
(2005) 02 AHC CK 0174
In the Allahabad High Court
Case No : C.M.W.P. No. 33722 of 2001

Smt. Shanti Devi and Others

APPELLANT

Vs

Addl. District and Sessions Judge and Others

RESPONDENT

Date of Decision : 02-02-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Provincial Small Cause Courts Act, 1887 — Section 23

Citation : (2005) 1 ARC 592 : (2005) 2 AWC 1148

Hon'ble Judges : Mukteshwar Prasad, J

Bench : Single Bench

Advocate : A.A. Khan, for the Appellant; K.D. Tripathi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Mukteshwar Prasad, J.—By means of this petition under Articles 226 and 227 of the Constitution of India, the plaintiffs have prayed for quashing the Order dated 25.7.2001, passed by the respondent No. 1 (Annexure-1 to the writ petition) in S.C.C. Revision No. 100 of 1999, Suraj Pal Singh v, Smt. Shanti Devi and others, whereby the respondent No. 1 allowed the revision with costs and set aside the Order dated 22.4.1999 passed by the Judge Small Causes, Agra in S.C.C. Suit No. 551 of 1993.

2. The facts, in nutshell, for the decision of this petition are that the petitioners filed a suit in the Court of Judge Small Causes, Agra, for eviction of the tenant-respondent No. 2 from the shop in dispute. The suit was filed with the allegations that late Vijayender Pal Singh, who was husband of the plaintiff No. 1 and father of plaintiff Nos. 2 and 3, was allotted a plot by the Gaon Sabha. After obtaining possession, he built shops thereon. Late Vijayender Pal Singh opened a clinic in one of the shops and adjoining shop was let out to Suraj Pal Singh on a monthly rent of Rs. 250. After the death of late Vijayender Pal Singh, the plaintiffs being his legal heirs became owners of the shop. The tenant-respondent defaulted in payment of rent w.e.f, 1.1.1984, and he was, therefore, served with a notice

terminating the tenancy. The suit was filed for vacating the shop in dispute.

3. The tenant-respondent No. 2 filed written statement and contested the suit on the grounds, inter alia, that he was never inducted as tenant in the disputed shop by the husband of the plaintiff No. 1 and there was no relationship of landlord and tenant between late Vijayender Pal Singh and Suraj Pal Singh. The defendant-tenant asserted that the shop in question as well as adjoining shops were constructed by the joint fund of the defendant and his father (late Sobaran Singh) and both were doing the profession of "vaidya". The defendant after the death of his father and during his lifetime also was using the shop in dispute and was in possession as owner thereof. The relationship of tenant and landlord never existed between the parties. It was also pleaded that since the question of title was involved; in the matter, the Judge, Small Causes Court had no jurisdiction to try the suit and plaint had to be returned u/s 23 of the Provincial Small Causes Court Act (for short as the "Act") to a Court having jurisdiction to determine the question of title.

4. After close of the plaintiffs' evidence, the tenant-respondent took several dates to produce his evidence. He moved an application on 9.3.1999 for returning the plaint to a competent Court on the ground that in the suit in question, the plaintiffs had asserted their title over the shop in question and defendant had not only denied the title of the plaintiffs but had claimed himself to be owner also. An objection was filed on behalf of the plaintiffs mainly on the grounds that after close of the plaintiffs' evidence, the tenant took several dates to produce oral evidence and with a view to delay the disposal of the suit, he had moved the application in question.

5. After having considered the submissions made on behalf of the parties, learned Judge, Small Causes rejected the application of the tenant.

6. S.C.C. Revision No. 100 of 1999 was filed by the defendant, which was allowed and the impugned Order was passed and the record was sent back to the court of Judge Small Causes with the direction to pass the appropriate orders on the application moved u/s 23 of the Act.

7. I have heard Sri Ateeq Ahmad Khan, learned counsel for the petitioners, Sri K. D. Tripathi, learned counsel for the respondent No. 2 and learned standing counsel. I have also gone through the impugned Judgment passed by the respondent No. 1 and record also.

