

(2000) 01 AHC CK 0123

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15447 of 1981

T.S.Bajpai

APPELLANT

Vs

Ist Addl. District Judge, Allahabad and Others

RESPONDENT

Date of Decision : 11-01-2000

Acts Referred:

Citation : (2000) 01 AHC CK 0123

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 2121981, passed by respondent No. 1, whereby the revision was allowed and the suit filed by the plaintiffrespondents was decreed.

2. Briefly stated the facts are that the plaintiffrespondents filed suit for recovery of arrears of rent, ejectment and damages against the petitioner with the allegation that the petitioner was a tenant at monthly rent of Rs. 150. He failed to pay rent since 1st June, 1973. He gave notice demanding arrears of rent since 161976 to 3091976 amounting to Rs. 4,000/ and ejectment on 18101976 which was served on the defendant. The defendantpetitioner filed written statement. He took the plea that he had paid rent to the plaintiffs for the period till August 1976 but no rent receipt was issued. It was alleged that on the date of service of notice four months rent was not due.

3. On behalf of the plain tiffs two witnesses were produced, Kailash Kishore as P.W. 1 and Jawahar Lai as P.W. 2. The petitioner appeared as D.W 1. The trial Court believed the version of the petitioner and dismissed the suit by his judgment dated 14121976. The plaintiffs filed revision against the said order. Respondent No. 1 has allowed the revision by his order dated 2121981 and decreed thesuit.

4. I have heard Shri R.N. Bhalla, learned counsel for the petitioner and Shri Yasharth, learned counsel for the contesting respondents.

5. Respondent No. 1 was exercising jurisdiction under Section 25 of the Provincial Small Causes Court Act. The finding could have been set aside only when there was any error of law. In *Laxmi Kishore and another v. Har Prasad Shukla*, 1981 A.R.C. 545. certain guidelines have been given as follows:

"If it finds that there is no evidence to sustain a finding on a particular issue of fact, it can ignore that finding. Same will be the case where the finding is based only on inadmissible evidence. In such cases, the Court will be justified in deciding the question of fact itself, because the evidence is all one way. No assessment is needed. The Court can also decide the revision if only a question of law or some preliminary point of view, viz, validity of notice, is sufficient for its decision.

But if it finds that a particular finding of fact is vitiated by an error of law, it has power to pass such order as the justice of the case requires, but it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact for itself. If it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guidelines. It cannot enter into the evidence, assess it and determine an issue of fact."

6. In the present case P.W. 1 has stated that she was maintaining a diary where he used to note about the payment made by the petitioner. D.W 1 stated that he was not being issued any rent receipt. He, however, relied upon the diary in which, according to him, he had noted the date of the payment of rent. The plaintiff had produced P.W 2, another tenant, who made statement that the landlord used to issue rent receipts. The Revisional Court took the view that the diary produced by the petitioner does not establish that it was maintained in regular course and is not reliable. This was a pure matter of assessment of evidence. If it finds that there was any legal infirmity whereby the Court should have considered certain aspects, it should have remanded the case as held in *Laxmi Kishore 's case (supra)*.

7. Learned counsel for the plaintiff has relied upon the decision *Kailash Chandra v. IIIrd Addl. District Judge, Jalaun* at Oral, 1998 (1) ARC 451; 1998(2) JCLR 998 (All), wherein it has been held that if the Revisional Court has set aside a finding on the ground that there was an error of law in the finding recorded by the trial Court, the High Court may in its discretion under Article 226 may not interfere with the finding of fact. This case has no application to the facts of the present case. The finding on the question as to whether the default was committed by the tenants was to be based on assessment of evidence.

8. In view of the above, the writ petition is allowed. The impugned order is hereby quashed. The Judge, Small Causes Court shall, however, decide the matter afresh keeping in view of the observations made by the Revisional Court and in accordance with law. It is, however, made clear that he will examine" the diary produced by the defendant and come to his own conclusion and not be

guided by the observations made by the Revisional Court. As the matter is very old the trial Court shall decide the case within three months from the date of production of a certified copy of this order before it. Petition allowed.