

Court No. - 10

Case :- MATTERS UNDER ARTICLE 227 No. - 8579 of 2023

Petitioner :- Rajeev Kumar And Another

Respondent :- Nihal Singh And Another

Counsel for Petitioner :- Ajay Kumar Pathak, Surendra Kumar Chaubey

Counsel for Respondent :- Rahul Kumar Sharma

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Surendra Kumar Chaubey along with Sri Ajay Kumar Pathak, learned counsel for the petitioners and Sri Rajesh Dutt Pandey, holding brief of Sri Rahul Kumar Sharma, learned counsel for the respondents.

2. Suit for ejectment filed by the plaintiff-petitioners against the defendant-respondents was decreed by the Judge, Small Causes Court by judgment and decree dated 10.07.2019. The defendants preferred revision against the said decree which has been allowed by the order impugned dated 25.05.2023 and the matter has been remanded to the trial court for fresh consideration.

3. Learned counsel for the petitioners submits that order of remand is mainly based upon framing of two points by the revisional court, one in respect of alleged dispute of title between the parties and the other to the effect as to whether the provisions of U.P. Act No.13 of 1972 are applicable and whether the property in dispute is an open piece of land.

4. It is contended by the learned counsel for the petitioners that there is no dispute of title in between the parties and in fact it was raised by the defendant no.2 who was inducted as the sub-tenant by defendant no.1. With regard to the nature of property in dispute, it is contended that it is a building and, therefore, the remand has been wrongly ordered.

5. On the other hand, learned counsel for the defendants submits that the plaintiffs claim title on the basis of registered sale deed which is in respect of a land with no mention of any constructions thereon and, therefore, jurisdiction of J.S.C.C. is an important aspect to be examined by the court and, hence, the order impugned is lawful. With regard to the relationship between the parties, it has been argued that there being no relationship of landlord-tenant, the point no.1 was also rightly framed and remitted for fresh consideration.

6. Having heard the learned counsel for the parties and the entire record being before this Court at least for the purposes of deciding this matter, I find that J.S.C.C. has decided the suit after framing four points including the issue of sub-tenancy. Joint written statement filed by defendants in fact challenges the impleadment of the defendant no.2 stating that there is no relationship between the plaintiff and the defendant no.2.

7. I find that the revisional court has misread the contents of written statement and it has been wrongly observed that there is averment denying relationship of landlord-tenant between the parties. In fact, there is a clear admission of landlord-tenant relationship between the plaintiffs and the defendant no.1 however the issue of sub-tenancy has been decided against the plaintiff-petitioners as they failed to establish sub-tenancy in between defendants.

8. Irrespective of the status of defendant no.2, there being admitted relationship of landlord-tenant at least in between the plaintiff and the defendant no.1, the finding recorded on point No.1 in paragraph no.11 of the order impugned is perverse and is **set aside**.

9. In so far as the second point contained in paragraph no.12 of the order, considering the nature of the sale deed and the contents of the plaint and non framing of point on the said aspect by the trial court, I find that the revisional court was justified in remanding the matter to the trial court to decide the said issue as it goes to the root of the matter, particularly, a jurisdictional aspect.

10. The petition is, accordingly, **allowed in part**.

11. The order impugned dated 25.05.2023 is **set aside to the extent of** finding and observation contained on point No.1 in paragraph no.11 of the order.

12. The trial court shall decide point no.2 only as contained in paragraph no.12 of the revisional court's order and shall pronounce the final judgment in the suit **on or before 31.12.2023**, after hearing the parties.

Order Date :- 28.10.2023

AKShukla/-