



2024:UHC:9875

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE,
SHRI JUSTICE MANOJ KUMAR TIWARI

23 December, 2024

Writ Petition (M/ S) No. 531 of 2022

Shri Shaikh Saif Ullah

--Petitioner

Versus

Smt Shahnaz Parveen & another

--Respondents

Presence:-

Mr. Vikas Bahuguna, Advocate for the petitioner

Mr. Neeraj Garg, Advocate for the respondent no. 1.

Mr. I.P. Kohli, Advocate for the respondent no. 2.

JUDGMENT

Petitioner filed a suit for recovery of rent, possession and mense profit against respondent no. 2 before Small Cause Courts, stating that he is the owner of the scheduled property and respondent no. 2 is his tenant at the monthly rent of Rs. 120/-. It was further stated that respondent no. 2 has not paid the rent since 01.01.1986; a notice for termination of tenancy was given to him on 02.05.2017, which was served upon him on 06.05.2017; however, he has not handed over vacant possession of the scheduled property to him nor paid the rent.

2. Respondent no. 2 in his written statement



stated that one Abdul Sakur was the original tenant and after his death, Abdul Salam became tenant, who died in the year 2012 and respondent no. 2 is residing in the premises in question as brother of Abdul Salam and he is not a tenant of the plaintiff.

3. In the said suit, respondent no. 1 filed an application under Order 1 Rule 10 CPC with the contention that she is the sole owner of the property in question, therefore, she needs to be impleaded. Petitioner filed objection to the said application, contending that there exists relationship of landlord – tenant between him and respondent no. 2, and respondent no. 1 has remedy to file separate suit, for determination of her right.

4. Learned trial court rejected the impleadment application moved by respondent no. 1 vide order dated 02.03.2019. Feeling aggrieved, respondent no. 1 filed SCC Revision No. 05 of 2019 under Section 25 of Provincial Small Cause Courts Act, 1887 (*for short 'the Act'*), which was allowed by learned 6th Additional District Judge, Dehradun vide judgment dated 06.01.2022 and plaintiff in the suit (*petitioner herein*) was directed to implead respondent no. 1, as party to the suit. Thus, feeling aggrieved, plaintiff has filed this writ petition.

5. Learned counsel for the petitioner submits



that in view of provision contained in Section 23 of Provincial Small Cause Courts Act, 1887, dispute regarding title cannot be decided by a Small Cause Court and effect of the impugned judgment is that, a suit for eviction filed against a tenant has been converted into a title suit. Section 23 of the Act reads as under:-

“23. Return of complaints in suits involving questions of title.

(1)Notwithstanding anything in the forgoing portion 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 stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2)When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of section 57 of the [Code of Civil Procedure (14 of 1882)] and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the [Indian Limitation Act, 1877 (15 of 1877)] be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.”

6. Learned counsel for the petitioner submits that respondent no. 1 is trying to convert a eviction suit into a title dispute and in view of the Statutory bar contained in Section 23 of the Act, such a dispute cannot be decided by a Small Cause Court. He relies upon judgment rendered by Hon’ble Allahabad High Court in the case of *Noor Ahmad v. Qazi Zafar Ahmad & another*, (2021) 2 ARC 588, Para no. 7 of the said judgment is reproduced below:-

“7. It is against the settled principle governing



disposition of rent suits, that the cause of action cannot be enlarged so as to alter the scope of a rent suit to a title. Ex-hypothesi, no party can be impleaded who seeks to bring in a cause of action that would ultimately convert the rent suit into a title suit. This position of the law is beyond cavil, going by consistent authority”

7. Per contra, Mr. Neeraj Garg, learned counsel for respondent no. 1 submits that respondent no. 1 is co-owner of the premises in question, from which eviction of respondent no. 2 is sought by petitioner. He relies upon a judgment and decree passed in Original Suit No. 174 of 1970 in support of this contention. Thus, he submits that learned revisional court rightly allowed the impleadment application and the writ petition is liable to be dismissed.

