

Court No. - 10

Case :- MATTERS UNDER ARTICLE 227 No. - 8056 of 2023

Petitioner :- Rajendra Singh Yadav

Respondent :- Abrar Ahmad And Another

Counsel for Petitioner :- Shreya Gupta,Ravi Anand Agarwal

Counsel for Respondent :- Rama Goel Bansal,Shalini Goel

Hon'ble Kshitij Shailendra,J.

1. Supplementary affidavit, filed in Court today, is taken on record.
2. Heard Ms.Shreya Gupta, learned counsel for the petitioner and Ms.Rama Goel Bansal for the plaintiffs-respondents.
3. By the first order impugned dated 21.2.2023, the application filed by the defendant-petitioner under Section 23 of Provincial Small Cause Courts Act, 1887 (herein after referred to as 'the Act, 1887) has been rejected and by the second order impugned dated 6.7.2023, the revision, preferred against the rejection order, has been dismissed by the Additional District Judge, Court No.10, Bareilly.
4. It is contended by Ms.Shreya Gupta that application under Section 23 of the Act, 1887 has not at all been adjudicated upon on merits, rather the courts below have taken aid of a previous order dated 8.11.2012 by which the Issue No.1 was decided in negative against the defendant in his absence. She submits that the earlier order cannot be treated as res judicata and, therefore, the orders impugned are unsustainable. In support of her plea, it is contended that Gokul Chand being the owner of the property created a licence in favour of the defendant's brother and pursuant to a family settlement arrived at between the family members, the shop had

settled in favour of the defendant and, therefore, there is no relationship of landlord-tenant in the parties to the suit. It is also contended that the plaintiff is not the owner of the property.

5. Ms.Rama Goel Bansal, on the other hand, has vehemently opposed the petition and pointed out the conduct of the defendant. It has been argued that the Issue No.1 was framed on the application filed by the defendant himself to the effect as to whether the suit is beyond jurisdiction of the Court of JSCC. She has referred to the order dated 21.9.2012 passed in this regard. It has further been contended that when the defendant did not deposit the amount on the first date of hearing, an application under Order XV Rule 5 CPC was filed, which was rejected on 16.8.2019 against which the plaintiff filed revision before the District Judge, which was allowed on 22.8.2022 and the matter has been remanded for fresh consideration of the application under Order XV Rule 5 CPC and in order to obstruct the disposal of the said application, identical application has been filed after withdrawing the writ petition, which was filed by the defendant against the order of remand. It is further contended that documents filed before this Court, i.e., copy of the alleged licence-deed or the family settlement do not form part of the record as till today, the evidence of the defendant has not been recorded.

6. Having heard learned counsel for the parties, I find that the suit was filed in the year 2009. For a period of about 10 years, no remedy has been availed by the defendant against the order dated 8.11.2012. By the said order though the issue was decided in absence of the defendant without recording any finding on merits, the courts-below were justified in placing reliance upon the previous order, which was coming in their way for adjudicating the

application under Section 23 of the Act, 1887.

7. I find that landlord-tenant relationship as well as maintainability of the suit being the questions to be adjudicated upon by the court concerned while deciding the suit, merely because the orders impugned have been passed, it cannot be said that the arguments on the line, which are being advanced today before this Court have lost their significance.

8. The submission of Ms.Shreya Gupta that once the application under Order XV Rule 5 C.P.C. is allowed, the defendant would be left with no defence at all and in that event, the suit would be decided ex parte against the defendant, does not impress the Court as the issue involved before this Court is not associated with the proceedings, which are being conducted pursuant to the order of remand passed by the revisional court. The matter is confined to the plea raised by means of application under Section 23 of the Act, 1887.

9. While declining to interfere in any of the orders impugned, the petition stands **disposed of** directing the court below to conclude the proceedings of the suit as well as all miscellaneous applications, which are pending as on date **on or before 31.5.2024**.

10. The arguments on the landlord-tenant relationship or title of the plaintiff are left open to be adjudicated during the course of trial of the suit if defence sustains on record.

Order Date :- 28.10.2023

LN Tripathi