

(2016) 08 AHC CK 0132

ALLAHABAD HIGH COURT

Case No: S.C.C. Revision No. 269 of 2016.

Sanjay Sharma @ Pintu -
Revisionist @HASH Anil Dua @
Teetu - Opposite Party

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 23, 2016

Acts Referred:

- Provincial Small Cause Courts Act, 1887 - Section 25

Citation: (2016) 3 ARC 569

Hon'ble Judges: Pankaj Mithal, J.

Bench: Single Bench

Advocate: Arun Kumar Tripathi and Ganesh Datt Mishra, Advocates, for the Revisionist;
Prabhat Kumar and Siddharth Niranjan, Advocates, for the Opposite Party

Final Decision: Dismissed

Judgement

Pankaj Mithal, J. - Heard Sri G.D. Mishra, learned counsel for the defendant/revisionist. Sri Siddharth Niranjan has appeared for the plaintiff/respondent.

2. This revision under Section 25 of the Provincial Small Cause Courts Act, 1887 as been preferred against the judgment and order dated 14.7.2016 passed by the Additional District Judge exercising power of the Small Cause Court decreeing SCC Suit No.88 of 2013, Anil Dua alias Titu v. Sanjay Sharma alias Pintu.

3. The only argument advanced by learned counsel for the revisionist is that there was no service of notice determining tenancy.

4. The court below in respect of the above contention formulated issue No.3 to the effect whether the notice dated 4.4.2013 was served upon the defendants. In deciding the said issue the court below has considered the entire evidence on

record as well as respective arguments of the parties and has come to the conclusion that the notice dated 4.4.2013 determining tenancy was served upon the defendant on 8.4.2003.

5. The submission of Sri Mishra, learned counsel for the revisionist is that the plaintiff/respondent in his statement has admitted that the notice was sent at the wrong address and, therefore, the service cannot be deemed to be proper.

6. The court below has dealt with the above aspect of the matter and has recorded a finding that the plaintiff/respondent in his statement as P.W. 1 has clearly stated that the Postman had come with the notice dated 4.4.2013 to serve upon the defendant on 8.4.2013. He had served the notice upon the defendant in his presence and had obtained his signatures on the acknowledgement. The information available on the website of the Postal Department also shows that it has been served on 8.4.2013. Therefore, the statement that the notice was sent on the wrong address has wrongly been recorded and the word "not" has been left out in recording the said statement.

7. The aforesaid reasoning of the court below appears to be just and proper under the facts and circumstances of the case.

8. Moreover, the defendant/revisionist has simply denied that he had not received the notice. He had nowhere stated that no Postman as alleged had come to deliver the notice.

9. In such circumstances, the finding returned by the court below on the above aspect of the matter is not faulty and cannot be said to be illegal.

10. No other point has been raised and pressed before me.

11. In the last Sri Mishra prays that the defendant/revisionist be allowed some reasonable time to vacate the premises in dispute to which the counsel for plaintiff/respondent has no objection and he leaves upon the court to grant some suitable time.

12. In the interest of justice the defendant/revisionist is allowed time till 31st December, 2016 to vacate the premises in dispute provided he gives an undertaking on affidavit before the court below that he will handover peaceful vacant possession of the premises in dispute to the plaintiff/respondent within the aforesaid time and that he will clear the entire dues as per the decree and pays the damages/rent for the aforesaid period at the rate fixed by the court below.

13. The revision lacks merit and is dismissed.