

**(2004) 04 AHC CK 0196**

**Allahabad High Court**

**Case No:** Writ Petition No. 10280 of 1984

Mahendra Pal Singh and Others

APPELLANT

Vs

District Judge and Another

RESPONDENT

**Date of Decision:** April 9, 2004

**Acts Referred:**

- Provincial Small Cause Courts Act, 1887 - Section 23, 25

**Citation:** (2004) 5 AWC 4090

**Hon'ble Judges:** Tarun Agarwala, J

**Bench:** Single Bench

**Advocate:** K.K. Dubey, for the Appellant; Prakash Gupta, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Tarun Agarwala, J.

The Plaintiff filed a Suit No. 150 of 1973 alleging that he is the owner of the premises in question and that the Defendant was the tenant and that he had paid the rent upto 23.2.1966 and thereafter, did not pay the rent. The Plaintiff served a notice of demand and also terminated his tenancy and thereafter, the suit was filed.

2. The Defendant contested the suit and denied the relationship of landlord and tenant between the parties. The Defendant contended that his father had built the house and that he was in possession of the premises in question as owner and not as a tenant.

3. It transpires that the Judge Small Cause Court by order dated 12.12.1974 passed an order holding that a question of title is involved in the suit and therefore, the suit should be transferred to the court of Munsif. In pursuance of this order, the suit was transferred to the court of Munsif.

4. The trial court after recording the evidence determined the point in controversy and decreed the suit of the Plaintiff holding that the Defendant was the tenant and

that he was in arrears of rent.

5. Aggrieved by the decree passed by the trial court, the Defendant filed a revision u/s 25 of the Provincial Small Cause Courts Act. The District Judge vide judgment and order dated 13.4.1984, allowed the revision holding that since disputed question of title was involved the same could not be decided in proceedings arising under the Provincial Small Cause Courts Act. The District Judge, therefore, allowed the revision and set aside the judgment of the trial court with the direction that the trial court should return the plaint to the Plaintiff for presentation to the proper court.

6. Aggrieved by the order of the District Judge, the Plaintiff has filed the present writ petition.

7. Heard, Sri K. K. Dubey, the learned Counsel for the Petitioner and Sri Prakash Gupta, the learned Counsel for the Respondent.

8. The learned Counsel for the Petitioner submitted that originally the suit was filed before the Judge Small Cause Court and vide order dated 12.12.1974, the Court had transferred the suit to the regular court as it involved a question of title. On the basis of the order dated 12.12.1974, the suit was transferred to the regular court of the Munsif, where it was tried as a regular suit and thereafter, the Munsif decreed the suit. The learned Counsel for the Petitioner submitted that against the decree of the trial court no revision could have been filed by the Defendant and the revision so filed was not maintainable. Further the order of the District Judge directing the plaint to be returned to the proper court was wholly erroneous inasmuch as the trial court itself was the proper court and was competent to deal and decide the question of title.

9. The learned Counsel for the Defendant submitted that the order dated 12.12.1974 only transferred the suit to another Court and, therefore, after the transfer of the case, the Munsif tried the case as a Judge Small Cause Court and did not try the suit on the regular side. Consequently after the decree of the trial court, the Defendant filed a revision u/s 25 of the Provincial Small Cause Courts Act. The learned Counsel in support of his submission stated that originally the suit was numbered as 150 of 1973 and upon the transfer of the suit by order dated 12.12.1974, the suit was not renumbered and the original number of the suit remained as 150 of 1973. Further the judgment of the trial court clearly indicated that the learned Judge had proceeded and decided the case as a Judge Small Cause Court and therefore, the revision was maintainable. The learned Counsel for the Defendant submitted that the order dated 12.12.1974, only transferred the case and did not return the plaint to the Plaintiff for presentation to the proper court. The Munsif tried the case as Judge Small Cause Court and did not decide the same on the regular side.

10. In my view, the order dated 12.12.1974, only transfers the case from one Court to another. It is not an order returning the plaint for presentation to the proper court. Section 23 of the Provincial Small Cause Courts Act clearly stipulates that

where the right of a Plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title. Thus, Section 23 of the Act only indicates that the Court may return the plaint to be presented before the proper court when intricate question of title are involved. The section does not provide for transferring of the case to the regular side. Thus, the contention of the learned Counsel for the Petitioner that the order dated 12.12.1974, transferring the case amounts to returning the plaint for presentation to the proper court is wholly incorrect.

11. From the order sheet of the court below filed in the writ petition, it is clear that the suit proceeded as a suit under the Provincial Small Cause Courts Act and not as a suit on the regular side. After the transfer of the case, the number of the suit remained the same. The judgment passed by the trial court was passed exercising the powers of Judge Small Cause Court, which is further fortified by the fact that no issues were framed by the trial court as is done when trying the case on the regular side. It further transpires that no objection with regard to the maintainability of the revision was raised by the Plaintiff before the revisional court. The Petitioner has nowhere stated in the writ petition that he had raised this point and the same was not considered by the revisional court. Thus, the contention of the learned Counsel that the revision filed by the Defendant was not maintainable cannot be accepted. Thus, I hold that the trial court decided the suit exercising the powers of a Judge Small Cause Court and that the Defendant rightly filed a revision u/s 25 of the Provincial Small Cause Courts Act.

12. The revisional court has allowed the revision and has set aside the decree of the trial court on the ground that intricate question of title are involved which the Judge Small Cause Court could not decide. In my view since intricate question of title is involved in the present case, the revisional court had rightly exercised its discretion u/s 23 of the Act in directing the trial court to return the plaint for presentation to the proper court. The discretion exercised was sound and reasonable and requires no interference by this Court.

13. In the result, the writ petition is dismissed. However, there shall be no order as to cost.