

(2014) 08 DEL CK 0060

Delhi High Court

Case No: CM(M) No. 765/2014

Dayawati

APPELLANT

Vs

Dalip Kumar

RESPONDENT

Date of Decision: Aug. 22, 2014

Acts Referred:

- Constitution of India, 1950 - Article 227
- Provincial Small Cause Courts Act, 1887 - Section 15, 23

Hon'ble Judges: Valmiki J. Mehta, J

Bench: Single Bench

Advocate: Joginder Sukhija and Karuna Chhatwal, Advocate for the Appellant

Final Decision: Dismissed

Judgement

Valmiki J Mehta, J.

This is a petition under Article 227 of the Constitution of India impugning the concurrent judgments of the courts below; of the trial court/Judge Small Cause Court dated 19.12.2012 and the first appellate court dated 26.3.2014; by which the suit of the respondent/plaintiff/landlord for recovery of Rs.2,700/- being the amount of arrears of rent has been decreed alongwith the interest at 15% per annum pendente lite.

2. A reading of the judgment of the trial court/Judge Small Cause Court shows that the present petitioner/defendant failed to lead any evidence and accordingly, the evidence of the petitioner/defendant was closed vide order dated 7.2.2012. Respondent/plaintiff proved his case by leading evidence. Respondent/plaintiff duly proved his title as also the entitlement with respect to the amount claimed towards arrears of rent. The relevant paras of the judgment dated 9.12.2012 of the trial court/Judge Small Cause Court are paras 11 to 15 and which read as under:-

"11. To prove his ownership of the suit premises, the plaintiff has placed on record the photocopy of the sale deed which has been proved by PW2 Munish Kumar,

Record Keeper of Sub-Registrar by producing the record regarding sale deed dated 20.02.1985 executed by Smt. Usha Devi in favour of the plaintiff. The defendants have not produced any document to prove their ownership in respect of the suit premises. There is no material on record on behalf of the defendants to prove that they are the owner of the premises.

12. There is no material on behalf of the defendants to rebut the document produced on behalf of the plaintiff to establish their right, title or interest in the suit premises.

13. Even otherwise, a question was put by counsel for the defendants to PW1 Dalip Kumar in his cross-examination to which he has replied that "It is correct that when he received the rent vide Ex.PW1/5 no other person except myself and Dalel Singh were present". By putting such questions to PW1 Dalip Kumar, it is admitted on behalf of the defendants that rent was paid to the plaintiff by Dalel Singh vide Ex.PW1/5.

14. In view of above discussion, it is proved that Dalel Singh, predecessor in interest of the defendants had paid rent to the plaintiff in respect of the suit premises.

15. It is proved on oath by the plaintiff that rate of rent of premises is Rs.75 per month and that the defendants have not paid rent for the last three years to which the plaintiff has claimed."

(underlining added)

3. In my opinion, the trial court was therefore justified in decreeing the subject suit in view of the reasoning contained in the above paras.

4. Before the first appellate court, petitioner/defendant took up a totally new case that since there was an issue of title, the suit could not have been decided by the trial court/Judge Small Cause Cases as per Section 23 of the Provincial Small Cause Courts Act, 1887 (in short 'the PSCC Act'). This contention of the petitioner/defendant was rejected by the first appellate court observing that there is a discretion of the court whether or not to return the plaint and in the facts of the present case it was not required that the discretion be exercised to return the plaint inasmuch as title to the suit property was duly proved by the respondent/plaintiff. The relevant paras of the judgment dated 26.3.2014 of the first appellate court are paras 11 to 13, 16, 19 and 21 and which read as under:-

"11. In the instant case, the established facts came on record are that the plaintiff is claiming to be an exclusive owner and landlord of the suit premises, for which he has exhibited a sale deed Ex.PW2/1 and its registration on 28.02.1985 with the Registrar concerned, vide entry at S.No. 430, Volume No. 1787, at pages 155 to 158 and the plaintiff has established the original rent receipts exhibited as Ex.PW1/2 to 14 issued to Sh. Dalel Singh as tenant was paying rent, for a period varying from 1986 to 1992 to show that Sh. Dalel Singh (deceased), the husband of appellant no.1

and father of appellants no.2 and 3, was in possession of the suit premises as tenant and the appellants being the family continued in possession as tenant-in-succession, after his death.

12. Also, as per the record and the observations in the impugned judgment, the defendants in their written statement have raised a mere allegation that the ownership of the premises vested in Sh. Dalel Singh (deceased), by way of adverse possession and that the appellants were not in tenant-in- succession of the suit premises.

13. Further, in the impugned judgment, it is observed that 'apart from filing the written statement and an averment in the written statement claiming the ownership of the defendants, no material has been placed to rebut the document of title produced on behalf of the plaintiff to establish their right of claiming the rent in the suit'.

