

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

S.L.P (C)Nos.30648-30651 /2010 @(CC No.14376-14379 of 2010)

Nirmal Jeet Singh Hoon

...Appellant

Versus

Irtiza Hussain & Ors.

...Respondents

ORDER

Dr. B.S. CHAUHAN, J.

1. Delay condoned.
2. The application for permission to appear in person and argue is allowed.
3. Facts and circumstances giving rise to the case are as follows:
(A) Irtiza Hussain, Zaheeda Khatoon and Murtuza Hussain (hereinafter referred to as 'respondents'), were the original plaintiffs in Small Cause Case No. 41 of 1974 under Section 21 (1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter called the Act 1972). Nirmal Jeet Singh Hoon, (hereinafter referred to as 'petitioner'), was defendant No. 3 in the

above-mentioned case which was Suit for ejectment and arrears of rent filed by the respondents/plaintiffs. The case of the plaintiffs/respondents was that defendant no. 1, namely, Shri Ram Prasad (dead-nothing on record to show as to whether his legal heirs had been substituted) and defendant no. 2, namely, M/s United Hotels Pvt. Ltd., had illegally sub-let the suit property to the petitioner; and defendants had also refused to pay the amount due as rent and they should, therefore, be evicted from the suit property.

(B) Smt. Sarvari Khatoon, Plaintiff no. 4 in Small Cause Case No. 41 of 1974 died during the pendency of the Suit and her right, title and interest in the suit property vested in her children i.e. the respondents, who were also the co-plaintiffs before the trial court.

(C) The case of all the defendants including the petitioner was that they did not sub-let the property to the petitioner. All the defendants also contended that they were entitled to a reduction in rent as the plaintiffs were illegally in occupation of large parts of the suit property. The petitioner denied the plaintiffs' claims and in his written statement, he submitted that no proper notice under Section

106 of the Transfer of Property Act, 1882 (hereinafter referred to as 'TP Act'), had been issued to him and so he could not be evicted. The petitioner also questioned the jurisdiction of the court to entertain the suit and stated that the respondents had illegally sold part of the suit property to a third party, so were not entitled to any relief.

(D) In view of the pleadings taken by the parties in the Small Cause Court, the court framed 29 issues and the parties led evidence on the said issues. The court after appreciating the evidence decreed the Suit, vide judgment and decree dated 22.8.2008 against the defendants with cost for ejectment, arrears of rent, restoration of the items of furniture, crockery and cutlery and the defendants were further directed to pay pendent lite and future mesne profits till the date of actual delivery of possession of the suit property. Further, it was held that petitioner was not a sub-tenant in possession of the property and defendant nos. 1 and 2 were in exclusive possession of the premises.

(E) The High Court of Uttarakhand at Nainital vide judgment and order dated 23.7.2009 dismissed the Revision Petition filed by the petitioner and upheld the decree of the Small Cause court. The High

Court confined its judgment to the questions of arrears of rent and sub-letting. The High Court held that the trial court had jurisdiction to entertain the suit; notice was served on all the parties in accordance with the provisions of Section 106 of the TP Act. The High Court also agreed with the findings of the trial court with respect to the questions relating to the arrears of rent.

(F) Aggrieved by the decision of the High Court, petitioner filed Review Petition No. 633 of 2009. The said Review Petition was heard in the absence of the petitioner, as he did not appear, and dismissed vide order dated 2.9.2009 by a speaking and reasoned order.

(G) Subsequent to the retirement of the Chief Justice of the High Court (who had heard the afore-mentioned Revision Application and the Review Petition), petitioner filed a Recall Application (M.C.C. No. 711 of 2009), wherein he raised the issue of the propriety of the ex-parte dismissal of his Review Petition and made certain unsubstantiated allegations against the former Chief Justice of the High Court. The issues were dealt with by the High Court and it observed

that the Recall Application had been drafted in bad taste and did not have any legal basis. The said Recall Application was dismissed vide order 18.3.2010.

