
(2001) 06 AHC CK 0017

Allahabad High Court

Case No: C.M.W.P. No"s. 23271-74 of 2001

Pervez Alam alias Imran

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision: June 5, 2001

Acts Referred:

- Provincial Small Cause Courts Act, 1887 - Section 23
- Transfer of Property Act, 1882 - Section 106

Citation: (2002) 3 AWC 2527

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: Kailash Nath Tripathi and A.N. Sinha, for the Appellant; S.M. Dayal, S.C., for the Respondent

Final Decision: Dismissed

Judgement

Anjani Kumar, J.

These four connected writ petitions have been filed by four petitioners arising out of common order passed by the revisional court on 18th May, 2001 (Annexure-22 to the petition). The revisional court has consolidated revision of four S.C.C. suits which have been decreed by Judge Small Causes Court by judgment and decree dated 27th February, 2001. The petitioners, who are the tenants, are aggrieved by the aforesaid judgment and decree.

2. The facts leading to the filing of petition are that the contesting respondent purchased four accommodations in dispute by its owner by registered sale deed, thereafter he served notice informing them that he is the landlord. The service of notice is not disputed. The notice has been served by the landlord wherein it has been stated that these tenants are in arrears of rent and if they do not pay rent after receipt of notice, they would be liable to be evicted. It appears that petitioners-tenant have disputed the liability of payment of rent and also right of the

landlord to file ejectment suit against these four petitioners on the ground that erstwhile owner had appointed one power-of-attorney holder who collected money from these tenants for sale of the respective tenements and they are owner in their independent capacity and contesting respondent cannot evict them as there is no relationship of landlord and tenant. The suit was filed and contested by the petitioners. The trial court framed issues including the issue as to whether there is a relationship of the landlord and tenant, i.e., between the petitioners and contesting respondent and whether the suit is liable to be decreed as same has been filed after terminating the tenancy and other issues.

3. I have heard Shri K. N. Tripathi, Shri A. N. Sinha in support of these petitions and Shri S. M. Dayal. who appears for the contesting respondent-landlord.

4. it is admitted that the provisions of U. P. Act No. 13 of 1972 are not applicable to the accommodations in question. The trial court after having gone through the evidence on record arrived at the conclusion that there is a relationship of landlord and tenant between the petitioners and the contesting respondents. The landlord has filed the suit after due service of notice terminating the tenancy ; and that the petitioners-tenant are in arrears of rent which they have not paid inspite of the demand made by the landlord.

5. Aggrieved by the order of the trial court, petitioners filed revisions before the revisional court and slated that they have additional ground but the trial court has not afforded full opportunity to the petitioners-tenant. The revisional court dealt with the additional ground first and recorded the findings on the order-sheet that it is not open to the petitioners-tenant to argue before the revisional court that full opportunity was not given by the trial court whereas from record. It is apparent that full opportunity was given by the trial court and no grievance whatsoever was raised by the petitioners. Thus, revisional court rejected the aforesaid argument.

6. Learned counsel for the petitioners has laid emphasis on the notice served on them and tried to demonstrate that in this notice demanding the arrears of rent, the tenancy has not been determined and argument advanced in support thereof is that since there is no determination of tenancy as is required u/s 106 of the Transfer of Property Act. 1882. therefore, the suit is liable to be dismissed on this ground alone.

7. Learned counsel for the petitioner. Shri A. N. Sinha in one of the writ petition, i.e.. Writ Petition No. 23273 of 2001. submitted that, which according to the petitioners, it is the notice of demand served on them and tried to demonstrate that it is a simple notice demanding the rent and does not terminate the tenancy. From perusal of the last paragraph of the notice, it is clear that notice after determining the tenancy was served that in case of non-payment of the arrears of rent, tenant would be evicted. In this view of the matter, findings recorded by the trial court and affirmed by the revisional court regarding issue of notice u/s 106 of the Transfer of Property Act. 1882. does not warrant any interference by this Court in exercise of

power under Article 226 of the Constitution of India.

8. It is then submitted by the learned counsel for the petitioners that since the petitioners-tenant disputed the title of the landlord, the suit was barred under the provisions of Section 23 of the Provincial Small Cause Courts Act. 1887.

9. Respondent-landlord cited decisions of this Court as well as of the Apex Court on the basis whereof the trial court as well as the revisional court decided the case. One of the submission is that the question as to whether the suit in question involves the question of title should have been gone through by the Small Causes Court and if the trial court came to the conclusion that question of title does not Involve in the suit or that the defendant has failed to demonstrate that they had any semblance of title, suit cannot be said to be barred by Section 23 of the Provincial Small Cause Courts Act. 1887. The trial court recorded its categorical findings after discussing the entire evidence that suit is triable in Small Causes Court. These are findings of fact which cannot be assailed in the petition particularly in the circumstances that the same has been affirmed by the revisional court. Regarding other disputes, trial court recorded categorical findings which have been affirmed by the revisional court and in view of the decision in [Syed Yakoob Vs. K.S. Radhakrishnan and Others](#), it is not a fit case for interference under Article 226 of the Constitution of India. The Hon'ble Supreme Court in the case of Budhu Mal v. Mahabir Prasad and Ors.. 1988 (21 AWC 1057 : 1988 ACJ 484. has held that suit involving question of title does not make obligatory on Court to return the plaint as question of title could also incidentally be gone into by the Judge Small Causes Court. I am not multiplying the decisions relied upon by the counsel of the either side, as principle of law has already been settled which, in my opinion, is not applicable in this cases as trial court recorded the findings against the petitioners on all the issues framed by the trial court which has been affirmed by the revisional court and in view of the concurrent findings of fact recorded by the trial court as well as revisional court, this Court will not exercise its discretionary jurisdiction under Article 226 of the Constitution of India.

10. In view of what has been stated above all the four writ petitions are liable to be dismissed and are hereby dismissed. The interim order/orders, if there be any. shall stand vacated. However, there will be no order as to costs.