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Court : Allahabad

Decided On : Sep-05-2005

Reported in : 2006(1)AWC45

Judge : Anjani Kumar, J.

Acts : Small Cause Courts (Amendment) Act, 1972 - Sections 25; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 56638 of 2003

Appellant : Sushil Kumar and anr.

Respondent : Om Prakash Shop Keeper and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : Virendra Kumar and ;Vivek Kumar Dixit, Adv.

Disposition : Writ petition allowed

Judgement :

Anjani Kumar, J.

1. This writ petition under Article 226 of the [Constitution of India](#) by the petitioners challenges judgment and order passed by revisional court dated 22nd September, 2003 and the judgment and order dated 13th May, 1997 passed by the trial court.

2. The brief facts of the case are that the landlord-petitioners purchased the property in dispute by a registered sale deed dated 4th March, 1987. The petitioners filed a suit being Suit No. 69 of 1988 for arrears of rent and ejectment against the respondent-tenants on the ground that the tenants being in arrears of rent for more than four months and have not paid the same in spite of service of notice. Therefore, the tenancy was terminated and suit was filed. One additional ground was taken in the suit that the tenants have materially and structurally altered the accommodation in dispute which has diminished the utility and also the value of the accommodation in dispute. The Suit No. 69 of 1988 was withdrawn and the present suit being Suit No. 123 of 1992 was filed on 31st August, 19 92, inter alia on the grounds referred to above. The tenants disputed the plaint allegations and submitted that they have been regularly paying the rent and they are not in default and in any view of the matter since the tenants deposited the admitted rent etc. on the first date of hearing of the suit, therefore, the tenants are entitled for the benefit of Section 20 (4) of U. P. Act No. 13 of 1972 and the tenants cannot be evicted on this ground. On the ground of structural alteration the tenants, have denied the same and submitted that the tenancy is coming down from the time of father of the tenants and in 1968 the tenants' father was alive. There was a rent deed between the father of the tenants and the then landlord, Laxmi Chand, to the effect that sehan, staircase and roof would not be part of the tenancy and the rent was agreed at the rate of Rs. 50 per month. With regard to allegations regarding structural alteration the tenants have taken stand that there was oral agreement in the year 1977 between the erstwhile landlord. Laxmi Chand and the tenant, Om Prakash to the effect that sehan, staircase and the roof would now be included in the tenancy of the tenant and the rent was enhanced from Rs. 50 to Rs. 60 per month. It is also alleged that it is at that time that the tenant was allowed to use the accommodation for manufacturing of biscuits. It is further alleged that in the year 1987 when the present landlord-petitioners purchased the property, the tenant was carrying on business of manufacture of biscuits from the accommodation in dispute and that to the allegation of structural alteration the tenant had denied that there is any such structural alteration which had either defaced the accommodation in dispute or diminished the value or utility of the accommodation in dispute. The trial court after considering the material on the

record has dismissed the suit vide judgment and order dated 13th May, 1997.

3. Aggrieved thereby the petitioner-landlords filed a revision being Small Cause Revision No. 20 of 1997. This revision was allowed by the revisional court by its judgment and order dated 5th March, 1999 and the revisional court set aside the order passed by the trial court and the suit filed by the landlords has been decreed. The tenant-respondents filed a writ petition being Writ Petition No. 9655 of 1999 challenging the order passed by the revisional court dated 5th March, 1999, before this Court. This Court by its judgment and order dated 7th September, 2000, allowed the writ petition, set aside the order passed by the revisional court and remanded the matter with a direction to the revisional court to decide the matter afresh in accordance with law and in the light of the directions issued in the aforesaid judgment. This Court, in paragraphs 21, 22, 24 and 25 of the said judgment, had held as under :

21. Thus, if the findings recorded by the trial court are based on no evidence or there exists no evidence to sustain the finding on the record or finding is solely based on inadmissible evidence or is perverse in the sense that no reasonable person could have ever reached to the conclusion arrived at by the Court, may be a good ground for setting aside the findings recorded by the trial court but the same cannot be grounds for reappraising the evidence or to record its own findings on the questions of fact contrary to the findings recorded by the trial court. In the present case, both parties produced evidence in support of their cases on each issue referred to above, therefore, it was not a case in which it could be said that there was absolutely no evidence or that the findings were based on any inadmissible evidence or that on the basis of the evidence on the record, no reasonable person could have reached to the conclusion arrived at by the trial court. The court below has, thus, acted illegally in observing that :

