

(2010) 12 AHC CK 0111**Allahabad High Court****Case No:** Writ-A No. 73331 of 2010

Ram Sevak

APPELLANT

Vs

Pramod Kumar

RESPONDENT

Date of Decision: Dec. 20, 2010**Acts Referred:**

- Provincial Small Cause Courts Act, 1887 - Section 17, 18, 23, 25
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 20(4)

Hon'ble Judges: Shashi Kant Gupta, J**Final Decision:** Dismissed**Judgement**

Shashi Kant Gupta, J.

This writ petition has been filed against the concurrent judgment and orders dated 31.8.2010 and 25.11.2004 passed by the Additional District Judge/Small Causes Court, Court No. 9, Kanpur Nagar and Small Causes Court whereby the suit of the plaintiff for arrears of rent and ejectment has been decreed.

2. The brief facts of the case are as follows;

3. The suit for arrears of rent and ejectment was filed by one Ram Krishna Agarwal against the petitioner. The suit was decreed ex parte against the petitioner. Thereafter, a restoration application along with an application under Section 17 of the Provincial Small Cause Courts Act, 1887 (In short "Act 1887" was filed which was allowed, and the suit was restored to its original number. During the pendency of the suit Ram Krishna Agarwal died. Thereafter, on the basis of the will, his wife Smt. Gomti Devi was substituted in his place who died issueless consequent to which the property was succeeded by her brotherinlaw (husband's brother) Hari Narain. Thereafter, Hari Narain also expired and Pramod Kumar was substituted in his place on the basis of the will left by Hari Narain in his favour.

4. The written statement was filed by the petitioner stating that the property in dispute belonged to the Trust and that Ram Krishna Agarwal was merely the Sarwarakar of the Ram Krishna Janki Trust and not the owner of the suit property. In fact he was paid rent regularly as the Manager of the trust. The petitioner also challenged the will executed by Ram Krishna Agarwal. The suit was decreed by the trial court holding that the property in question originally belonged to Ram Krishna Agarwal, and after the death of Ram Krishna Agrawal and Gomati Devi it was bequeathed to the present plaintiff, Pramod Kumar by Hari Narain through a will. Being aggrieved by the order of the trial court, a revision was filed which was also dismissed. Hence, the present writ petition.

5. The main submission of the learned counsel for the petitioner is that the property in dispute did not belong to Ram Krishna Agarwal but was in fact the property of the trust. He further challenged the wills executed by Ram Krishna Agarwal and Hari Narain and submitted that an intricate question of title was involved in the matter, as such, the plaint should have been returned to be presented to a competent court having jurisdiction to determine the title under Section 23 of the Provincial Small Cause Courts Act, 1987. It was further submitted that the petitioner had paid the entire decretal amount along with taxes at the time of filing of an application under Section 17 of the Act 1887 for setting aside the ex parte order, as such, the petitioner was not a defaulter and was entitled to the benefit under Section 20 (4) of the U. P. Act No. 13 of 1972.

6. Per contra, Sri R. K. Mishra, learned counsel for the respondent has submitted that both the courts below have very categorically recorded a finding that the property did not belong to the trust and it was the personal property of Ram Kirshna Agarwal, who was fully competent to execute the will deed in favour of his wife Gomti Devi. He further submitted that since Gomti Devi died issueless, Hari Narain, the brother of Ram Krishna Agarwal succeeded to the suit property, as such, he had the right title and interest over the suit property and was fully competent to bequeath the suit property to Promod Kumar who is now the owner and the landlord of the suit property. It has further been submitted that since the petitioner himself had admitted that the rent was paid by him to Ram Krishna Agarwal as well as to Gomti Devi, therefore, the petitioner can not deny their title over the property. It was further submitted that the said suit was rightly decreed on the ground of arrears of rent and denial of the title as provided under Section 20 (2) (f) of the Act. It was further submitted that only the decretal amount was deposited by the petitioner for setting aside the ex parte order under Section 17 of the Act 1887, however, time barred rent and taxes were not deposited, therefore, the petitioner was not entitled for any benefit as provided under Section 20 (4) of the UP Act No. 13 of 1973.

7. Heard the learned counsel for the parties and perused the record.

8. A bare perusal of the record clearly goes to show that the both the courts below have made meticulous evaluation of the evidence on record and have arrived at the conclusion that the property in dispute did not belong to the trust but it was a personal property of Ram Krishna Agarwal which was finally bequeathed to Promod Kumar. It has also come on record that the munsif court by order dated 28.9.1955 in Suit No. 185 of 1952 held Ram Krishna Agarwal to be the owner of the suit property and the appeal against that order was also dismissed. Moreover, the names of Ram Krishna Nagar and other successors to the property were also mutated from time to time in the Municipal Assessment Record of the Nagar Maha Palika. It is also noteworthy that the present landlord Pramod Kumar was substituted by the court below under order 22 Rule 5 of CPC in place of Har Narayan. The affidavits of the attesting witnesses of the will was also filed in the court below to prove the will which was not rebutted by the petitioner and, moreover, no prayer was made to crossexamine them, as such, the petitioner in view of the above circumstances cannot challenge the validity of the wills. It is well settled law that under Section 23 of the Act 1887, the court can go into the question of the title incidentally, and try the suit.

