

HIGH COURT OF UTTARAKHAND AT NAINITAL

Hon'ble Justice Sri Rakesh Thapliyal

17th October 2025

Civil Revision No. 108 of 2025

Rakhi Bhatnagar Revisionist

Vs.

Udaseen Mandir Shrichand Charitable Trust and another

.....Respondents

With

Civil Revision No. 109 of 2025

Surendra Kumar Bhatnagar

..... Revisionist

Vs.

Udaseen Mandir Shrichand Charitable Trust and another

.....Respondents

Counsel for the Revisionist:

Mr. Arvind Vashisth, learned Senior Advocate assisted by Mr. Hemant Singh Mahra and Ms. Devanshi Joshi, learned counsel

Counsel for the Respondents:

Ms. Monika Pant, learned counsel (through V.C.)

(Sri Rakesh Thapliyal, J.)

1. These two civil revision are arising out of the proceeding of SCC Suit no. 09 of 2020 and SCC Suit No. 10 of 2020 filed by Udaseen Mandir Shrichand Charitable Trust, Cheti Chauraha Kashipur through its Manager Balveer Das Chela Baba Harjender Das Kashipur, District U.S. Nagar (respondent herein) instituted for ejectment, arrear of rent and the damages which were decreed on 18.09.2025.

In SCC suit No. 9 of 2020, Suresh Kumar Bhatnagar was the defendant and in SCC suit No. 10 of 2020 Rakhi Bhatnagar, W/o Suresh Kumar Bhatnagar

was the defendant, and, both of them were the tenant in the shops owned by the Trust, namely, "Udaseen Mandir Shrichand Charitable Trust". These two SCC suits were instituted by the Trust through Manager of the Trust since the then Manager and Trustee of Trust, namely, Baba Harjender Das executed a registered *Will* on 09.01.2024 in favour of the plaintiff no. 2 to be act as a Manager of the Trust. Subsequently, Baba Harjender Das was died on 03.08.2019.

2. In the plaint, it is pleaded that both the defendants executed a rent deed for 11 months by specifying a monthly rent. It is also contended in the plaint that after death of Baba Harjender Das, plaintiff no. 2 become the Manager of the Trust, however, after death of Baba Harjender Das no rent was paid then a registered notice was sent by plaintiff no. 2 to the defendants on 15.06.2020, whereby rent was asked to paid which was due from 01.08.2019, and when no rent was paid then the tenancy was terminated on expiry of the period, as stipulated in the notice. The defendants filed their written statement by raising an objection that plaintiff no. 2 has no right to terminate the tenancy and, notice of terminating the tenancy is bad in law, therefore, the suit filed on the behest of plaintiff no. 2 is not maintainable. The Small Causes Court thereafter framed following four issues:-

(i) Whether there is a relationship of landlord and tenant between plaintiff no. 1-Trust and the defendant?

(ii) Whether the defendant is a tenant @ Rs. 3800/- per month of plaintiff no. 1 in the shop in question?

(iii) In the shop in question whether Rules of Act No. 13 of 1972 is not applicable?

(iv) Compensation?

3. Issue nos. 1, 2 and 3 were dealt with together and decided in favour of the plaintiff and since issue no. 4 was consequential, which pertains to relief, therefore, the same was also decided in favour of the plaintiff, and finally the Small Cause Court decreed both the suits with the direction to pay arrear of rent and give peaceful possession of shops in question to the plaintiff/Trust within a month.

4. On the previous date, the matter was heard and both the revisions were admitted and the Trial Court records were also summoned and counsel for both the parties also perused the records. Revisionists were also directed to deposit the deretal amount which has been complied with today.

5. Mr. Arvind Vashistha, learned Senior Advocate advanced his arguments by submitting that plaintiff no. 2 has no right to terminate the tenancy of the revisionists/ defendants, and, as such, notice for terminating the tenancy is bad in law, and, since, plaintiff no. 2 has no right to terminate the tenancy, as such, the suit is not maintainable on his behest. In reference to this Mr. Vashistha placed before this Court

copy of Trust deed dated 14.05.2003, which is also part of the trial court record.

