

Pratap Singh Vs. Ixth Additional District Judge, Fatehpur and Others

Pratap Singh Vs. Ixth Additional District Judge, Fatehpur and Others

SooperKanoon Citation : sooperkanoon.com/478912

Court : Allahabad

Decided On : May-10-2000

Reported in : 2000(3)AWC1995

Judge : O.P. Garg, J.

Acts : Provincial Small Causes Courts Act, 1887 - Sections 23 and 23(1); [Constitution of India](#) - Article 226; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 75; Indian Limitation Act, 1877

Appeal No. : C.M.W.P. No. 37929 of 1999

Appellant : Pratap Singh

Respondent : ixth Additional District Judge, Fatehpur and Others

Advocate for Def. : S.C. and ;V.S. Kushwaha, Adv.

Advocate for Pet/Ap. : S.F.A. Naqvi, Adv.

Judgement :

O. P. Garg, J.

1. The controversy canvassed in the present writ petition lies in very narrow compass. It is an admitted fact that one Brij Rani Kakkar was owner/landlady of house No. 3 situate in Mohalla Katra Abdul Gani in town Fatehpur. The petitioner

undoubtedly was earlier her tenant in a portion of the said house at a monthly rent of Re. 165. Smt. Brij Rani Kakkar, the original owner landlady sold the house in question in favour of Smt. Prema Awasthi-respondent No. 3 through a registered sale deed dated 15.12.1988. Subsequently, she filed a S.C.C. Suit No. 3 of 1991 against the present petitioner for his eviction from the tenanted accommodation on the ground that he has committed default in payment of arrears of rent in spite of service of the notice of demand and quit. Besides the relief of ejectment, arrears of rent and pendente lite mesne profits have also been claimed. The defendant-petitioner denied the title of the plaintiff-respondent No. 3 as well as relationship of landlady and tenant, primarily on the ground that the original owner-landlady Smt. Brij Rani Kakkar had executed an agreement for sale dated 13.12.1976 in his favour and pursuant to the said agreement, he is in occupation of the tenanted portion in his own right. The defendant-petitioner also took the plea that he has instituted a Suit No. 212 of 1989 for the relief of specific performance of the agreement against Smt. Brij Rani Kakkar as well as the plaintiff-respondent No. 3-Smt. Prema Awasthi. and since a serious and intricate question of title has to be investigated to decide the rights of the parties, the plaint of the suit for ejectment is liable to be returned for presentation before competent regular Court in view of the provisions of Section 23 of the Provincial Small Causes Courts Act, 1887 (hereinafter referred to as 'the Act'). The objection of the petitioner did not find favour with the Judge, Small Causes Court/ trial court who refused to return the plaint by order dated 5.2.1997. The petitioner filed a revision application but was not met with any better luck as it was dismissed on 21.8.1999.

2. In the present writ petition under Article 226 of the [Constitution of India](#), the defendant-petitioner has challenged the orders passed by the trial court as well as revisional court dated 5.2.1997, Annexure-2, and dated 21.8.1999. Annexure-1 respectively to the writ petition primarily on the ground that since complicated and intricate question of title is required to be decided, the only option left with the Small Causes Court was to return the plaint under Section 23 of the Act so that question could be decided on the regular side.

3. Counter and rejoinder-affidavits have been exchanged. Heard Sri S. P. A. Naqvi, learned counsel for the petitioner and Sri V. S. Kushwaha appearing on behalf of

the contesting respondent No. 3-Smt. Prema Awasthi. Learned counsel for the parties agreed that since only a legal controversy has been raised in the present writ petition, it should be decided finally at this stage.

4. Learned counsel appearing on behalf of the landlady-respondent No. 3 supported the orders passed by the Courts below and urged that they have rightly interpreted the provisions of Section 23 of the Act and since the dispute raised by the defendant-petitioner does not involve any question of title, the plaint was not required to be returned. It was urged that the parties would swim or sink on the proof or disproof of the relationship of landlady and tenant between them and the suit which is still pending be directed to be disposed of at an early date. Learned counsel for the petitioner repelled this submission and maintained that an intricate question about the title of the parties is involved in the suit and since the Judge Small Causes Court is not competent to decide it finally, in all fairness and with a view to do complete justice between the parties, a direction be issued to return the plaint for presentation before the appropriate regular civil court.