(H) Still dissatisfied with the decision of the High Court, the petitioner preferred Reconsideration Application No. 262 of 2010. The said Reconsideration Application was also dismissed as not being maintainable in law vide order dated 23.4.2010.

(I) Being aggrieved, these Special Leave Petitions have been filed with application for condonation of delay challenging all the orders passed by the High Court.

4) The petitioner-in-person has raised only scandalous and unsubstantiated allegations against the Hon'ble Chief Justice who has decided the Revision Application and Review Petition and the advocates who had dealt with the case relating to the suit property at an early stage and have been elevated to the Bench of the High Court. He kept his case limited to the issue of the transfer of the suit property prior to the institution of the Suit and his only submission is that such

a big fraud has been committed in this case, that it requires a thorough investigation against the judge who has decided this case. In spite of several questions put to him by us, wherein he has been asked as under what circumstances he was concerned with the property, he could not point out any document whatsoever, to show that he had been in lawful possession of the property, nor could he explain under what circumstances he could get the possession of the property. His parrot like narration, at all the times had been that the greatest fraud on the earth has been committed by transferring this property. We fail to understand how the petitioner could challenge the transfer, if he has no title in the suit property.

It appears from the judgment of the trial court that at the time of framing the issues, the trial court refused to frame an issue on the alleged fraud involving the transfer of property, for the reason that nobody had challenged the ownership of the plaintiffs and the present petitioner was not in a position to disclose in what capacity he entered into the property. The court refused to investigate the allegation that Sarvari Khatoon had executed any Will of the property in favour of plaintiff No.1. We fail to understand in what capacity the present petitioner can challenge the said Will. The trial court held as under :

“Herein the present case since the relationship of landlord and tenant has been admitted by the defendants. The plaintiffs are admittedly co-owner of the property in question, they are entitled to maintain the suit and the question of title can be looked into incidentally. This court is not required to investigate whether the sale deeds executed by Smt. Sarvari Khatoon and Smt. Raziaunnisa Begum were forged and fictitious and were not executed by real Sarvari Khatoon and Smt. Raziaunnisa Begum. This court is also not to investigate whether Smt. Jahida Khatton has executed any Will of her share in the property in favour of plaintiff no. 1. The plaintiffs are admittedly being the co-owner of the property, it is immaterial if the other co-owners have transferred their share in their favour or not. In any case, the defendants cannot be said to be the aggrieved person even if it is presumed that the said sale deed or gift deed were executed by imposters. The real such lady could come and claim the relief and question the said transfer, but nobody else has a right to question the same. Even otherwise the adjudication whether the sale deed or gift deed executed by them is without any right or title, cannot be tried by the court of Small Cause and this can only be investigated by a competent court or original civil jurisdiction that too through a suit by aggrieved person e.g. real Sarvari Khatoon, Raziaunnisa or Jahida Khatoon and none else.”

5. The trial court further held that it had no authority nor there was a necessity to investigate the question of the identity of Sarvari Khatoon and that if the petitioner is aggrieved by any alleged act of fraud by any party, he was free to approach the competent forum.

6. Section 23 of the Provincial Small Cause Courts Act, 1887 (hereinafter called as Act 1887) reads:

“23. Return of complaints 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 Cause 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 complaint to be presented to a Court having jurisdiction to determine the title.

(2) xx xx xx xx xx”

Thus, it is evident from the above that the Small Cause Court cannot adjudicate upon the issue of title and, therefore, the trial Court has rightly refused to go into that issue and no fault can be found with the findings by the courts below in this regard. More so, as it has been an admitted fact that defendant Nos. 1 and 2 had been the tenants of the original plaintiffs, the question of title could not be adjudicated at the behest of the petitioner under any circumstance.

7. While dealing with the provisions of Section 23 of the Act, 1887, this Court in **Budhu Mal v. Mahabir Prasad & Ors.**, AIR 1998 SC 1772, held as under:

“It is also true that in a suit instituted by the landlord against his tenant on the basis of contract of tenancy, a question of title could also incidentally be gone into and that any finding recorded by a Judge, Small Cause in this behalf could not be res judicata in a suit based on title. It cannot, however, be gainsaid that in enacting S. 23 the Legislature must have had 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.”