As per the Trust Deed , there is a composition of the Trustees and the Office Bearer, and, Baba Harjender Das was inducted as a life time manager of the Trust with a right to appoint his successor who will be the manager of the Trust. At this juncture, certain extracts of the Trust deed is being reproduced herein as under:-

UDASEEN MANDIR SHRI CHAND CHARITABLE TRUST

This Trust Deed (TRUST DEED) Indenture (INDENTURE) has been executed by Baba Harjender Das, resident of Udaseen Mandir Shri Chand. Village Khadakpur Devipura (Chaiti Nauraha). Tehsil Kashipur, District Udham Singh Nagar (Uttaranchal), hereinafter referred to as the Founder (SETTLER), as the First Party; and 1. Baba Harjender Das, resident of Udaseen Mandir Shri Chand, Village Khadakpur Devipura (Chaiti Chauraha). Tehsil Kashipur. District Udham Singh Nagar (Uttaranchal), 2. Baba Hansdas, disciple (Chela) of Baba Harjender Das, Udaseen Mandir Baba Shri Chand, Village Khadakpur Devipura (Chaiti Chauraha), Tehsil Kashipur, District Udham Singh Nagar, 3. Swami Jasdev, disciple (Chela) of Baba Hardev Das, resident of Udaseen Ashram, Kirti Nagar Industrial Area, New Delhi, 4. Shri Deepak Gupta, son of Shri Moti Lal Gupta, Mohalla Ganj, Tehsil Kashipur, District Udham Singh Nagar, 5. Major Ranveer Singh (Retired), Subhash Nagar, Tehsil Kashipur, District Udham Singh Nagar, 6. Shri Ajaiv Singh, son of Shri Ujagar Singh, Rampur Road, Bazpur, District Udham Singh Nagar, 7. Shri Joga Singh, son of Shri Arjun Singh, Awas Vikas Colony, House No. 256, Tehsil Gadarpur, District Udham Singh Nagar, 8. Shri Baldev Singh Dodiyaal, resident of Village Dhamman, Tehsil Swar, District Rampur, who shall hereinafter be referred to as the Trustees (TRUSTEES), as the Second Party, and this was executed at Kashipur District Udham Singh Nagar (Uttaranchal) on the 14th day of the month of May, year 2003.

The Founder has voluntarily handed over a sum of Rupees One Thousand (Rs. 1,000/-) to the Trustees (TRUSTEES) for the purpose of establishing a Trust (TRUST) for religious and public welfare purposes, etc. The Trustees have given their consent thereto, and the said sum shall now constitute the Corpus (CORPUS) of the Trust. The Trustees have expressed their desire and consent to continue to function in accordance with the present provisions of this Trust. It is the desire of the Founder that the Corpus of the Trust be augmented from time to time through amounts, properties, donations, or grants received in the future.

The Founder, in pursuance of the above desires and consents, hereby approves the handing over and transfer of the said sum of Rupees One Thousand as the Corpus of the Trust and grants all related rights to the Trustees on behalf of the Trust for all time to come. The Founder also grants to the Trustees the right over such powers, rules, decisions, agreements, etc., as may be declared or made in relation to the Trust in the future. However, as a special privilege, the right of final decision in any matter shall vest with the Founder/Manager, and such decision shall be binding upon all Trustees. No person shall have any right to object to or interfere with

the final decision of the Founder/Manager. Baba Harjender Das shall be the lifelong Manager of the Trust (Nyaas), Temple, Ashram, etc. His successor shall be one belonging to the Udasi sect (Udasi Bhekh, Udasi Sampradaya), in the spiritual lineage (Guru Parampara) of Baba Harjender Das, and shall be one without household attachments (celibate). This arrangement shall remain in force perpetually in the future. The right to appoint his successor shall rest with Baba Harjender Das. The successor of Baba Harjender Das shall be the future Manager, and the right to appoint his own successor shall vest in the future Manager. The succeeding Manager shall automatically become a Trustee. At present, Baba Hanadas, disciple (Chela) of Baba Harjender Das, is assisting Baba Harjender Das in supervising and managing all arrangements related to the aforesaid responsibilities.