8. Hon'ble Supreme Court in the case of *Kanalklata Das & others v. Naba Kumar Das & others*, reported in (2018) 2 SCC 352 held that title of landlord in a eviction suit is not relevant and if landlord fails to prove his title but proves relationship of landlord and tenant, and proves existence of any ground pleaded for eviction then his suit would succeed. It was further held that a person, who claims to be a co-sharer or co-owner with the plaintiff in the suit property is neither a necessary nor proper party in a eviction suit and such eviction suit can be decreed or dismissed on merits, even without impleadment of the person claiming to be a co-owner. Para 10 to 16 of the said



judgment are reproduced below:-

“10. In other words, we are inclined to dismiss the application filed by Respondent 1 under Order 1 Rule 10(2) of the Code in the appellants' ejectment suit.

11. There are some well-settled principles of law on the question involved in this appeal, which need to be taken into consideration while deciding the question which arose in this appeal. These principles are mentioned infra:

11.1. First, in an eviction suit filed by the plaintiff (landlord) against the defendant (tenant) under the State Rent Act, the landlord and tenant are the only necessary parties. In other words, in a tenancy suit, only two persons are necessary parties for the decision of the suit, namely, the landlord and the tenant.

11.2. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff landlord has sought defendant tenant's eviction under the Rent Act exists. When these two things are proved, the eviction suit succeeds.

11.3. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See *Ranbir Singh v. Asharfi Lal*.)

11.4. Fourth, the plaintiff being a dominus litis cannot be compelled to make any third person a party to the suit, be that a plaintiff or the defendant, against his wish unless such person is able to prove that he is a necessary party to the suit and without his presence, the suit cannot proceed and nor can be decided effectively. In other words, no person can compel the plaintiff to allow such person to become the co-plaintiff or defendant in the suit. It is more so when such person is unable to show as to how he is



a necessary or proper party to the suit and how without his presence, the suit can neither proceed and nor it can be decided or how his presence is necessary for the effective decision of the suit. (See Ruma Chakraborty v. Sudha Rani Banerjee.)

11.5. Fifth, a necessary party is one without whom, no order can be made effectively, a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. (See Udit Narain Singh Malpaharia v. Board of Revenue.)

11.6. Sixth, if there are co-owners or co-landlords of the suit premises then any co-owner or co-landlord can file a suit for eviction against the tenant. In other words, it is not necessary that all the owners / landlords should join in filing the eviction suit against the tenant. (See Kasthuri Radhakrishnan v. M. Chinnian.)

12. Keeping in mind the aforementioned well-settled principles of law and on examining the legality of the impugned order, we find that the impugned order is not legally sustainable and hence deserves to be set aside.

13. In our considered opinion, Respondent 1, who claims to be the co-sharer or/and co-owner with the plaintiff-appellants herein of the suit property is neither a necessary and nor a proper party in the eviction suit of the appellants against Respondents 2 to 5. In other words, such eviction suit can be decreed or dismissed on merits even without the impleadment of Respondent 1.

14. In the eviction suit, the question of title or the extent of the shares held by the appellants and Respondent 1 against each other in the suit premises cannot be decided and nor can be made the subject-matter for its determination.

15. The reason being that this is not a suit between the appellant-plaintiffs and Respondent 1 where their inter se rights relating to the suit premises can be gone into but rather is an ejectment suit filed by the appellants against Respondents 2 to 5 for their eviction from the suit premises.

16. Therefore, the lis in the suit is between the appellants on the one hand and Respondents 2 to 5 on the other hand and the decision in the suit would depend upon the question as to whether there exists any relationship of landlord and tenant between the appellants and Respondents 2 to 5 in relation to the



suit premises and, if so, whether the grounds pleaded in the plaint for claiming eviction of Respondents 2 to 5 are established or not. For deciding these two main questions, the presence of Respondent 1 is not necessary.”

9. Admittedly, the relief sought in SCC Suit was for rent and ejectment of respondent no. 2 from the premises in question and for deciding the said suit, presence of respondent no. 1 is not necessary. Thus, respondent no. 1 cannot be said to be necessary or proper party.

10. In such view of the matter, learned Trial Court was justified in rejecting the application moved by respondent no. 1 under Order 1 Rule 10 CPC and learned Revisional Court erred in interfering with the order passed by learned Trial Court. The interference made by Revisional Court was not warranted in view of the facts and reasons, discussed above.

11. In such view of the matter, the impugned judgment and order dated 06.01.2022 passed by learned Revisional Court deserves to be set aside and is hereby set aside. Accordingly, the writ petition is allowed. No order as to costs.

MANOJ KUMAR TIWARI, A.C.J.

Dt: December 23, 2024
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CHANDRA

Digitally signed by NAVEEN CHANDRA
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