

## Ajay Kumar Verma Vs Ajay Kumar Sharma and Others

**Court:** Allahabad High Court

**Date of Decision:** Oct. 9, 2006

**Hon'ble Judges:** Rakesh Tiwari, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Rakesh Tiwari, J.

Heard counsel for the petitioner, Sri P.K. Jain, counsel for the respondents and perused the record.

2. Briefly stated, the facts of the case are that S.C.C. Suit No. 135 of 1994 was filed by respondent Nos. 1 to 3 against the petitioner and one Sri

Kallu Mal-respondent No. 7 for their eviction from the shop, in dispute. It was alleged that the petitioner, who was tenant of the shop, in dispute,

on a monthly rent of Rs. 100 with house tax and water charge @ Rs. 20 per month had inducted Sri Kallu Mai as sub-tenant and was not regularly

making payment of rent to the landlords.

3. The petitioner contested the suit by filing written statement denying the plaint allegations. He disputed the allegation of sub-tenancy and non-

payment of rent.

4. The aforesaid suit was decreed by the trial court vide judgment and decree dated 21.5.1998. Aggrieved, the petitioner preferred S.C.C

Revision No. R.C.C. Revision No. 21 of 1998 which has been dismissed vide the impugned judgment and order dated 10.5.2001, affirming the

judgment and decree passed by the trial court.

5. Aggrieved, the petitioner has come up before this Court by means of the instant writ petition.

6. Counsel for the petitioner contended that on the basis of evidence led before the trial court, no reasonable man could come to the conclusion

that it was a case of subletting. He submits that in fact, Sri Kallu Mal-respondent No. 7 was engaged as servant by the petitioner and he was not a

sub-tenant. Sri Kallu Mal was never found in exclusive possession of the disputed shop.

7. On the other hand, counsel for the respondents contended that the petitioner has his own shop in Mohalla Sarraffa Bazar, Bulandshahr and Sri

Kallu Mal, who was tenant of another shop of the present landlords, was evicted from his shop, which is adjacent to the shop in dispute. On the

very next day of his eviction, Sri Kallu Mal occupied the disputed shop as sub-tenant of the petitioner. He vehemently urged that the shop in

dispute, was never allotted to Sri Ajai Kumar Verma-the petitioner, in which he is carrying on the business of goldsmith.

8. Counsel for the respondents then urged that apart from the shop in dispute, which has been given to Sri Kallu Mal, the petitioner has his own

shop in Sarraffa Bazar, which has not been denied by the petitioner. He also submitted that the statement given by the petitioner denying any

knowledge about the fact that son of Sri Kallu Mal is carrying on business in the same lane and that Sri Kallu Mal has been engaged as servant by

the petitioner, before the courts below was not believed as admittedly Sri Kallu Mal is his first cousin. He stated that as a matter of fact, the shop,

in dispute, given to Sri Kallu Mal, his first cousin, mostly remains closed. The petitioner, in fact, is carrying on his business from his own shop and

the disputed shop has been given to Sri Kallu Mal and, thus, the petitioner has created sub-tenancy.

9. It appears from the statement of the landlords before the trial court that there is another shop of Sri Kallu Mal where his son is carrying on the

business of goldsmith, which is situated in the same lane. The petitioner-tenant, in his statement before the trial court emphatically asserted that the

shop under the tenancy of Sri Kallu Mal was adjacent to the shop, in dispute, and after the same was got vacated, Sri Kallu Mal was engaged by

the petitioner as servant. The petitioner alongwith Sri Kallu Mal and other workers is carrying on the business of goldsmith from the shop, in

dispute. Sri Kallu Mal is the first cousin (his mausi's son) and that the petitioner himself receives the work-orders and issues notices accordingly. It

is asserted in the statement that no parcha or book order has been issued by Sri Kallu Mal.

10. After hearing counsels for the parties and going through the record of the case, I am of the view that the courts below have rightly disbelieved

the case of the petitioner. A concurrent finding of fact has been recorded that the petitioner has created sub-tenancy by Inducting Sri Kallu Mal, his

first cousin.

11. It is very difficult for the landlord to prove sub-tenancy. However, from the evidence and other materials available on record, the courts below

have arrived to the conclusion that the petitioner has failed to prove his case that Sri Kallu Mal was his servant. It has also been noticed that though

the petitioner, in his statement has stated that Jeetu was his servant but no where he stated that Sri Kallu Mal was servant. In case, the petitioner

comes out with the case that Sri Kallu Mal, his cousin, is his servant, it was incumbent on his part to discharge the burden of proof. The statement

of the petitioner that he does not know that son of Sri Kallu Mal is doing business of goldsmith in the same lane does not inspire confidence. He

being the uncle of the son of Sri Kallu Mal and in the same business as well as in the same lane ought to have known this fact. Moreover, Sri Kallu

Mal was doing his own independent business and after his eviction in the circumstance would rather prefer to sit with his son in his shop than work

as servant elsewhere. There is nothing on record that there is any ill-will between Sri Kallu Mal and his son. The court below has rightly disbelieved

the evidence by the petitioner in the circumstances.

12. Counsel for the petitioner could not show any illegality or infirmity in the impugned orders requiring interference in writ jurisdiction.

13. For the reasons stated above, the writ petition fails and is dismissed without any order as to costs. The petitioner shall vacate the shop in

dispute within one month from today and hand over peaceful possession to the landlords. If the petitioner fails to comply with this order within the

stipulated period of one month from today, the landlords will be at liberty to evict him from the disputed shop by coercive process with the aid of

local police.