(Emphasis added)

8. Procedure adopted in trial of the case before the Small Cause Court is summary in nature. Clause (35) of Schedule II to the Act 1887, made the Small Cause Court a court of limited jurisdiction. Certain suits are such in which the dispute is incapable of being decided in a summary manner. More so, the Small Cause Court does not possess exclusive jurisdiction as its jurisdiction is merely preferential. [Vide **Ram Chandra Pandey v. Maheshwari Singh & Ors.**, AIR 1962 All 480; and **Manzurul Haq & Anr. v. Hakim Mohsin Ali**, AIR 1970 All 604 (F.B.)]

9. Thus, it is evident that the finding on the issue of title recorded by the Small Cause Court does not operate as *res judicata* and ultimately the issue of title has to be adjudicated upon by the

competent civil court. This view also stands supported by the judgments of this Court in **Dhulabai etc. v. State of M.P.**, AIR 1969 SC 78; **Govt. of Andhra Pradesh v. Thummala Krishna Rao & Anr.**, AIR 1982 SC 1081; **State of Tamil Nadu v. Ramalinga Samigal Madam**, AIR 1986 SC 794; and **State of Rajasthan v. Harphool Singh (dead) thr. His Lrs.**, (2000) 5 SCC 652.

10. We are of the considered opinion that no illegality had been committed by the courts in refusing to frame an issue on that point and such a matter could not be investigated in proceedings before the Small Cause Court. Shri Ram Prasad, original defendant No.1, who had entered into the contract of tenancy had died and his legal heirs, if any, had not been impleaded as parties in these petitions. Thus, it raises a doubt regarding the maintainability of the petition itself.

11. Paragraph 24 of the impugned judgment dated 23.7.2009 makes it evident that the dispute was only regarding the arrears of rent and eviction. The case of the tenants had been limited to the extent that they had not committed any default in payment of rent and no arrears had been due. Further, the validity of the notice under Section 106 of

TP Act was challenged and the District Judge, Dehradun, the Small Cause Court had no jurisdiction to entertain the suit and no other point was urged though in the revision petition large number of grounds had been taken.

It is settled legal proposition that court is supposed to respond only to the issue agitated before it and in case at the time of hearing the issue was not taken the court cannot deal with it. (Vide **State of Maharashtra v. Ramdas Shrinivas Nayak & Anr.**, AIR 1982 SC 1249; **Abdul Aziz v. State of W.B. & Anr.**, (1995) 6 SCC 45; **Transmission Corporation of A.P. Ltd. & Ors. v. P. Surya Bhagavan**, AIR 2003 SC 2182; and **Mohd. Akram Ansari v. Chief Election Officer & Ors.**, (2008) 2 SCC 95).

12. None of the persons against whom unsubstantiated, uncalled for and unwarranted allegations have been made has been impleaded. Thus, such allegations cannot be entertained. (Vide: **Dr. J.N. Banavalikar v. Municipal Corporation of Delhi & Anr.**, AIR 1996 SC 326; **State of Bihar & Anr. v. P.P. Sharma, I.A.S. & Anr.**, AIR 1991 SC 1260; **I.K. Mishra v. Union of India & Ors.**, (1997) 6 SCC

228; and **All India State Bank Officers' Federation & Ors. v. Union of India & Ors.**, (1997) 9 SCC 151).

13. More so, this Court has already dealt with the impugned judgment while deciding the SLP(C) No. 28029 of 2009 vide order dated 20.11.2009 and the impugned judgment has been upheld. In the said case, the present petitioner was also a party. Entertaining this petition would amount to review of the earlier order dated 20.11.2009. The law does not permit two contradictory and inconsistent orders in the same case in respect of the same subject matter.

14. The petitions lack merit and are, accordingly, dismissed.

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.....J.
(P. SATHASIVAM)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
October 26, 2010