In view of the above the evidence taken into consideration by the lower court to be scrutinized and it is to be seen that the jurisdiction which is vested in them has been exercised properly or not, whether the evidence has been taken into consideration or not, whether inadmissible evidence have been taken into consideration or not. In view of above pronouncements, the evidences which have

been adduced by the parties and taken into consideration by the Court and keeping in view the contention of learned Counsel for parties that will be examined.²² After making the abovenoted observation, the court below has reassessed the entire evidence, oral and documentary, on the record and wrote judgment spreading over 52 (typed) pages substituting its own findings for the findings recorded by the trial court. Legally, if in the opinion of the court below the findings recorded by the trial court were not legal, after setting aside the said findings, it could at the best remand the case to the trial court for decision afresh. It has acted illegally and in excess of its jurisdiction in allowing the revision and decreeing the suit for ejectment on the ground of material alteration and structural changes.

24. The court below has not noticed the abovenoted decision in the impugned judgment. In view of the aforesaid discussion, the Judgment and order passed by the court below is liable to be quashed.

25. The writ petition succeeds and is allowed. The judgment and order dated 5.3.1999 passed by IInd Additional District Judge, Saharanpur, is hereby quashed. The case is remanded to the court below for decision afresh in the light of the observations made above.

4. It is after the aforesaid directions were issued by this Court in the aforesaid judgment, the matter was remanded back to the revisional court. The revisional court by its Judgment and order impugned in the writ petition has dismissed the revision. Thus, this writ petition.

5. Before this Court learned Counsel for the petitioners argued that the findings arrived at by the trial court on Issues No. 3, 4, 5, 6 and 7 are based either on no evidence or is based on evidence which is not legally acceptable. Learned Counsel for the petitioners has further submitted that the tenant, Om Prakash, has admitted in his written statement that he has altered the accommodation under the tenancy and in view of provisions of Section 20 (2)(c) of the Act, no permission in writing by the landlord was pleaded before the trial court.

6. It is argued on behalf of the respondent-tenants that the trial court has recorded a finding in favour of the tenant and this finding has been affirmed by the revisional court inasmuch as after remand from this Court the revisional court has observed that the findings arrived at by the trial court do not warrant interference by the revisional court. Learned Counsel appearing on behalf of the respondents submitted that the case set up by the tenants was that in the year 1977 when the rent was enhanced from Rs. 50 per month to Rs. 60 per month the building was altered so as to suit the business of manufacture of biscuits, which has been changed by the tenants from manufacture of sweets to biscuits and, therefore, there was no necessity for seeking any permission in writing of the landlord. This case of the tenants has been denied by the plaintiff inasmuch as it is proved from the evidence on the record that Laxmi Chand, the erstwhile landlord-owner is still alive but was not produced by the tenants and non-production of Laxmi Chand has been taken to be shortcomings on the part of the landlord by the trial court whereas the burden to produce the best evidence was on the tenants who has pleaded that there was fresh agreement of tenancy which included the roof, staircase and verandah in the year 1977 with alteration. There is nothing on the record that when fresh tenancy was created any allotment order was obtained from the Rent Control and Eviction Officer as admittedly the provisions of U. P. Act No. 13 of 1972 are applicable to the premises in question.

7. Learned Counsel for the petitioners further submitted that even assuming that the landlord has allowed the tenants to include in its tenancy, the roof, staircase and verandah by an oral agreement as pleaded by the tenants, this oral agreement firstly is not proved because Laxmi Chand, the erstwhile landlord, is not produced by the tenants and secondly the agreement can be said to be binding only between the erstwhile landlord. Laxmi Chand, and the tenant Om Prakash and the plaintiff cannot be said to be bound by the said agreement of roof, staircase and verandah in the year 1977 and occupation of the tenant to the aforesaid roof, staircase and verandah is that of an unauthorised occupant in view of law laid down by the Apex Court in the case of *Nutan Kumar and Ors. v. IInd Additional District Judge and Ors.* : [2002]SUPP2SCR686 and the case of *Nanakram v. Kundalraj* : [1986]2SCR839 . The case of the consent of the landlord for fresh tenancy including roof, staircase and verandah with alterations has been