9. This apart the Apex Court in Shamim Akhtar Vs. Iqbal Ahmad Khan and others AIR 2001 SC 1 : 2000 SCFBRC 446 : 2000 (2) ARC 770 has observed as follows;

"The question of title of the plaintiff to the suit house could be considered by the Small Causes Court in the proceedings as an incidental question and final determination of the title could be left for decision of the competent Court. In such circumstances, it could not be said that for the purpose of granting the relief claimed by the plaintiff it was absolutely necessary for the Small Causes Court to determine finally the title to the property. The tenant respondent by merely denying the relationship of landlord and tenant between himself and the plaintiff could not avoid the eviction proceeding under the Rent Control Act."

10. This Court in the case of Bashir Ahmad Vs. Ist Additional District Judge, Saharanpur and others 2000 (2) ARC 327 has observed as follows;

"It is well settled in law that section 23 does not ousts the jurisdiction of Small Cause Court to decide question of title. It merely gives option to the Court to send a case to the Court having jurisdiction, to determine the title. A reference in this regard made in the case of Ram Dayal Sonar v. Sukh Mangal Kalwar, AIR 1937 Alld. 676, Mohammed Fazi v. Abdul Qyaum, AIR 1978 Alld. 470, Abdul Ghafur Khan v. Gokul Prasad and others, AIR 1914 Alld. 527. The use of the word "may" is indicative that the section confers on the Court of Small Causes a discretion to decide or not to decide the suit for which question of title is raised. A reference in this regard is made in the case of Smt. Padma Negi v. Giri Lal Jain, 1983 (1) ARC 244. It is well settled in law that the question of title, if arises incidentally, can be decided for the purposes of deciding the main point in the case, which is properly within the jurisdiction of the Small Causes Court Act."

11. Thus, section 23 of the Act does not make it obligatory on the Court of Small Causes to invariably return the plaint instituted by the landlord against the tenant on the basis of contract of tenancy once the question of title is raised by the tenant in a suit for eviction. The question of title could also incidentally be gone into. The argument of the applicant that the plaint should have been returned back to the competent court does not have any merit. The argument has been spun around thin air. The petitioner has not laid down any valid foundation to his argument and it is difficult to hold the contention of the petitioner.

12. The submission of the petitioner that since the entire money was deposited by him, he was entitled to the benefit under Section 20 (4) of the U.P. Act No. 13 of 1973, is also not tenable. Suffice it to say that only decretal money for setting aside the ex parte decree was deposited and the entire amount including the time barred rent and taxes as provided under Section 20 (4) of the Act 1972 were not deposited to satisfy the requirement of Section 20 (4) of the Act 1972, as such, the petitioner was not entitled for any benefit provided under the 20 (4) of the Act 1972 and the court below was fully justified in denying the benefit of Section 20 (4) of the Act to the petitioner.

13. A perusal of the record also goes to show that the petitioner has vehemently denied the title of the landlord although he was inducted by Ram Krishana Agarwal in the disputed property and was paying rent to him. Therefore, the petitioner was also liable for eviction under Sub Section 2 (f) of Section 20 of the Act 1972 for denying the title of the landlord. Both the courts below have given cogent, convincing and satisfactory reasons while passing the orders in favour of the respondent. It is also noteworthy that the rent receipts were never issued in the name of the trust but in favour of Ram Krishna Agarwal and no one else came forward to claim his right over the suit property. The validity of the will also was never challenged by any of the family members of Ram Krishna Agarwal, Gomti Devi and Hari Narayan. The findings recorded are neither perverse nor based on any extraneous or irrelevant material. The courts below have on meticulous evaluation of evidence found the property in dispute to be the personal property of Ram Krishna Agrawal and not of the trust which was later on succeeded by the present plaintiff Pramod Kumar on the basis of will executed by Hari Narayan, as such, this Court cannot substitute its opinion for the opinion of the court below unless it is found that that the conclusion drawn by the lower court is perverse, arbitrary and being opposed to well established principles of law.

14. I do not find any illegality or infirmity in the impugned orders.

15. In the result, the petition is dismissed.

16. After the order was dictated it was requested by the learned counsel for the petitioner that at least three months time may be granted to vacate the disputed premises. Prayer of the petitioner appears to be reasonable.

17. In view of the above, the petitioner is granted three months time to vacate the disputed premises subject to condition that the petitioner will submit an affidavit in the shape of undertaking within a month from today before the prescribed authority specifically indicating therein that he will handover peaceful possession of the disputed premises to the plaintiff without inducting any third person on or before the expiry of the three months from today. In case of default, in compliance of the aforesaid conditions, the stay order shall stand automatically vacated and the petitionertenant shall be evicted forthwith.