

## Shamshad Ahmad Vs Abdul Hameed

**Court:** Allahabad High Court

**Date of Decision:** Oct. 8, 2012

**Acts Referred:** Provincial Small Cause Courts Act, 1887 " Section 23

**Hon'ble Judges:** Sudhir Agarwal, J

**Final Decision:** Dismissed

### Judgement

Sudhir Agarwal, J.

Heard Sri Shahid Masud, learned counsel for the petitioner and perused the record.

2. This writ petition is directed against the order dated 11.12.2009 passed by Judge, Small Cause Court, Ghaziabad in S. C. C. Suit No. 15 of

2004 returning the plaint in purported exercise of power under Section 23 of Provincial Small Cause Courts Act, 1887 expressing the view that in

the present case question of title has to be decided in order to grant relief to plaintifflandlord and, therefore, the suit must be filed in regular court

and should be not tried by Small Cause Court. The aforesaid view of Trial Court has been confirmed by Revisional Court by means of another

impugned order dated 19. 05. 2011, whereby the Revisional Court has rejected petitioner"s Revision No. 5 of 2010.

3. Both the courts below found that the tenant has come up with a case that he is. not the tenant but residing in the accommodation in question in

his capacity as owner and has adduced certain evidence also in support thereof. The courts below after considering the evidence, prima facie have

found that issue of title is necessary to be decided before granting any relief to petitionerlandlord and in that view of the matter the plaint has been

returned to petitioner so as to be presented in appropriate court dealing with the matter on regular side.

4. Learned counsel for the petitioner submitted that it is not obligatory on the part of Small Cause Court to return the plaint but it can also decide

the said issue incidentally. The proposition by itself has no exception but where the Small Cause Court found that issue of title is necessary to be

decided, Section 23 contemplates that such an issue be adjudicated by a regular court and not by Small Cause Court. Hence where discretion has

been exercised by Small Cause Court by returning the plaint, in such a matter, so as to enable the plaintiff to file suit in regular court, the same

cannot be faulted.

5. In the circumstances, I find no reason to interfere with the impugned orders. Dismissed.