

(1977) 08 AHC CK 0017
In the Allahabad High Court
Case No : Writ Petition No. 1578 of 1974

Shyam Manohar Lal

APPELLANT

Vs

4th Addl. Dist. and Sessions Judge and Others

RESPONDENT

Date of Decision : 19-08-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Article 4

Citation : AIR 1978 All 238

Hon'ble Judges : D.N. Jha, J

Bench : Single Bench

Advocate : H.D. Srivastava, for the Appellant; Sudhir Shanker, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Jha, J.—This petition has been directed against the order dated 4-10-1974 passed by the IVth Additional District Judge, Kheri. It may be mentioned that there were three revisions relating to different subject-matters before the Additional District Judge, Kheri, and that is why three different sets of orders were passed although the subject-matter of the judgments is one and the same. These orders are contained in Annexures 4, 5 and 6.

2. The facts in brief are that the petitioner was the landlord of the premises of which opposite party No. 3, District Agriculture Officer, Kheri, was the tenant. The petitioner filed a suit in the court of Munsif, Kheri, for ejectment of the opposite party, for arrears of rent and damages for use and occupation coupled with the prayer for ejectment. The suit was contested. Thereafter it was transferred to the Judge, Small Causes, in view of the amendment brought about by U. P. Act No. 37 of 1972 which came into force on 20-9-1972, The case came up for hearing and was fixed for 9-2-1973 before the Judge, Small Causes, and on that date opposite party No. 3 was not present, hence Sri V. V. Singh, Judge

Small Causes, passed an ex parte decree for ejectment against opposite party No. 3. On 19-2-1973 opposite party No. 3 moved an application for setting aside the ex parte decree. This application was dismissed on 24-2-1973. Thereafter the decree for possession was executed and possession was delivered to the petitioner. On behalf of opposite party No. 3 a review application was also presented before the Judge, Small Causes, and that was pending. This is how three revisions were preferred before the IVth Additional District Judge. One was against the initial ex parte decree passed in favour of the petitioner dated 9-2-1973, the second revision was directed against the order dated 24-2-1973 rejecting the application moved by opposite party No. 3 and the third was a revision petition regarding the delivery of possession. Since the matters were interconnected learned Additional District Judge disposed them of by his order dated 4-10-1974 whereby he allowed the revisions. This is how the petitioner has now come up before this Court impugning all the three orders although as mentioned above the contents are identical. This petition has been contested on behalf of opposite parties 3, 4 and 5 and a counter affidavit has been filed by Ram Kuber Yadav, Junior Plant Protection Assistant at the Plant Protection Sub Centre, Lakhimpur Kheri, and an effort has been made to support the order passed by the IVth Additional District Judge, Kheri, being legal, just and proper.

3. I have heard learned counsel for the parties. It may be mentioned that the learned Judge in view of Article 1 of the Second Schedule was of the view that the suit although primarily for ejectment was not maintainable before the Judge, Small Causes. It may further be mentioned that the revisions preferred before him were highly belated but since the learned Judge was of the opinion that the entire order was without jurisdiction he exercised his discretion for condoning the delay for which reasons have been described in the order and it was thereafter that he proceeded to hear the revisions and decided against the petitioner. In this Court the learned counsel for the petitioner has vehemently argued that the revisions initially filed were not accompanied by an application for condonation of delay which was subsequently filed after a considerable delay and was not supported by an affidavit, yet the learned Judge exercised his discretion and condoned the delay which itself is contrary to the accepted principles for condoning the delay. It may be that some procedural irregularity might have been committed but that would not entitle the petitioner to relief from this Court as regards the discretion exercised by the learned Judge in condoning the delay and entertaining the revision preferred on behalf of opposite party No. 3. It cannot be said that the discretion exercised by the learned Judge was manifestly perverse or against the principles of natural justice. It is also not disputed that opportunity was provided to the petitioner before disposing of the application for condonation of delay. That being so, the order exercising discretion to condone the delay is not even violative of the principles of natural justice. I, therefore, do not find any substance in the contention of learned counsel for the petitioner on this score.

