the present suit was filed after they came into force it is fully governed by them. The result of amendments, and notifications is that a District Judge or Additional District Judge can try a suit of Small Cause Court nature of any valuation. This question has been elaborately discussed in the case of Kailash Chand v. Lalta Prasad 1975 AWC 653. Therefore, there can be no manner of doubt that the learned District Judge Mirzapur is competent to try the suit as a small cause court case. His order does not suffer from any infirmity.

7. The revision application is accordingly dismissed with costs on parties.