The Trustees shall maintain the sum of Rupees One Thousand (Rs. 1,000/-) as the Trust Fund. The interest thereon and any other additional receipts, as well as the use of movable and immovable properties, shall be utilized for religious and charitable purposes and for the health, medical care, and welfare of the general public, in accordance with the existing arrangements. The other provisions of this Trust are determined as follows:

1. Name The name of this Trust shall be Udaseen Mandir Shri Chand Charitable Trust.
2. Address Udaseen Mandir Shri Chand Charitable Trust, Khadakpur Devipura (Chaiti Chauraha), Post Office Kashipur, District Udham Singh Nagar (Uttaranchal).
3. Jurisdiction Area of Operation Its principal office shall be at Kashipur, District Udham Singh Nagar, Uttaranchal, and it may also be located at such other place in India as the Trustees may decide from time to time.

4. Objects -

1. To create and promote religious, social, moral, and educational awareness among the general public.
2. To make proper medical arrangements and provide for the supply, distribution, or availability of affordable medicines for the welfare of the general public.
3. To arrange for and operate pharmacies, etc., for providing suitable medical facilities to the general public.
4. To establish ashrams or similar institutions for public welfare.
5. To implement various schemes for public welfare.
6. To undertake and perform all such acts and measures as the Trustees may deem proper for achieving the above objectives and for the welfare of humanity, as laid down in the existing provisions of the Trust and in conformity with the spirit of the Trust. All the above objectives shall be fulfilled impartially and without any pressure or bias, solely for the welfare of the general public and for charitable and religious purposes, so that the general public may be benefited and helped.

5. Trustees and Office Bearers -

There shall be a minimum of three and a maximum of eleven Trustees in this Trust. The Trust shall have the following posts: President, Vice-President, Manager, Deputy Manager and Treasurer. Baba Harjender Das, the Manager, hereby appoints from among the Trustees; Bab Hansdas as President, Swami Jasdev as Vice-President, Major Ranveer Singh as Deputy Manager and Shri Deepak Gupta as Treasurer. The remaining persons shall continue as Trustees. Baba Harjender Das shall remain lifelong Manager of the Trust.

Shir Soban Singh Adhikar, Advocate, resident of Kusumkheda, Tehsil Haldwani, District Nainital; And Shri Radhe Mohan Saxena, Advocate, resident of Majra Prabhu, Tehsil Bajpur District Udham Singh Nagar; and Baba Hardev Das, resident of Village Khadakpur Devipur (Chaiti Chauraha) Kashipur shall be the lifelong patrons (Guardians) of the Trust.

The right to appoint and remove (dismiss) office bearers shall vest in the Manager. Similarly, right to expel (remove) any Trustee who act to the detriment of the Trust shall also rest with the Manager. The Manager shall have the right to appoint a new Trustee in place the removed one, and such appointment shall be final and binding.

6. Duties of the Office Bearers of the Trust-

1. Duties of the President: To preside over all meetings of the Trust, to approve the date and time for convening meetings of the Trust in accordance with the rules; and to carry out the tasks assigned by the Trust.

2. Duties of the Vice-President: To preside over meetings in the absence of the President; and to carry out the tasks assigned by the Trust.

3. Duties of the Manager: To convene meetings of the Trust in accordance with the rules; to handle the correspondence of the Trust, including receiving mail and arranging replies to letters; to maintain the accounts; to operate the Trusts' bank account. To manage all accounts of the institution and arrange for the annual audit; to represent or defend the Trust in any legal proceedings for or against it; to function as the Chief Executive of the Trust in the execution of its day to day affairs; and to perform such other tasks as may be assigned to him by the Trust from time to time.

4. Duties of Deputy Manager:- To perform the managerial duties in the absence of the Manager; to assist the Manager in his work and to carry out the tasks assigned by the Trust.

5. Duties of Treasurer: to make efforts for the increase of this Trust's funds; to consult and deliberate with the Trust's office bearers from time to time regarding the augmentation of funds; and to carry out all such tasks as may be assigned to him by the Trust from time to time.

6. Fund The account or accounts of the Trust shall be opened in any bank, and the operation of the Trust's accounts shall be carried out by the Manager.