denied by the landlord by filing copy of the registered sale deed executed by the erstwhile landlord, Laxmi Chand, in favour of the petitioner-landlords wherein it is specifically mentioned that the roof, staircase and verandah are not included in the tenancy of the defendants. The trial court placing reliance on the evidence of Ishwar Chand Kanchhal, who is holder of power of attorney with regard to properties of Laxmi Chand said to be doing pairvi. It is also on the record that Ishwar Chand Kanchhal does not hold power of attorney with regard to the present suit. The document that were filed to prove that Ishwar Chand Kanchhal holding power of attorney are of the year 1991. Learned Counsel then submitted that there is no categorical finding with regard to Issues No. 3, 4, 5 and 7. As the issues No. 3, 4, 5 and 7 were dealt with together and even assuming that evidence of Ishwar Chand Kanchhal is reliable, he has only stated that there was fresh agreement of tenancy when U. P. Act No. 13 of 1972 was in force. He has not stated as 'to what constructions were made, when the rent was enhanced from Rs. 50 to Rs. 60 per month. This is not denied by the tenant that there was no allotment order in favour of the tenant under the provisions of U. P. Act No. 13 of 1972. Learned Counsel further submitted that the revisional court was directed by the order of remand as held in paragraph 8 of the judgment in the case of Om Prakash and Ors. v. End Additional District Judge, Saharanpur and Ors. 2000 (4) AWC 3173 : 2000 (2) ARC 739, in the earlier writ petition between the parties. Paragraph 8 of the aforesaid decision is reproduced below :

8. All issues, noted above, except issue No. 2, were based on the facts of the case. After taking into consideration the evidence, oral and documentary, on the record produced by the parties in the case, the trial court decided all the aforesaid issues in favour of the defendant-petitioners and dismissed the suit. The findings recorded by the trial court were findings of fact which were based on relevant evidence on the record. In case the revisional court was of the opinion that the findings recorded by the trial court were either illegal or were vitiated by errors of law, it was at liberty to set aside those findings and to remand the case of the trial for decision afresh; but it had no jurisdiction to reappraise the evidence on the record and to substitute its own findings in place of the findings recorded by the trial court. Section 25 of the Small Cause Courts Act (as amended by U. P. Act No. 37 of 1972) reads as under :

25. Revision of decrees and orders of Courts of Small Causes.--The District Judge, for the purpose of satisfying himself that a decree or order made in any case decided by a Court of Small Causes was according to law may of his own notion, or on the application on an aggrieved party made within thirty days from the date of such decree or order, call for the case and pass such order with respect thereto as he thinks fit: Provided that in relation to any case decided by a District Judge or Additional District Judge exercising the jurisdiction of a Judge of Small Causes, the power of revision under this section shall vest in the High Court.

8. The High Court in the case of Om Prakash (supra) has further observed as under :

18. Even in Kailash Chandra and Anr. v. Illrd Additional District Judge, Jalaun at Oral 1999 (1) AWC 302 : 1998 (2) ARC 451, upon which implicit reliance has been placed by the court below. It was held by the learned single Judge that the revisional court's power is supervisory and while exercising such powers the revisional court cannot assume the function of a court of appeal and reappraise the evidence. The revisional court is bound by the findings of fact reached by the trial court as even a wrong decision on fact by a competent authority is also a decision according to law and the Court has no power to examine de novo findings of fact reached by the trial court ; it has no power to examine and scrutinize the evidence meticulously to decide whether finding of fact arrived at by the courts below is justified by the evidence on record or not. It is open to the revisional court to make interference with the finding of fact if it is not found to be according to law but it is not open to it to substitute its own findings on questions of fact already determined by the trial court. The revisional court though can point out the legal errors committed by the trial court while recording finding of fact if the legal position has been totally misconceived, the revisional court can rectify the defect and interference in a finding of fact is permissible if it suffers from the defect of non-consideration of vital and material evidence or is based on consideration of irrelevant and extraneous material. The revisional court although can make an interference in the finding of fact on the above noted ground but it has got no jurisdiction to substitute its own finding of fact for the finding recorded by the trial

court unless of course, the evidence was all the one way and there has been no assessment of the same by the trial court. In any view of the matter the revisional court has got no jurisdiction to re-assess or reappraise the evidence in order to determine an issue of fact for itself.

19. It was also held that the revisional court could ignore the finding of fact recorded by the trial court and could record its finding where the finding of the trial court is based on no evidence or there is absolutely no evidence on record to sustain a particular finding of fact or it is based on inadmissible evidence or the same is perverse in the sense that no reasonable man could have ever reached to the conclusion arrived at by the court below.