16. Thus, resultantly, it was observed that the allegation regarding the ownership of the suit premises and the dispute regarding the title/ownership of the plaintiff (respondent) in the suit remained a mere allegation in the written statement that the ownership vests in the defendants (appellants) in the suit filed by the plaintiff (respondent) for claiming the arrears of rent and the plaintiff through un rebutted testimony proved the entitlement of the arrears of rent for the period claimed in the suit & the suit was decreed.

19. Thus, on the basis of above settled principle applied to the facts of present case, it is observed that in the case in hand, the respondent has claimed the arrears of rent in the suit filed before the Judge Small Cause Court and reliefs claimed regarding the arrears of rent were dependent on the existence of tenant-landlord relationship, that was duly established by the respondent by exhibiting the rent receipts Ex.PW1/2 to 14 issued to Sh. Dalel Singh (deceased), the tenant-in-predecessor of interest in the tenanted premises qua the appellants who were in possession of the suit premises as tenants-in-succession in the tenanted premises.

Thus, clearly, on the basis of facts established on record, the relief claimed in the suit was not dependent on the determination of the title or ownership of the suit property in any manner to attract for the bar of provisions of Section 23 of the Act, particularly when claim of ownership by the appellants was mere a plea in the written statement about their ownership and nothing material placed on record to establish such plea.

21. Further, it is observed that the scope of Section 23 of the Act, has been discussed in minute details in the cases viz [Mohd. Muzammil Khan Vs. Mohd. Nadir Khan and Others,](#), Smt. Parwati & Ors. Vs. Gaya Prasad & Ors., DOD 08.04.2008, Ram Ashera Savita Vs. IInd A.D.J. & Ors, C.M.W.P.No. 8661/2005, DOD-22.02.2005, [Daya Shankar Upadhyaya Vs. Naresh Chandra and Others,](#), Madan Mohan Goswami Vs. Fifth

Additional District Judge & Ors., DOD 23.3.2007 & [Maresh Chandra Sharma and Another Vs. IInd A.D.J. and Others,](#) , and on the basis of the judicial opinions expressed, cumulatively, in the above- noted cases, now it has been well settled as a principle of law that ownership vests in the defendants does not entitle the defendants (appellants) to submit that the case was involving the title dispute and it should not have been dealt by the Judge Small Cause Court or that the Court was acted illegally in its jurisdiction to entertain the suit & that if the plaint was not returned, then also there is no illegality committed by the Court.

Also, it is well settled law that a word `may" has been used to draw an inference that the court has a discretion u/s. 23 of the Act to exercise & decide as to whether the plaint is to be returned for the determination of the title, in the appropriate facts and circumstances of the case, where the claim/relied in the suit is dependent in the determination of the title in the suit."

(underlining added)

5. Powers under Article 227 of the Constitution of India are not meant to be invoked and exercised as appellate powers as if a second appeal is being heard. Powers under Article 227 of the Constitution of India are also discretionary and only exercised if there is a clear case of injustice. On technical grounds which are pleaded, a petition under Article 227 of the Constitution of India does not lie if the impugned judgments do not result in any injustice. In the present case, I do not think that the impugned judgments result in any injustice inasmuch as petitioner/defendant has been called upon to pay arrears of rent alongwith interest and that too in a case where petitioner/defendant led no evidence and the respondent/plaintiff proved his case including his title to the suit premises.

6. Before this Court learned counsel for the petitioner/defendant sought to raise once again a totally new plea, not raised in any of the courts below, based upon Section 15 of the PSCC Act read with Article 8 of the Second Schedule of the PSCC Act to argue that suits for recovery of rent cannot lie before the Small Cause Court. Firstly, even if, I presume that the said provisions being Section 15 and Article 8 of the Second Schedule apply, however, the relevant Article 8 itself states that a suit for recovery of house rent lies. House rent has to be interpreted practically that rent is towards a premises and not that rent is only for a residential premises as is sought to be canvassed on behalf of the petitioner/defendant. The object of the expression `house rent" is to seek rent with respect to a constructed premises, and as per the language of Article 8, rent other than that payable for a constructed premises only is excluded from the operation of the PSCC Act. At this stage, also itself I must note that I am presuming that Provincial Small Cause Courts Act, 1887 applies inasmuch as a reading of Section 15 with its sub-sections (2) and (3) shows that the PSCC Act only applies to suits for recovery up to a sum of Rs.1000/-. I am however discussing the provisions because counsel for the petitioner/defendant states that the limit of Rs.500/1000/- has been increased to Rs.10,000/- as per the knowledge of the

counsel for the petitioner/defendant, though of course, I very much doubt this argument inasmuch as I do not find any such amendment in the PSCC Act which is before this Court and which contains the amendments till the year 2014.

7. In view of the above, I do not find that present is a fit case for exercise of discretionary and extraordinary powers under Article 227 of the Constitution of India, and the petition is therefore dismissed, leaving the parties to bear their own costs.