5. Having heard learned counsel for the parties at some length. I am of the opinion that on the facts and in the circumstances of the case, the provisions of Section 23 of the Act are clearly attracted and the plaint of the S.C.C. suit is required to be returned for presentation before a Court having jurisdiction to determine title. Before taking up the discussion about the object and the circumstances in which Section 23 of the Act may be invocable. it would be proper to reproduce the provision as the entire controversy centres round it :

'23. Return of plaints in suits involving questions of title.--(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.'

(2) When a Court returns a plaint under sub-section (1). it shall comply with the provisions of the second paragraph of Section 75 of Code of Civil Procedure and make such order with respect to costs as it deems just, and the Court shall, for the

purposes of the Indian Limitation Act. 1877, be deemed to have been unable to entertain the suit by reason of a cause of nature like to that of defect of jurisdiction.'

The object of the section is to enable the Small Causes Court to decline to exercise its jurisdiction in small causes suit when the right of the plaintiff and the relief claimed by him depend upon the proof or disproof of a title to an immovable property or other title which the Small Causes Court cannot finally determine and to return the plaint to be presented to a Court having jurisdiction to determine the title. In effect, the rights to or interests in immovable property are elaborately excluded, but as questions of this character may arise incidentally in small causes suits, a facultative provision is made by Section 23 enabling the Small Causes Court to send the matter to ordinary civil court but not obliging it to do so.

6. A Small Causes Court is expected to try suits of a comparatively simple character and, therefore, suits involving question of title should not be entertained by that Court. Section 23 is intended to enable the Courts of Small Causes to save their time by returning the plaints in suits which involve enquiry into the question of title. This section is designed to meet the cases in which Judge, Small Causes Court is satisfied that the question of title raised is so intricate and difficult that it should not be decided summarily but in ordinary Court in which evidence is recorded in full and the decision is open to appeal. The underlying principle under Section 23 seems to be that where it is considered advisable by a Small Causes Court that a final decision on a question of title, which decision would, if given by an original Court, ordinarily be subject to appeal and even to second appeal and which decision would ordinarily be res judicata between the parties, should be given in the particular case before a Small Causes Court, by an original Court, the Small Causes Court though competent to decide incidentally the question of title in that particular case might exercise with discretion. the power of returning the plaint to be presented to the original Court which would have jurisdiction to so decide on that title finally. Obviously, the section is designed to meet the cases in which the Judge. Small Causes Court is satisfied that the question of title raised is so intricate and difficult that it should not be decided summarily but in an ordinary Court in which evidence is recorded in full and decision is open to appeal.

7. Section 23 is framed in optional terms giving discretion to the Court to act in the matter or not. and therefore, in suits involving question of title, the Small Causes Court has a discretion either to decide the question of title or to act under this section and return the plaint. It is not always bound to return the same. Nevertheless, when any complicated question of title arises. it would be the wiser course for Small Causes Court in the exercise of its discretion to act under Section 23 and return the plaint.