20. In Kailash Chandra's case (supra), the view taken by the learned single Judge to the effect that the revisional court after ignoring the findings of fact recorded by the trial court can record its own findings, in view of the decisions of the Apex Court and of the Division Benches of this Court is per incuriam. A reference in this regard may be made to the decisions in the cases A.R. Antulay v. R.S. Naik : 1988 CriLJ1661 ; Municipal Corporation of Delhi v. Gurnam Kaur : AIR 1989 SC38 ; Punjab Land Development and Reclamation Corporation Limited v. Presiding Officer, Labour Court : (1990)IILLJ70SC ; State of U. P. v. Synthetics and Chemicals Ltd. : 1993(41)ECC326 , and Krishna Chandra Pallai v. Union of India and Anr. AIR 1992 Ori 291 (FB).

9. The answer of the revisional court in the impugned order to the aforesaid directions, after narrating the case of the parties, is as under :

In view of the judgment and observations of the Hon'ble High Court this Court has got no power to re-appreciate the evidence. If the finding of the trial court is perverse then the revisional court is only competent to remand the case and it is not within the competence of the revisional Judge to assess the evidence himself and record his own finding of fact, in place of one recorded by the trial court which was based on appreciation of evidence. As revisional court I have got no power to reassess the evidence. If the finding is perverse then as revisional court I have got the jurisdiction to remand the case for fresh trial and I am of the opinion that the finding of the trial court is not at all perverse. The finding is based on the

overwhelming evidence present on the file.

On the basis of above discussion I have come to the conclusion that the finding of the trial court to the effect that no material and substantial alteration was made by the defendant is perfectly justified. The defendant had been carrying on the business of manufacturing biscuit. Even according to the documentary evidence from earlier to 1981, although the defendant has alleged that the business of manufacturing of biscuits is being done since November, 1977. But the documents have not been filed from earlier to 1981. But this fact shows that even prior to the purchase of the property in dispute by the plaintiff the business of manufacturing biscuits was being done in the property and if the business of manufacturing biscuits was being done then it is a must that there might be furnace, tandoor and other necessary attachments. There is no evidence that any machine was installed by the tremors of the machine. The report of expert must have been filed to support this fact. There is also no evidence to draw the inference that the drain was also blocked. The property was also not disfigured. Point No. 3 is decided accordingly against the plaintiff-revisionists.

On the basis of above discussion, I have come to the conclusion that the judgment and decree of the trial court is perfectly justified. The learned J.S.C.C. has considered the entire evidence present on the file. There is no reason to interfere in the judgment and decree of the trial court. The revision is liable to be dismissed with costs.

10. Learned Counsel for the petitioners submitted that in view of above paragraphs quoted from the judgment in the present writ petition it is apparent that revisional court without going into the controversy in dispute and without complying with the order of remand has held that it does not find any perversity in the judgment of the trial and dismissed the revision. The revisional court has not adverted to the legal position as clarified by the Apex Court in the case of Nutan Kumar (supra) and has not considered the effect of the fact that in the year 1977 when according to the tenant fresh agreement of tenancy has come in existence what would be the position that this fresh tenancy is without any allotment order under the provisions of U. P. Act No. 13 of 1972.

11. In view of the above discussions, it is clear that the case set up by the petitioners-landlord that there was no fresh agreement of tenancy and in view of the fact that the U. P.' Act No. 13 of 1972 was in force. Even assuming that there was an agreement of tenancy, the same being in contravention of the provisions of the U.P. Act No. 13 of 1972 is not binding, either on the authorities under the U. P. Act No. 13 of 1972, or the petitioners-landlord and in any view of the matter it was the duty of the revisional court to decide this aspect of the matter, which he has not decided. Since this question goes to the root of the matter and requires to be dealt with afresh, therefore, in my opinion, the matter deserves to be sent back to the trial court.

12. In view of what has been stated above I find that this order passed by the revisional court cannot be sustained and deserves to be quashed. The writ petition, therefore, succeeds and is allowed. The order passed by the revisional court is quashed. The matter is now remanded back to the trial court to decide the controversy afresh in the light of the arguments advanced on behalf of rival parties and on the basis of evidence already on the record. Since the matter is fairly old the trial court shall decide the matter within three months from the date of presentation of a certified copy of this judgment before it.

13. No orders as to cost.