

Smt. Rajeshwari Devi and anr. Vs. Ist Additional District Judge and ors.

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Court : Allahabad

Decided On : May-19-2004

Reported in : 2004(3)AWC2339

Judge : Tarun Agarwala, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 25

Appeal No. : C.M.W.P. No. 4087 of 1986

Appellant : Smt. Rajeshwari Devi and anr.

Respondent : ist Additional District Judge and ors.

Advocate for Def. : R.K. Jain and ;S.C.

Advocate for Pet/Ap. : Ravi Kant, ;Kunjika Prakash and ;Hamendra Kumar

Disposition : Writ petition dismissed

Judgement :

Tarun Agarwala, J.

1. The petitioner is the landlady of the shop in question, which has been let out to respondent No. 3. The petitioner filed a suit for eviction of respondent No. 3 on the ground of default in the payment of rent and also on the ground that a portion of the shop had been sublet to one Jagan Nath, who was running a pan shop from a

portion of the premises in question. During the pendency of the suit Sri Jagan Nath died and his heirs were arrayed as respondent Nos. 4 and 5.

2. The defendant respondent No. 3 contested the suit and contended that he had not committed any default in the payment of rent nor had sublet the shop to Jagan Nath. The respondent No. 3 stated that Jagan Nath was running a pan shop outside the shop on the road and no portion of the shop had been let out to Jagan Nath.

3. The trial court after determining the points in issue held that the respondent No. 3 did not commit any default in the payment of rent. The trial court, however, found that the respondent No. 3 had sub-let the shop in question to Jagan Nath and since Jagan Nath was not related to respondent No. 3, therefore, the suit was decreed on the ground of subletting. The trial court found that since the summons sent by the Court to Jagan Nath at the address of the shop was received by him, therefore, the Court came to a conclusion that a portion of the shop was sublet by the tenant to Sri Jagan Nath.

4. Aggrieved by the decree of the trial court, the respondent No. 3 filed a revision under Section 25 of the Provincial Small Cause Courts Act. The revisional court allowed the revision and set aside the decree of the trial court holding that the subtenancy was not proved and that the tenant had not sub-let any portion of the shop to Sri Jagan Nath. The landlady has now filed the present writ petition challenging the order of the revisional court.

5. Heard Ms. Kunjika Prakash, the learned counsel holding the brief of Sri Ravi Kantt, the learned senior counsel. No one appeared on behalf of the respondents.

6. The learned counsel for the petitioner submitted that the revisional court in its jurisdiction under Section 25 of the Provincial Small Cause Courts Act is bound by the finding of fact recorded by the trial court and that the revisional court had no power to interfere in the finding of fact recorded by the trial court nor had any jurisdiction to reassess or reappraise the evidence in order to determine the issue of fact. The learned counsel submitted that a finding of sub-letting had been recorded by the trial court, which cannot be reappraised in a revisional jurisdiction

and, therefore, the revisional court committed a manifest error in substituting its own finding of fact and had wrongly discarded the finding of the trial court. In support of her submission the learned counsel has placed reliance in *Om Prakash and other v. IInd Additional District Judge, Saharanpur and Ors.*, 2000 (4) AWC 3173 : 2002 (2) ARC 739 and a decision of the Supreme Court in *Dr. D. Shankra Narayan v. Punjab National Bank*. 1995 Supp (4) SCC 675. The Supreme Court in the aforesaid decision held that a revision petition could not be treated as a second appeal and the evidence cannot be reassessed. In *Om Prakash's case* (supra), this Court held that the revisional court had no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact. However, in para 18 of the said judgment, this Court held that the revisional court can point out the legal error committed by the trial court while recording a finding of fact and that the revisional court can rectify the defect if the finding of fact recorded by the trial court suffers from the defect of non consideration of vital and material evidence or was based on consideration of irrelevant and extraneous material.

7. In *Laxmi Kishore and Anr. v. Har Prasad Shukla*. 1979 AWC 746, a Division Bench of this Court held that the decision under Section 25 of the Provincial Small Cause Courts Act must be according to law i.e., there should be no miscarriage of justice due to a mistake of law. This Court further held that the Court while exercising revisional power under Section 25 of the Act does not possess jurisdiction to determine the issues of fact itself by entering into the evidence and assessing it. The Division Bench further held that if the revisional court finds that there is no evidence to sustain a finding on a particular issue of fact or is based on inadmissible evidence in which case the revisional court is justified in deciding the question itself.

8. In *Jagdish Prasad v. Smt. Angoori Devi*, 1984 (1) ARC 679, the trial court decreed the suit on the ground of sub-tenancy. The revisional court reversed the finding of subtenancy and set aside the decree. The High Court quashed the order of the revisional court on the ground that the revisional court had no jurisdiction to reappraise the evidence on record on the issue based on facts. The Supreme Court set aside the judgment of the High Court and affirmed the order of the revisional court holding that :

'The revisional jurisdiction under Section 25 of the Provincial Small Cause Courts Act is not as wide as the appellate jurisdiction under Section 96 of the Civil Procedure Code ; yet in a case of this type, we do not think that fault could be found with the revisional court for pointing out the legal error committed by the trial court in its approach to this material aspect. The legal position having been totally misconceived by the trial court and there being an assumption of the position which the landlord was required to prove by evidence, the revisional authority was entitled to point out the legal error and rectify the defect.'

9. In *Rauf v. Illrd A.D.J., Deoria and Anr.*, 2001 (3) AWC 1852, this Court held that 'the revisional court while exercising revisional power under Section 25 of the Act, normally will not set aside the finding on the question of fact to substitute its own finding, but where the revisional court finds that the judgment under revision suffers from the vice of perversity or it is based on wrong appreciation of evidence, the revisional court will interfere with the same and set aside such finding. It is further held that the finding of fact recorded by the trial court is not sacrosanct and ultimately if it is found that it is not according to law or was based on misreading or misappraisal of the evidence or the view taken was perverse, in which case the revisional court should not hesitate and to rectify the mistake and set aside the finding recorded by the trial court.'

10. In the present case, the trial court was swayed by the fact that the summons sent by the Court to Sri Jagan Nath was sent at the address of the shop, which was duly received by Sri Jagan Nath and, therefore, the trial court presumed that he was occupying a portion of the shop. On this basis, the trial court resumed that the respondent No. 3 had sub-let a portion of the shop to Sri Jagan Nath. The revisional court found that the process server while serving the summons to Sri Jagan Nath recorded on the summons that Sri Jagan Nath was found to carry on the business of a Pan shop on the road. On this basis, the revisional court held that the sub tenancy was not proved and, therefore, reversed the decree of the trial court.

11. In my view, the approach adopted by the trial court was wholly erroneous and not in accordance with law. The finding of sub-letting arrived at by the trial court

was based on presumption and not on any concrete evidence. The landlord failed to prove by evidence that a portion of the shop was let out by the tenant to Sri Jagan Nath. This defect in the order of the trial court was rightly rectified by the revisional Court. The revisional court validly exercised its revisional jurisdiction under Section 25 of the Provincial Small Cause Courts Act.

12. In view of the aforesaid, there is no merit in the writ petition and it is dismissed. However, there shall be, no order as to cost.

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