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Radhey Shyam Vs. Xth Additional District and Sessions Judge and ors.

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Court : Allahabad

Decided On : Jul-05-2002

Reported in : 2002(3)AWC2378

Judge : Anjani Kumar, J.

Acts : Provincial Small Cause Courts Act, 1887 - Sections 25

Appeal No. : C.M.W.P. No. 15965 of 2002

Appellant : Radhey Shyam

Respondent : Xth Additional District and Sessions Judge and ors.

Advocate for Def. : Iqbal Ahmad, S.C.

Advocate for Pet/Ap. : C.M. Rai, Adv.

Judgement :

Anjani Kumar, J.

1. This writ petition is filed by the tenant against the judgment dated 19th February, 1996, passed by the Small Causes Court, whereby the suit filed by the landlord-respondent for eviction of petitioner due to arrears of rent demanded from the petitioner was dismissed. The demand was for arrears of rent and water-tax which had not been paid by the petitioner inspite of demand and further the tenant

had sub-let the accommodation in favour of one Shri Hari Bhagwan Taneja and thus may be liable for eviction. This suit was filed by the landlord for the eviction, which was contested by the tenant-petitioner. After affording opportunity to the parties the trial court found that accommodation In fact was sub-let by the petitioner-tenant in favour of Shri Hari Bhagwan Taneja, in full knowledge of the landlord. The suit for eviction was, therefore, dismissed with costs. The defence taken by the tenant was that the landlord was in knowledge of the fact that Shri Hari Bhagwan Taneja was carrying business of manufacturing Wax Candle along with Agarbatti and, therefore, this cannot be said to be sub-letting as the same was within the knowledge of the landlord. The trial court discussed the case of the tenant. rejected the suit of landlord and held that since it was in the knowledge of the landlord that Shri Hari Bhagwan Taneja was carrying business with the tenant the same cannot be said to be sub-let and dismissed the suit.

2. Aggrieved thereby, the landlord filed a revision under Section 25 of the Provincial Small Cause Courts Act, 1887. The revisional court on the basis of findings recorded by the trial court found that findings recorded by the trial court deserve to be reversed and recorded its own findings that the suit filed by the landlord deserves to be decreed as trial court committed error in dismissing the same. The revisional court, therefore, decreed the suit after recording its own findings.

3. Learned counsel for the petitioner relied upon the decision of this Court in Sardar Gurdeep Singh v. VIth Additional District Judge, Kanpur Nagar and another, 1997 (2) AWC 756 : 1997 (1) ARC 338. The law with regard to the interference under Section 25 of the Provincial Small Cause Courts Act, 1887, is well-settled :

'It is well-settled in law that the Revisional Court in exercise of the power under Section 25 of the Act has got no jurisdiction to reappraise the evidence and reverse the findings of the trial court on the questions of fact and substitute its own finding in case the revisional court is not satisfied with the findings of fact recorded by the trial court, It could at the best remand the case to the trial court.

It is also well-settled in law that if the findings recorded by the trial court are not based on any evidence or were in respect of the jurisdictiorral fact, or were vitiated by error of law, the revisional court is entitled to interfere with the said findings and could record its own findings.'

4. By applying the principle laid down in the aforesaid case, in the present case, it cannot be said that findings arrived at by the trial court are perverse and, therefore, view taken by the revisional court for decreeing the suit of the landlord is not in accordance with law. The similar view was taken by this Court in Suresh Kumar Sahu v. Ram Chandra Sahu and another. 1999 (2) ARC 524, and Om Prakash and others v. IInd Additional District Judge. Saharanpur and Ors. 200O (4) AWC 3173 : 2OOO (2) ARC 739. Learned counsel for the petitioner further relied upon a decision in Ram Dayal v. Jawala Prasad. AIR 1966 ARC 623, whereby the Court held that after service of first notice as in the present case if no suit is filed, the notice stands waived. Even if earlier occupant Shri Hart Bhagwan Taneja might amount to sub-letting but the fact is also that after the service of second and third notices by the landlord, if no action is taken by the landlord the notice stands waived. Thus, finding recorded by the trial court that suit deserves to be dismissed cannot be said to be perverse findings which required interference by the revisional court to exercise its power under Section 25 of the Provincial Small Cause Courts Act, 1887, Learned counsel for the petitioner relied upon the decision In Badri Nath Garg v, Sheo Prasad Tandon, 1990 (1) ARC 93 and Smt. Shyam Kumari Gupta v. Shanker Sahai and Anr. 1982 ALJ 916. In view of the law laid down by this Court, I am of the opinion that revisional court committed error in decreeing the suit after reversing the findings recorded by the trial court and arrived at different findings. In this view of the matter, the petition deserves to be allowed and the order of the revisional court deserves to be quashed. The matter is, therefore, remanded back to the trial court to decide It afresh in the light of the observations made by the revisional court. As the case is very old, therefore, trial court is directed to decide the case within a period of three months from the date a certified copy of this order is served upon him.

5. What has been stated above, the petition is allowed. The order of the revisional court is quashed and the matter is remanded back to the trial court. The trial court

is directed to decide the matter within a period of three months from the date a certified copy of this order is served upon him. on the basis of evidence on record and the observations made by the revisional court after affording an opportunity to the landlord as well as to the tenant.

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