8. Conduct of Meetings - *The meetings of the Trust shall be presided over by the President. In the absence of the President, the Vice-President shall preside over the meeting. In the absence of both, the Trustees shall elect one Trustee from among themselves to preside over the meeting. The quorum for a meeting of the Trust shall be one-third (1/3) of the total number of Trustees. Decisions in the meeting shall be taken by a simple majority of the Trustees present. In the event of an equality of votes for and against any proposal, the decision of the Manager shall be final in determining the proposal. For the proceedings of the meeting, a proceedings register shall be maintained, in which all proceedings, decisions, and resolutions of the meeting shall be recorded. Notice for an ordinary meeting shall be given to the Trustees in writing seven (7) days prior and notice for an urgent meeting shall be given three (3) days prior. However, under special circumstances, a meeting may be convened at any time. The notice of the meeting shall be given either through a special messenger or through telecommunication.*

9. Rights and duties of Trustees:-

3. *The Trustees may construct movable or immovable properties out of the Trust Fund or may cause such construction to be done by any institution or person, and such properties shall be vested in the Trust. The Trustees shall have the authority to construct buildings, renovate, reconstruct, adopt, improve or develop them, and to expend from the Trust Fund or its income for the purposes or objects of the Trust. The Trustees shall also have the right to pay such fees, contribution, dues and expenses as they may deem proper. The Trustees may all rents, taxes and expenses incurred upon other immovable properties as they may consider appropriate.*

4. *The Trustees shall have the right to safeguard the properties comprised in the Trust Fund against any kind of loss. However, the Trustees shall not be liable for any loss arising from any property that remains unprotected or reserved.*

6. *The Trustees shall have the right to purchase any movable or immovable property, to construct thereon, to take on rent or lease, with or without the option of renewal, for such price, rent, terms, or duration as they may deem proper and necessary for the fulfillment of any of the objects or purposes of the Trust.*

7. *The Trustees shall have the right, in the interest of the Trust, to execute agreements, obtain licenses, conduct public auctions, exchange, or transfer property.*

6. Mr. Vashistha, submits that as per the Trust Deed only with the consent of other Trustees the tenancy can be terminated, therefore, plaintiff being a Manager of the Trust has no right to terminate the tenancy. He further argued that the Trial Court while deciding both the SCC suits have not framed any specific issue in this regard and, as such, in absence of framing any such issue order impugned cannot sustain.

In support of his arguments, he placed reliance of one of the judgment of the Apex Court in the case of ***Shamim Akhtar vs. Iqbal Ahmad and another, (2000) 8 SCC 123*** by giving reference of para 6 and 12 which read as under:-

“6. On 14.10.1982, respondent No.1 filed an application before the Trial Court for deciding the objection regarding maintainability of the suit in the Court in view of the provisions in the Evacuee Property Act, 1950 and the Enemy Property Act, 1968 as a preliminary issue. By the order dated 14.10.1982 the Trial Court held that under the U.P. Rent Act the denial of title of landlord by the tenant is itself a ground for eviction of the tenant; in such a case the court was

competent to go into the question of the title incidentally and, therefore, it had jurisdiction to try the suit. Again the respondent No.1 filed an application under section 23 of the Provincial Small Cause Courts Act, 1887 to decide the question of title as a preliminary issue. The Trial Court again rejected the objection vide order dated 5.4.1991. Yet another application was filed by respondent No.1 under section 23 of the Small Causes Court Act with a similar prayer which met with similar result. Ultimately, the suit was decreed by the Trial Court by the judgment and order dated 26.4.1993, holding inter alia, that Fakia Bibi had gifted the suit house to her daughter Khairunnisa Bibi and not to the stranger Ibrahim, S/o. Ishahaq and that Khairunnisa Bibi had let out the house to respondent No.1. The Trial Court accepted the case of the appellant that Khairunnisa Bibi had gifted the house in question to the appellant by the registered deed of gift. The Court also accepted the case of the appellant that respondent No.1 was liable to be evicted on the ground of denial of the title of the landlady and default in payment of rent.

