

Mool Chand Vs. Trilok Chand and Others

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Court : Allahabad

Decided On : Jan-31-2001

Reported in : 2001(1)AWC778

Judge : U.S. Tripathi, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 25 and 27; [Code of Civil Procedure \(CPC\) , 1908](#) - Order XLI, Rule 27

Appeal No. : C.M.W.P. No. 3225 of 2001

Appellant : Mool Chand

Respondent : Trilok Chand and Others

Advocate for Def. : Ashok Kumar, Adv.

Advocate for Pet/Ap. : Dhruva Narayana and ;B.K. Narayana, Adv.

Judgement :

U. S. Tripathi, J.

1.Heard the learned counsel for the petitioner, Sri Ashok Kumar, learned counsel for respondent No. 1 and perused the record.

2. This writ petition has been filed for issue of a writ, order or direction in the nature of certiorari quashing the order dated 12.1.2001 passed by XVth Additional

District Judge, Kanpur Nagar in S.C.C. Revision No. 137 of 1999.

3. The respondents filed S.C.C. Suit No. 95 of 1991 against the petitioner for his ejectment and recovery of arrears of rent and damages on the ground of subletting and changing the user of the premises. The petitioner contested the suit denying the relationship of landlord and tenant between the parties. The trial court decreed the suit for ejectment as well as arrears of rent and damages. Aggrieved with the above judgment and decree, the petitioner filed S.C.C. Revision No. 137 of 1999 before District Judge, Kanpur Nagar. The revision was transferred to the court of XVth Additional District Judge, Kanpur Nagar, for disposal.

4. During pendency of the revision, the petitioner moved an application paper No. 30C before the revisional court under Order XLI, Rule 27, C.P.C. for permission to adduce additional evidence and to file papers per list 31C. The respondent filed objection against the above application on the ground that provisions of Order XLI, Rule 27, C.P.C. are not applicable to revision and there was also no sufficient ground for allowing the additional evidence.

5. Learned Additional District Judge on hearing the learned counsel for the parties held that provisions of Order XLI, Rule 27, C.P.C. are not applicable to revision proceeding, but, however, additional evidence may be adduced in a revision under Section 25 of Provincial Small Cause, Courts Act under the inherent powers of the Court. He further held that additional evidence sought to be adduced related to questions of fact and would amount recording a fresh finding, which was beyond the purview of revisional jurisdiction. With these observations, he rejected the application, vide impugned order dated 12.1.2001.

6. The above order has been challenged in this writ petition.

7. I have heard the learned counsel for the parties, as narrated above. The learned counsel for the petitioner contended that assuming that provisions of Order XLI, Rule 27, C.P.C. are not applicable to the revisional proceeding, additional evidence may be admitted in the exercise of inherent power of the Court. He placed reliance on Division Bench case of this Court in Virendra Singh Kushwaha v. VIIth Additional District Judge, Agra and others, 1996 (2) ARC 108. It was held

in the said case that in the exercise of inherent power of the Court in its revisional jurisdiction under Section 25 of Provincial Small Cause Courts Act may admit the additional evidence. Thus, there is no bar of taking additional evidence by the revisional court in exercise of its power under Section 25 of Provincial Small Cause Courts Act. It was further held in the said case that it is also settled law that the additional evidence urged to be allowed to be admitted must be relevant to decide the real controversy and the Court must feel that the admission of the same is required in the interest of justice, i.e., it must meet the requirements of provisions of Order XLI, Rule 27, C.P.C.

8. It was held in the case of Smt. Gayatri Devi and others v. Additional District Judge/Special Judge (E.C. Act), Etawah and another, 1992 (1) ARC 148, that under inherent powers of the Court for doing justice between the parties, the revisional Court exercising its jurisdiction under Section 25 of the Provincial Small Cause Courts Act, has also the power to take additional evidence for doing complete justice between the parties.

9. The learned counsel for respondent No. 1 contended that the provisions of Order XLI, Rule 27, C.P.C. cannot be pressed into service for admitting additional evidence in revision under Section 25 of Provincial Small Causes Courts Act. He placed reliance on a Division Bench case of Babu Ram v. Additional District Judge, Dehradun and another, 1983 (1) ARC 15, in which it was held that Order XLI, Rule 27, of the Code of Civil Procedure confers right on a court of appeal to admit additional evidence. But, since that order has expressly been excluded from application to Provincial Small Cause Courts Act, neither Order XLI, Rule 27 in terms nor in principle can be applied for taking additional evidence. So far as a revision under Section 25 of the Provincial Small Causes Courts Act is concerned, the Court has a much narrower power than that of the first appellate court. Under Section 25, the Court can interfere only when the decree or order made in any case decided by a court of Small Causes was not according to law. Order XLI, Rule 27 cannot, therefore, be pressed into service for admitting additional evidence in revision under Section 25 of the Provincial Small Cause Courts Act.

10. The settled legal position, therefore, is that provision of Order XLI, Rule 27, C.P.C. cannot be pressed into service in a revision under Section 25 of Provincial Small Cause Courts Act, but if it appears that additional evidence is essential for doing justice between the parties, the revisional court may entertain additional evidence in the exercise of inherent powers of the Court.

11. In the instant case, the petitioner wanted to examine D.W. Shiv Prasad and to obtain expert report on the signature of Chhedi Lal, father of petitioner on the alleged agreement deed relied on by the plaintiff. The case of the petitioner was that respondent No. 1 was not landlord of the premises in question, but Shiv Prasad was landlord of the premises in question. The petitioner was, therefore, aware of the case taken by him at the initial stage and he had to prove the case set up by him. There is nothing in the application for adducing additional evidence to show that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed or that he applied for adducing above evidence but the Court had refused to admit the same. It is also not the case of the petitioner that the evidence sought to be adduced before revisional court was not within the knowledge of the petitioner. Moreover, if additional evidence sought to be adduced was taken, the revisional court had to record a finding of fact, which was beyond the scope of revisional jurisdiction as the revisional court had no jurisdiction to interfere with the finding of fact and has held in the case of Babu Ram v. Additional District Judge, Dehradun (supra). Under Section 25 of Provincial Small Causes Courts Act, the Court cannot admit additional evidence for reappraisal of the evidence or for setting aside a finding of fact.

12. There is also nothing on record to show that the additional evidence sought to be adduced was essential in the interest of justice. Contrary to it, the admission of additional evidence would have amounted in filling the lacunae in the case of the petitioner. As such, the admission of additional evidence was rightly refused. The petition has, therefore, no force and is, accordingly, dismissed summarily.