8. Learned counsel for the respondent-land lady placing reliance on the decision of this Court in Ravindra Pal Gupta v. Addl. District Judge. Dehradun, 1996 (27) ALR 35 ; Jagannath Prasad v. XIIth Addl. District Judge. Kanpur, 1996 (28) ALR 310 and Mushir Khan alias Masshan v. XIIth Addl. District Judge. Moradabad and others. 1999 (4) AWC 2900. urged that since the trial court has exercised its jurisdiction not to return the plaint but to proceed with the suit, there is no justification to interfere with the discretion which has been exercised in accordance with law and which has further been affirmed by the revisional court. Much emphasis was laid on the fact that it is open for the trial court to go into the question of title as set up in defence incidentally and therefore, the trial court was not required to return the plaint merely on the basis of pleadings of the parties. A passing reference was also made to the earlier decision of this Court in the case of Jagannath Prasad v. XIV Addl District Judge. Kanpur, 1997 (1) ARC 89, in which it has been held that the mere fact that in the written statement the defendant claims the title in himself is not sufficient for establishing that question of title is involved in the suit, as well as, another decision Jialal v. XIth Additional District Judge, Meerut, 1994 (23) ALR 281, in which it was ruled that a suit by landlord against a tenant is cognizable by Judge Small Causes Court on limited questions and the Court, though cannot decide the question of title, it can decide the suit on the strength of relationship of landlord and tenant between the plaintiff and defendant. To countervail the above submissions. Sri Naqvi appearing on behalf of the petitioner, placed reliance on Ram Jiwan Misra v. Smt. Kallu and others, 1980 ARC 522 and Iqbal Ahmad v. VIth Additional District Judge, Varanasi and others, 1999 (37) ALR 176. In Ram Jiwan Misra's case, celebrated decision of this Court in Bhola v. L. Chaman Lal : AIR1935 All148 , was referred to. The gamut of all these decisions is that the Small Causes Court, in a summary proceeding, should

not venture to decide the intricate question of title, which of necessity warrants full dressed regular trial and in such a situation the parties should be driven to get their rights established before the regular Court.

9. The Apex Court in the case of *Buddhu Mal v. Mahabir Prasad and others*, (1998) 4 SCC 194, considered and decided the matter with specificity. Since the decision in the said case is of far reaching consequence, it would be worthwhile to set out the facts of the said case and the holding in some detail. In *Buddhu Mal's* case (*supra*), the respondent had let out the premises in question to the appellants. After death of his son, he executed a registered deed of settlement, *in alia*, conferring on the widow of his deceased son the benefit of rent realised from the appellant-tenants for maintaining herself and her children, but without any right to transfer or mortgage the premises. After executing the deed, the respondent informed the appellant-tenants to pay rent to the widow and the tenants started paying accordingly. Subsequently, however, the respondent executed a registered cancellation deed by which he debarred the widow and her children from the right to realise the rent. The tenants were informed about the deed of cancellation also. The respondent thereafter instituted suits against the appellants in the Court of Small Causes for recovery of arrears of rent. etc. and their eviction from the premises in their tenancy on the ground that notwithstanding being informed of the deed of cancellation, they had not paid rent to him and were in arrears. The appellants raised the plea that the earlier deed could not be unilaterally cancelled by the respondent by the subsequent deed and disputed the title of the respondent to realise rent from them which they claimed to have already paid to the widow. The pleas were rejected and the suits were decreed by the Small Cause Court. Revisions filed by the appellants before the District Judge and High Court were also dismissed. The other plea that the suit involved a question of title and consequently was not cognizable by a Court of Small Causes also did not find favour with the Courts below. On behalf of the appellants, it was contended before the Supreme Court that by the earlier deed, the right to rent and not only the right to realise the rent was transferred and accordingly, benefits arising out of immovable property themselves partook the nature of Immovable property and the said deed having been acted upon, it was not open to the respondent to unilaterally cancel the benefits conferred on the widow and her children by the subsequent

deed.

10. In the context of the above facts, it was held that Section 23 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 instituted by the landlord against his tenant on the basis of contract of tenancy, a question of title can also incidentally be gone into and any finding recorded by a Judge, Small Causes in this behalf cannot be res Judicata in a suit based on title. But in enacting Section 23, the Legislature must have in contemplation some cases in which the discretion to return the plaint ought to be exercised in order to do complete justice between the parties. The Court further observed that if the plea set up by the appellants is accepted. it is likely not only to affect the title of the respondent to realise rent from the appellants but will also have the effect of snapping even the relationship of landlord and tenant, between the respondent and the appellants, which could not be revived by the subsequent unilateral cancellation by the respondent of the earlier deed. In that event. it may not be possible to treat the suits filed by the respondent against the appellants to be suits between landlord and tenant simpliciter based on contract of tenancy in which an issue of title was incidentally raised. if the suits cannot be construed to be one between landlord and tenant, they would not be cognizable by a Court of Small Causes and it is for these reasons that these are such cases where the plaints ought to have been returned for presentation to appropriate Court so that none of the parties was prejudiced.

