

**(1982) 10 AHC CK 0071****Allahabad High Court****Case No:** Civil Misc. Writ Petition No. 680 of 1982

Mangal Chand Nagalia

APPELLANT

Vs

District Judge and Others

RESPONDENT

**Date of Decision:** Oct. 20, 1982**Acts Referred:**

- Provincial Small Cause Courts Act, 1887 - Article 4, 23, 25

**Hon'ble Judges:** A.N. Varma, J**Bench:** Single Bench**Advocate:** V.K.S. Chaudhary, for the Appellant; K.M. Sinha and S.C., for the Respondent**Final Decision:** Dismissed

### **Judgement**

A.N. Varma, J.

This petition is directed against concurrent orders passed by the courts below disposing of a preliminary objection raised on behalf of the Petitioner-who is the Defendant in the civil suit filed against him as to the jurisdiction of the court to try the suit. Both the courts below have held, overruling the objection of the Petitioner, that the suit was rightly taken cognizance of by the learned Judge, Small Causes Court.

2. The relevant facts are that a suit has been filed against the Petitioner by the Plaintiff-Respondents Nos. 3 and 4 for the Petitioner's ejectment on the assertion that the disputed accommodation belonged to one Smt. Kamrunnissa and that the Plaintiff has got the same under a deed of transfer executed in his favour on 8-6-79. The Defendant was a tenant of Smt. Kamrunnissa. After the transfer of the property in favour of the Plaintiff, the Plaintiff served a notice informing the Defendant of the transfer. The Defendant in reply to that notice asserted that one Maqbool was his landlord. The Plaintiff thereafter served a notice determining the tenancy of the Defendant and asking him to vacate the disputed accommodation, inter alia, on the ground that the Defendant has denied the title of the Plaintiff and thereby incurred

forfeiture of the lease.

3. The Petitioner filed a written statement and asserted that he was the tenant of one Maqbool to whom he has been paying rent since 1974. Earlier the property belonged to one Nurul Hasan from whom the Defendant had taken the accommodation on rent. After the death of Nurul Hasan, Mohd. Maqbool became the owner of the same and the Defendant has been paying rent to him since 1974. In paragraph 5 of the Additional written statement, however, the Defendant stated that he never committed any default nor did he ever question the title of the Plaintiff nor even has the Defendant ever set up title in any third person.

4. The Plaintiff thereafter filed a replication in which he stated that Maqbool was not the owner or landlord of the disputed accommodation and that he had no right to collect the rent from the Defendant.

5. After the filing of the pleadings the Defendant moved an application before the court, namely, the Judge, Small Causes Court, Deoria to the effect that in view of the fact that a disputed question of title was involved in the suit the court has no jurisdiction to try the suit because of Section 23 of the Provincial Small Cause Courts Act.

6. The application was contested by the Plaintiff-Respondent. By an order dated 23rd October, 1981 the trial court rejected the application of the Plaintiff and held that the court does have jurisdiction to try the suit in view of the assertions made by the Defendant himself in paragraph 5 of his written statement.

7. Against the aforesaid order the Petitioner filed a revision u/s 25 of the Provincial Small Cause Courts Act but the same has been dismissed.

8. Aggrieved by the aforesaid orders the Petitioner has approached this Court by way of a writ petition. Sri. V.K.S. Choudhary, learned Counsel for the Petitioner submits that the courts below have committed an error in holding that there was no warrant for returning the plaint u/s 23 of the Provincial Small Cause Courts Act.

9. Having heard counsel for the parties I am clearly of the opinion that the courts below have rightly overruled the objection of the Petitioner.

10. The main contention of the learned Counsel for the Petitioner was that reading the written statement as a whole it was clear that the Defendant was disputing the title of the Plaintiff. Further according to the Plaintiff himself as pleaded by him in his plaint and replication the Defendant had denied the title of the Plaintiff. Under the circumstances the courts below ought to have returned the plaint for presentation to the proper court u/s 23 of the Provincial Small Cause Courts Act.

11. I am unable to accept the above contention. In the first place in paragraph 5 of the additional pleas raised by the Defendant in his written statement, it was categorically stated that the Defendant was neither denying the title of the Plaintiff

nor was he setting up title in any third person. The trial court was, therefore, justified in relying on what was admitted by the Defendant in paragraph 5 of his written statement. According to paragraph 5 of the written statement there can be no manner of doubt that the case pleaded by the Petitioner was that he was not disputing the title of the Plaintiff as such. What the Defendant seems to have pleaded is that his landlord was Maqbool. The Plaintiff's case on the other hand was that originally Smt. Kamrunnissa was the land-lady of the Defendant from whom the Plaintiff has got the property under a deed of transfer.

12. The simple question of fact which arises for determination, therefore, is whether the Defendant was the tenant of Smt. Kamrunnissa or he was the tenant of Maqbool. If the Plaintiff succeeds in proving his case, namely, that the Defendant was in point of fact the tenant of Smt. Kamrunnissa, he would be entitled to a decree for ejectment of the Defendant. If on the other hand the Defendant succeeds in proving his case that he was not the tenant of Smt. Kamrunnissa but that he was the tenant of Maqbool, the suit would be liable to be dismissed.

13. As the pleadings stand at present, I see no want of jurisdiction in the learned Judge, Small Cause Court to take cognizance of the suit. It is not correct to say that merely because the Defendant chooses to question the fact that the Plaintiff is not his landlord the Small Cause Court automatically loses jurisdiction to try the suit. What Section 23 of the Provincial Small Cause Courts Act says is that where the Court finds that the relief which the Plaintiff is claiming depends for its success 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. Section 23 in my view merely vests a discretion in the Court and in cases where the Court comes to the conclusion that the question of title is such which cannot finally be determined by the Provincial Small Cause Court, in those cases it may direct the return of the plaint to be presented to the proper Court.

14. The position, therefore, is that as the pleadings of the parties stand at present it cannot be said that the case involves determination of any such complicated question of title which the Court cannot itself determine.

15. Learned Counsel for the Petitioner, however, placed reliance on two decisions of this Court. The first case relied on by him is Smt. Kela Devi v. Rameshwar Dayal 1982 ARC 149. That case is clearly distinguishable. The finding in that case was that a complicated question of title was involved in the case. It was hence held that the trial court should have returned the plaint to be presented to proper court.

16. The other case cited by the learned Counsel for the Petitioner was Sarjoo Prasad Vs. IIInd Additional District Judge, Kanpur and Others, . I have examined this case and I do not find the same to be of any assistance whatsoever. In that case the question for consideration was whether the provisions of Article 4 of the Second

Schedule of the Provincial Small Cause Courts Act suffer from the vice of discrimination. That case was not concerned directly or indirectly with the issue with which I am concerned.

17. I may make it clear that any observations which I have made in the judgment are confined only to the question whether the decision of the courts below that on the facts of the present case Section 23 of the Provincial Small Cause Courts Act was not attracted, is correct. I have not expressed any opinion on any other question of jurisdiction which may or may not be involved in the case. I may further observe that this judgment shall have no effect on the merits of the amendment application which is said to be pending before the trial court.

18. The result of the aforesaid discussion is that this petition fails and is dismissed with costs.