4. The whole controversy that centres round is regarding the applicability of

Article 1 of Schedule II. It may be mentioned that by the U. P. Civil Laws Amendment Act, 1972 an amendment was brought about in the Second Schedule of Act No. 9 of 1887 dealing with the Provincial Small Cause Courts Act. Section 4 of the said Act substituted in the Second Schedule to the principal Act for Article 4 the following:--

"4. A suit for the possession of Immovable property or for the recovery of an interest in such property, but not including a suit by a lessor for the eviction of a lessee from a building after the determination of his lease, and for the recovery from him of compensation for the use and occupation of that building after such determination of lease.

Explanation.-- For the purposes of this Article, the expression "building" means a residential or non-residential roofed structure and includes any land (including any garden), garages and out-houses, appurtenant to such building, and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof".

It is, therefore, clear that as the ejectment suits and suits for arrears of rent and ejectment were made cognizable by the Judge, Small Causes, the District Judge had transferred the cases from the Court of Munsif Kheri to the Court of Judge, Small Causes, for the disposal of the suit. Learned Counsel for the petitioner argued that since the order had been passed for transfer of the case and that order not having been challenged the jurisdiction of the Small Cause Court was not ousted. It would suffice to say that no amount of acquiescence can confer jurisdiction if initially the court is found not to be possessed of jurisdiction to try a particular suit. It is, therefore, to be investigated whether this particular suit related to opposite party No. 3, District Agriculture Officer, Kheri was triable by Judge Small Causes. It is not in the name of the officer but it is clear that the premises were in the occupation of Government Department. It may also be mentioned that before filing the suit for ejectment a notice u/s 80 of the CPC was served by the petitioner on the State Government. In these circumstances there is little doubt that it involved the State Government. Article 1 of the Second Schedule reads as under:--

"1. A suit concerning any act done or purporting to be done by or by order of the Central Government the Government Representative or the State Government".

It is, therefore, to be examined whether this phraseology used in Article 1 covers the case as argued on behalf of the opposite parties about which a finding has been recorded by the learned Judge. The significant words in the article are "purporting to be done". The reading of the article specially in the light of this phraseology clearly shows that the act must bear such relation of the duty that the person acting could say a reasonable but, not a pretended or fanciful claim, that he did it in the course of the performance of his duty. It may further be pointed out that the same words have been used in Section 80 of the CPC and Section 197 of the Criminal Procedure Code. With respect to the Criminal

Procedure Code it has been held in the case of Amrik Singh Vs. The State of Pepsu, that if the act complained of is directly concerned with the official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then the section would be attracted, irrespective of whether it was in fact a proper discharge of his duties. In the case of Samanthala Koti Reddi Vs. Pothuri Subbiah and Others, a Full Bench expressed the view that under the CPC also, officers acting mala fide in the discharge of duties are covered. The same view was expressed in the case of Mohamed Sharif Vs. Nasir Ali and Others, . In my opinion the word "purporting" covers a profession by acts or by words or by appearance of what is true, as well as, of what is not true. In my opinion, therefore, if the act was such as could ordinarily be done by the officer in the course of his official duties and he considered himself to be acting as a public officer and desired other persons to consider that he was so acting, then the act clearly is purported to be done in official capacity. In this view of the matter, in my opinion, this case before me is fully covered under Article 1 of the Second Schedule. I, therefore, do not find any force in the submission of the learned counsel for the petitioner to the effect that Article 1 was not applicable.

5. In view of my above observations it is not necessary to deal with the argument of the learned counsel for the petitioner that the case of the opposite party at the most was covered within Article (3) of the Second Schedule and Article (3) of the Second Schedule covered only cases of tortious liability and did not envisage suits relating to contracts.

6. In view of my observations made above the writ petition fails and is accordingly dismissed. I, however make no order as to costs.