11. A suit between the landlord and tenant simpliciter based on contract of tenancy in which an issue of title has been incidentally raised. may be decided by the Small Causes Court but where intricate and complicated questions of law touching the title of parties have been raised, the said Court shall have no option but to return the plaint for presentation before the competent Court. In *Buddhu Mal's case supra*, the Supreme Court has clearly laid down that though the Judge Small Causes Court has the discretion in the matter, it cannot, however, be gainsaid that in enacting Section 23. Legislature must have had in contemplation some cases in which discretion to return the plaint ought to be exercised in order to do complete justice between the parties.

12. In the backdrop of above legal position, now let us consider the admitted facts of the present case. Admittedly, the petitioner was originally the tenant of one Smt. Brij Rani Kakkar. Smt. Brij Rani Kakkar entered into an agreement for sale of the house which included the tenanted accommodation in favour of the petitioner way back in 1976. The nature of the possession of the petitioner was relegated from that of the tenant to that of a prospective buyer in whose favour agreement for sale had been executed. Possession of the petitioner obviously was in part performance of the agreement for sale. The petitioner, prima facie, has a right to defend his possession which passed on to him pursuant to the agreement. Smt. Brij Rani Kakkar after more than a decade of executing the agreement in favour of the petitioner sold the house in favour of plaintiff-respondent No. 3 on 15.12.1988. She purchased the house, subject to the subsisting rights, if any. of the petitioner under the agreement. In order to enforce his rights under the agreement, the petitioner could do nothing except to file a suit for specific performance which he did by instituting Civil Suit No. 212 of 1989 against the original owner and the subsequent purchaser-respondent No. 3. The said suit is still pending. A pre-existing right in favour of the petitioner stands created under the agreement. The validity of the agreement in favour of the petitioner can be tested in the pending suit for specific performance.

13. It is also admitted fact that after the respondent No. 3 had purchased the property. the petitioner has never attorned to her by paying the rent. He also stopped payment of rent to Smt. Brij Rani Kakkar, the previous owner, obviously for the reason that his possession as a tenant ripened into possession as a prospective owner in pursuance of the agreement for sale. There is thus a distinct and sharp dispute of title between the parties. i.e.. whether the petitioner has right to seek the specific performance of the agreement and to get sale deed executed in his favour or the respondent No. 3 has acquired right in spite of the fact that she is subsequent purchaser. A very quixotic position is likely to arise in case the ejectment suit filed by the respondent No. 3 is allowed to proceed without investigating the question of title. If a decree for ejectment is passed against the petitioner and he is evicted from the house and subsequently the pending suit for specific performance is decreed, in that event, the petitioner would be nowhere and it would become difficult to restore possession of the house to him. In all

fairness, and with a view to do complete justice between the parties, their rival contentions with regard to title have to be gone into and sifted and a firm finding has to be recorded after evidence is led. if in the setting of the facts as set out above, Section 23 is held to be not attracted, in that event perhaps there would be no case in which this provision would be made applicable and the resultant effect would be that it would be rendered nugatory and a dead letter. Even though the trial court had a discretion to invoke the provisions of Section 23, the fact remains that it is an eminently suited case in which it ought to have exercised its discretion in returning the plaint for presentation before proper Court. Both the Courts below have failed to grasp the legal implications of the real controversy of title raised in the Small Causes suit.

14. In the conspectus of the above facts, the writ petition succeeds and is allowed. The orders dated 5.2.1997, Annexure-2. passed by Judge Small Causes Court/trial court (in S.C.C. Suit No. 3 of 1991) and 21.8.1999, Annexure-1, passed by revisional Court in Revision Application No. 4 of 1997 are hereby quashed and the Judge Small/ Causes/trial court is directed to return the plaint of S.C.C. suit No. 3 of 1991 for presentation to the appropriate Court as contemplated by Section 23 of the Act. Parties shall bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com