8. Learned counsel for the plaintiffs-petitioners has submitted with vehemence that the revisional court committed illegality in passing the impugned Order and erred in considering the spirit of Section 23 of the Act. Learned counsel has urged that the plaintiffs filed a suit for eviction of the tenant-respondent No. 2 on the ground that the shop in question was let out to the tenant on a monthly rent of Rs. 250 by late Vijender Pal Singh and after his death, the plaintiffs became owners/landlords of the disputed shop. In such suits, the plaintiffs are entitled to a decree provided they succeed in establishing that there existed a relationship

of landlord and tenant between the parties. Therefore, the relief of eviction claimed by the plaintiffs was dependent on the proof of aforesaid relationship and the question of title was not to be determined. He further contended that even the question of title can also be looked into incidentally by the Court in exercise of powers of Judge small causes.

9. Reliance was placed by learned counsel for the petitioners on the following decisions :

(1) Abdul Kalam Vs. Abdul Majid and others,

(2) Rakesh Kumar Vs. VIth Additional District Judge, Bulandshahr and others,

(3) Iqbal Ahmad Vs. VIth Addl. District Judge, Varanasi and others,

10. On the other hand, learned counsel for the tenant-respondent contended that the tenant has not only denied the title of the plaintiffs over the disputed shop but he claimed himself to be owner of the shop in question and in fact, the question of title of the disputed shop was to be decided in the suit giving rise to this petition. According to him, it is true that a Small Causes Court is also competent to go into the question of title incidentally but it cannot decide the question of title between the parties finally because the proceedings before the Judge, Small Causes are summary in nature and for determining the question of title finally between the parties, an elaborate enquiry is required. In support of his contention, he relied upon a decision of Hon''ble Apex Court in the case of Budhu Mal v. Mahavir Prasad and Ors. 1988 (2) AWC 1057.

11. I have considered the submissions made on behalf of the parties and have also perused the decision relied upon by them. It is well-settled that Section 23 of the Act does not make it obligatory on the Court of Small Causes to invariably return the plaint once a question of title is raised by the tenant. It is also true that a suit instituted by the landlord against his tenant on the basis of the contract of tenancy, a question of title could incidentally be gone into and that any finding recorded by a Judge Small Causes in this behalf, could not be res judicata in a suit based on title. It cannot, however, be gainsaid that in enacting Section 23, the Legislature must have had in contemplation some cases in which the discretion to return the plaint ought to be exercised In Order to do complete justice between the parties.

12. It is, therefore, clear that return of plaints in suits involving question of title is discretionary and Court may at any stage of the proceedings return the plaint to be presented to a Court having Jurisdiction to determine the title.

13. In the instant case, what I feel is that the plaintiffs filled suit with the allegation that their predecessor-in-interest late Vijender Pal Singh obtained a patta of land from the Gaon Sabha and he in his life time built shop on the land allotted to him. Thereafter, he let out one of the shops to the tenant on rent. After his death, the suit in question was filed by the petitioners.

14. On the other hand, the defendant at the very threshold not only denied the title of the plaintiff over the disputed shop but claimed himself to be the owner of the shop in question and pleaded that the plaint was liable to be returned to a Court having Jurisdiction as provided u/s 23 of the Act. After close of the evidence, the tenant again applied and requested the Court to exercise its power u/s 23 of the Act, but, he failed. Ultimately, he got success in the revisional court.

15. After having considered the decisions relied upon by the parties, including the aforesaid decision of the Apex Court, and considering all facts and circumstances of the case, I find that no case for interference with the impugned Order is made out and the Order passed by the respondent No. 1, in my view, does not suffer from any illegality or irregularity. The Order in question was passed in accordance with law.

16. For the reason stated above, I find that this petition lacks merit and is liable to be dismissed.

17. In the result, the petition fails and is hereby dismissed. No Order is made as to costs.