
(1997) 05 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 41911 of 1996

Yasin and Others

APPELLANT

Vs

Ist Addl. District Judge and Others

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1
Provincial Small Cause Courts Act, 1887 — Section 17(1), 25

Citation : (1997) AWC 202 Supp

Hon'ble Judges : Sudhir Sarain, J

Bench : Single Bench

Advocate : K.M. Garg, for the Appellant; S.C. and Deoraj, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 2.9.1996 passed by Respondent No. 1 allowing the revision against the judgment of Judge, Small Causes Court and remanding the case to it.

2. The facts of the case, in brief, are that Respondents No. 2 to 10 filed Suit No. 4 of 1983 in the court of Judge. Small Causes, Bijnor for recovery of rent, ejectment and damages for use and occupation of the premises in dispute against the Petitioners on the allegation that the property in dispute was purchased from Sri Jitendra Vir Singh through a registered sale-deed dated 14.6.1976 as well as additional sale-deed dated 13.3.1982. Shri Jitendra Vir Singh had succeeded to the property in dispute from Raghunandan Singh and Randhir Singh. The ancestors of the Defendants had executed a registered rent note on 9.5.1941 in favour of Raghunandan and Ranvir Singh, the then owner of the property. Petitioners succeeded to the tenancy right and are in possession over the property in question as tenants.

3. The Defendants (Petitioners) contested the suit. They denied that they ever paid any rent to the Plaintiffs. The ancestors of the Defendants were never

tenants of the predecessors of the Plaintiffs and there is no relationship of landlord and tenant between the parties. The property in dispute was ancestral property of the Defendants. Defendant's ancestor was Mola Bux son of Rahmatullah and not Malli son of Illahi Bux. He never executed any rent note dated 9.5.1941. The trial court dismissed the suit on the finding that the Plaintiffs failed to prove ownership as well as relationship of landlord and tenant. Plaintiffs-Respondents filed revision against aforesaid judgment. Revision has been allowed by Respondent No. 1 and the case has been remanded to the Judge Small Causes Court by the impugned order dated 2.9.1996.

4. I have heard Shri K. M. Garg, learned Counsel for the Petitioners and Shri Deo Raj learned Counsel for the contesting Respondents.

5. The learned Counsel for the Petitioners has urged that Respondent was not justified in remanding the matter to Judge, Small Causes Court, after setting aside its order. In Smt. Krishna Devi and Ors. v. Nth Additional District Judge, Saharanpur and Ors. 1994 (2) ARC 248, this Court took the view that u/s 25 of the Provincial Small Cause Courts Act, 1887, the Revisional Court is entitled to see the legality or otherwise of the finding or the order of the Court of Small Causes but is not entitled to re-assess the evidence itself. In case, re-assessment is necessary, it will have to remand the case for such re-appraisal to the Court of Small Causes.

6. In the present case, the Plaintiffs- relied upon the registered rent note alleged to have been executed by the ancestors of the Defendants in favour of predecessors-in-interest of the Plaintiff-Respondents on 9.5.1941. The trial court made reference of this document in its judgment but did not record finding as to whether this document was executed by the ancestors of Defendants. This was a material document which, if proved, may establish relationship of landlord and tenant between the parties. It is contended that the property in dispute is not same which is mentioned in the rent note dated 9.5.1994. It is matter of evidence which is to be examined by the trial court.

7. Second submission of the learned Counsel for the Petitioners is that the question of the title of the property in dispute is involved and the Judge, Small Cause Court has no jurisdiction to decide such controversy. He has placed reliance upon the decision of Budhu Mal Vs. Mahabir Prasad and Others, , wherein the Hon''ble Supreme Court observed that in some cases court can return the plaint to do complete justice between the parties. In Jiya Lal v. XIth Additional District Judge, Meerut and Ors. 1994 (1) ARC 280, it was held that the Judge, Small Causes Court cannot decide the question of title. In this case, the Plaintiff-Respondent filed suit on the allegation that ancestors of the Petitioners were living as tenants. They also relied upon the registered rent note alleged to have been executed by their predecessors-in-interest. In these circumstances, it was not necessary for the Judge, Small Causes Court to return the plaint, to the Plaintiffs.

8. The learned Counsel for the Petitioners then urged that the Plaintiffs had earlier filed Suit No. 428 of 1978 in the court of Munsif, Bijnor, for ejectment, but the same was withdrawn. It is contended that if the suit has been withdrawn, the present suit filed by the Plaintiffs was not maintainable.

9. The Plaintiffs in para 4 of their plaint themselves stated that they had filed Suit No. 428 of 1978 in the court of Munsif, Bijnor but the same was withdrawn with the permission of the court. There was no issue before the Judge, Small Causes Court that the suit was not maintainable on the ground that the Plaintiffs had withdrawn Suit No. 428 of 1978 and if so, its effect. The contention raised by the Petitioners in this respect, has no substance.

10. The third submission of the learned Counsel for the Petitioners is that the revisional court while remanding the case has framed certain issues and it had no jurisdiction to frame the issue when the Judge, Small Cause Court itself cannot legally frame any issue under the provisions of Code of Civil Procedure.

11. Sub-section (1) of Section 17 of the Provincial Small Cause Courts Act provides that the procedure prescribed in the Code of Civil Procedure, shall save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it. and in all proceedings arising out of such suits.

12. Order XIV, Rule 1 of the CPC provides for framing of issues by the court while deciding the suit. It is nowhere laid down in the CPC or Provincial Small Cause Courts Act that the Judge, Small Causes need not frame issue while deciding the suit instituted in its court. If issues are framed, parties concerned will be able to know on which point the evidence is to be led. The framing of the issues will narrow down the points in dispute. The revisional court while remanding the matter was Justified in framing certain issues as guidance to the trial court. The revisional court committed no error directing the trial court to decide certain issues while remanding the case.

13. In view of the above, there is no merit in this petition and it is accordingly dismissed.