

ALLAHABAD HIGH COURT

Mohd. Fasi

Vs.

Abdul Qyayum

Civil Revn. No. 597 of 1976

(R.R. Rastogi, J.)

09.05.1978

ORDER

R.R. Rastogi, J.

1. This is defendant' s application in revision arising out of a suit filed by the plaintiff-opposite party Abdul Quayum in the court of Judge Small Causes for ejection of the defendant from shop No. C-1/20 situated in Mohalla Phatak Sheikh Saleem, Varanasi and for recovery of rent and damages. The defendant did not deny in his written statement, as filed originally, that the plaintiff was the owner of the shop and he was its tenant, but by a subsequent application added para 34-B to the written statement stating that besides the plaintiff his other three brothers as well were owners of the shop. An application was also moved, paper No. 110-C, stating that since intricate question of title regarding the property was involved in the suit the plaint might be returned to the plaintiff for presentation to the proper court. The plaintiff filed an objection to that application.

2. The trial court took note of certain circumstances which were:

- (1) that in the written statement as filed originally Paras 1 and 2 of the plaint were admitted;
- (2) In Miscellaneous Case No. 188 of 1970 under Section 7-C of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 between the same parties the defendant who was the applicant in that case admitted the plaintiff to be the owner of the disputed shop;
- (3) In reply to the notice of the plaintiff dated 7-6-1967 the defendant did not deny the ownership of the plaintiff of the disputed shop and

(4) In the municipal records the plaintiff was shown as the exclusive owner of the disputed shop.

The trial court thus held that no intricate question of title in respect of the disputed property arose in this suit for determination. Reliance was placed on a decision of this Court in *Mohammad Iiyas v. Hari Ram* ¹ and of the Supreme Court in *Smt. Bela Das v. Samrendra Nath Bose*, ² In the result the defendant's application was rejected.

3. A revision was filed against that order before the District Judge, Varanasi. The 1st Additional District Judge, who decided the revision, has agreed with the findings given by the trial court and has confirmed its order. Now, a second revision has been filed before this court.

4. It was submitted on behalf of the applicant that the courts below erred in taking the view that the defendant-applicant was estopped from taking the plea that the plaintiff was not the exclusive owner of the disputed shop because in proceedings under Section 7-C of U. P. Act No. 3 of 1947 it was not necessary that all the owners should have been made parties. As for reply to the notice under Section 106 of the Transfer of Property Act, the defendant was under no obligation to give any such reply. It was stated that the applicant had taken the disputed shop on rent from plaintiff's father, that plaintiff's father died leaving behind four sons and all of them are owners of the disputed shop. The defendant-applicant, therefore, was quite justified in taking this plea and under Section 23 of the Small Cause Courts Act, the trial court was not competent to decide this case.

5. In my opinion the above submissions do not have much force. Section 23 of the Small Cause Courts Act lays down:-

"(1) Notwithstanding anything in the foregoing provisions 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 state of the proceedings, return the plaint to be presented to a Court having jurisdiction to determine the

title."

It would appear that in order to attract the application of this sub-section it is necessary that the court in which a suit has been filed must either be a Court of Small Causes or a court invested with Small Causes powers and the suit must be of the nature of Small Causes. The purpose and intention of this provision is to enable the court of Small Causes to save its time by returning the plaint which involves inquiry into the questions of title and is, therefore, likely to take time. It is only an enabling section and enables the court at any stage of proceeding to return the plaint in order that it may be presented to a court which could determine the title. The section does not say that such suits are not cognizable by the Small Cause Court. It also does not say that Small Cause Court has not got jurisdiction to determine the question of title to immovable property. It gives that court an option to send the case to the court having jurisdiction to determine the title probably on the ground of convenience. Another aspect is that the enquiry is limited under this provision to the right of the plaintiff and to the relief claimed by him and it is the right of the plaintiff and the relief claimed by him which has got to be considered. There is no warrant for an inference that the plaintiff and the defendant should be rival claimants to the immovable property.

6. In *Mohammad Iliyas v. Hari Ram* ³ it was held that where one party is precluded from disputing the title of the other party by virtue of estoppel it will be wrong to apply Section 23. Further there is a Division Bench decision of this Court in *Deoki Rai v. Harakh Narain Lal* ⁴ in which it has been observed that in order to decide whether a suit is one of a Small Cause Court nature or not, one should refer to the allegations of the plaintiff contained in the plaint. If those allegations make out a case which is exempt from the cognizance of the Small Cause Court, it is immaterial what the defense raised and what the actual findings arrived at by the court are. If the defendants were held to be estopped from contending that the suit was exempt from the cognizance of the Small Cause Court, merely because he had not admitted the commission of any offence, the result would be that the plaintiff would always be entitled to prefer a second appeal if the decision went against him, but the defendant would be estopped from doing so.

7. In *Noola v. L. Chimman Lal* ⁵ the view taken was that Section 23 says that a

Small Cause Court is competent to decide a question of title but then it should finally determine the same and not in a cursory manner; it is not always convenient for a Small Cause Court Judge to decide an intricate question of title and the object of Section 23 is to meet cases in which the Judge is satisfied that the question of title is so intricate that it should not be decided summarily and that it should return the plaint for presentation to a proper court. It was also held that under this section the enquiry is limited to the right of the plaintiff and to the relief claimed by him and it is the right of the plaintiff and the relief claimed by him which has got to be considered.

8. Similarly in *Ram Dayal Sonar v. Sukh Mangal Kalwar* ⁶ it was held that Section 23 does not lay down that the Small Cause Court has got no jurisdiction to determine the question of title to immovable property. It gives that court an option to send the case to the court having jurisdiction to determine the title, probably on the ground of convenience.

9. The Himachal Pradesh High Court in *Ata Mohammad v. Ghera* ⁷ has taken the same view.

10. Lastly the Supreme Court in *Smt. Bela Das v. Samrendra Nath Bose (AIR 1975 Supreme Court 398)* (supra) has taken the view that where it has been held that the defendant admitted that he was tenant under the plaintiff but was merely asserting that there were some more landlords of the disputed premises, it was not a case of denial of relationship of landlord and tenant between the parties.

11. It would thus appear that the courts below did not act beyond their jurisdiction in holding that the Court of Small Causes could proceed with the suit and no intricate question of title was involved. This is apart from the finding that the defendant in all earlier proceedings had admitted the plaintiff to be his sole landlord.

12. Thus, there is no substance in the revision and it is dismissed with costs.

Revision dismissed.

Cases Referred.

1. (AIR 1926 All 344)
2. 1975 Ren CJ 141: (AIR 1975 SC 398)
3. (AIR 1926 All 344)
4. (AIR 1926 All 760)
5. (AIR 1935 All 148)
6. (AIR 1937 All 676)
7. (AIR 1962 Him Pra 17)