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Smt. Munni Devi and Others Vs. the Xth Additional District and Sessions Judge, Agra and Others

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Court : Allahabad

Decided On : Apr-02-1990

Reported in : AIR1990All169

Judge : M.P. Singh, J.

Acts : Provincial Small Causes Court Act, 1887 - Sections 23; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 8135 of 1990

Appellant : Smt. Munni Devi and Others

Respondent : The Xth Additional District and Sessions Judge, Agra and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Ramendra Asthana, Adv.

Judgement :

ORDER

(1) The petitioners are the tenants of house No. 23/259, Jeoni Mandi, Agra.

(2) The landlords filed suit No. 482 of 1969 in the Court of Judge Small Causes for arrears of rent and for ejection. The case set up was that the rent up to 31-1-

1967 was due to be paid by the petitioner. Their tenancy was terminated by means of the notice dated 9-2-1967.

(3) The petitioners denied the plaintiff's allegations. It was stated that they were not in default. The entire rent was paid but the receipts were not issued to them. The frame of the suit was also defective since all the landlords have not joined the suit.

(4) The suit was decreed by the trial Court against which the petitioners filed a revision which too was dismissed on 26-7-1989.

(5) Heard Sri Ramendra Asthana, learned counsel for the petitioners and perused the record.

(6) The first contention raised by the learned counsel for the petitioner was that since in this case the title of the landlord was disputed, the Judge Small Causes ceased to have any jurisdiction to decide the suit. This submission has got no force and is rejected for the following reasons.

(7) It appears that the point has not been raised before the Judge Small Causes and as such no issue was framed on this question. The petitioners have not placed any satisfactory material before this Court even to show that there was any serious dispute regarding title. Mere raising of this objection will not debar the Judge Small Causes to proceed with the suit.

(8) In the case reported in 1983 Alt WC 52: (1983 All LJ 214) Mangal Chandra v. District Judge, it has been held : (at p. 216 of All LJ)-

'It is not correct to say that merely because the defendant chooses to question the fact that the plaintiff is not his landlord the Judge Small Causes automatically loses jurisdiction to try the suit. What section 23 of the Provincial Small Cause Court Act says is that where the Court finds that the relief which the plaintiff is claiming depends for its success by proof or disproof of a title to immoveable property or other title which such a court cannot finally determine, the Court may at any stage of the proceeding return the plaint to be presented to a Court having jurisdiction to determine the title, Section 23 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 plaint for presentation to proper Court.'

(9) The same view has been taken in the cases reported in (1984) 1 All Rent Cas 37 :(1984 UPLT NOC 46), Virendra Kumar v. Illrd Additional District Judge, Etawah and (1984) 1 All Rent Cas 63 Vinod Chandra v. Smt. Ram Kanwar.

(10) In a recent case reported in AIR 1988 SC 1772 Budhumal v. Mahabir Prasad, it has been held (at p. 1774 of AIR):

'Section 23 of the Small Cause Court Act does not make it obligatory on the Court of Small Causes to invariably return the plaint once a question of title is raised by the tenant in a suit for eviction. Also in a suit instituted by the landlord against his tenant on the basis of contract of tenancy a question of title could also incidentally be gone into and any finding recorded by a Judge Small Causes in this behalf could not be res judicata in a suit based on title.'

(11) In my opinion the Judge Small Cause had jurisdiction to decide the question of title incidentally involved in the case. The effort on the part of the petitioners' counsel for getting the case remanded to the Judge Small Causes to frame an issue and decide would be only a futile exercise in the absence of any material on record. Moreover in the reply dated 31-1-1967 sent by the petitioners it has been stated that rent up to 31-1-1967 has been paid by them to the plaintiff-landlord. This amounts to an admission of the relationship of landlord and tenant. The objection of the petitioners on this question does not appear to be a bona fide one.

(12) The second submission raised by the learned counsel for the petitioner was that there was no default on the part of the petitioners. It is also devoid of any merit inasmuch as he has produced no evidence to show that entire arrears of rent demanded by the plaintiff has been paid. Moreover on this question the courts have recorded a finding that the defendants (petitioners) have committed default. This Court while sitting under Article 226 of the Constitution is not exercising appellate power to reappreciate the evidence and record independent findings of its own. This Court exercises only supervisory jurisdiction. Accordingly the finding on this question is a finding of fact and cannot be interfered with by this Court.

(13) No other point was pressed before me, The Writ Petition is accordingly dismissed in limine.

(14) Since the petitioner No. 1 is the widow and the petitioners Nos. 2 and 3 are minors, looking to the hards days, the petitioners are granted six month's time to vacate the premises in case they file an undertaking before the Judge Small Causes within a month from today that they will hand over peaceful vacant possession of the premises to the landlords on or before 4-10-1990 and also deposit the entire rent due up to that date at the time of filing of the undertaking. In case of default the decree for ejection will become executable forthwith.

(15) Petition dismissed.

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