12. The Trial Court in the facts and circumstances of the case clearly erred in returning the plaint to the plaintiff-appellant under Section 23 of the Small Causes Court Act. Section 23(1) provides that when the right of a plaintiff and the relief claimed by him in a court of small cause depends 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. The power vested under sub-section (1) in the Court is discretionary. It is to be exercised only when the relief claimed by the plaintiff in the proceeding before the Small Causes Court depends upon the proof or disproof of a title to the immovable property and the relief sought cannot be granted without determination of the question. In the present case, as noted earlier, the plaintiff filed a petition for eviction under Section 20(2)(f) alleging that she was the landlady of the house and she had inducted respondent no.1 as tenant of the premises. The question was whether that case was to be accepted or not. Indeed the Trial Court, at the first instance, had accepted the plaintiff's case holding, inter alia, that she had got the property by a registered deed of gift from Smt. Khairunnisa Bibi who in turn had been gifted the property by her mother Fakia Bibi who, undisputedly was the original owner of the property. The question of title of the plaintiff to the suit house could be considered by the Small Causes Court in the proceedings as an incidental question and final determination of the title could be left for decision of the

competent Court. In such circumstances, it could not be said that for the purpose of granting the relief claimed by the plaintiff it was absolutely necessary for the Small Causes Court to determine finally the title to the property. The tenant-respondent by merely denying the relationship of landlord and tenant between himself and the plaintiff could not avoid the eviction proceeding under the Rent Control Act. That is neither the language nor the purpose of the provisions in Section 23(1) of the Small Causes Court Act.”

7. Another judgment which has further been placed reliance is in the case of **V. Chandrasekaran vs. Venkatanaicker Trust and others, 2016 SCC online Madras 33745** in which the Manager of a Trust terminate the tenancy and in para 6 following substantial question of law was framed;

(a) Whether the termination of tenancy by the issuance of Rx. B1, notice by the Manager is not in accordance with the provisions of the Indian Trust Act and whether the said notice took equity as ineffective. (b) Whether the suit filed by the Manager of the Trust and not by the Trustees joined together, is not maintainable.

The aforesaid question of law have been dealt with in para 16 and 20 which are also being reproduced herein as under:-

“16. As regards the validity of the termination of quit notice by one co-Trustee is valid or whether it is necessary that all the co- Trustees must join in giving such notice, the Hon'ble Full Bench has come to the following conclusion:

“It is, therefore, clear that one co-Trustee cannot given notice to quit determining the tenancy. The decision to determine the tenancy by giving notice to quit must be taken by all co-Trustees unless, of course, the instrument of Trust otherwise provides, or the beneficiaries being competent to contract consent, or in any particular case it is established that on the peculiar facts obtaining in that case, the

delegation of the power to determine the tenancy was necessary. But when he way that the tenancy must be determined by all co-Trustees, we must make it clear that what we means is that the decision to terminate the tenancy must be taken by all the co-Trustees. The formal act of the giving notice to quit pursuant to the decision taken all by the co-Trustees may be performed by one co-Trustee on behalf of the rest. The notice to quit given in such a case would be a notice given with the sanction and approval of all the co-Trustees and would be clearly a notice given by all co-Trustees."

20. In the light of the above two decisions, it could be seen that the Trust being not a legal entity and all the Trustees in law being the owners of the property and if a number of Trustees exist, they being the joint owners of the property and a Trust not in the normal course a legal entity and only the Trustees being the legal entities, it could be seen that as held by the above said courts, a suit by one of the Trustees on behalf of the Trust, in the absence of any stipulation in the Trust Deed providing otherwise, it could be seen that such a suit would not be legally maintainable and all the Co-Trustees must join in filing the suit to recover possession of the property from the tenant, after the termination of the lease."

By referring aforesaid judgment, Mr. Vashistha, submits that the shops in question are owned by the Trust, and, as such, only the Trustees of the Trust have right to terminate the tenancy. By referring the aforesaid two decisions one of the Apex Court and another one of the Madras High Court Mr. Vashistha finally concluded his arguments by submitting that both the SCC suits are not maintainable on the behest of plaintiff no. 2 and suits are based upon a *Will* dated 09.01.2014, executed by Late Baba Harjender Das in favour of plaintiff no. 2 but not proved before the SCC Court and furthermore with regard to the determination of profit and the damages, there is no evidence, and, as such, the order impugned passed by the SCC court cannot sustain and is liable to the set aside.

8. On the other side, Ms. Monika Pant learned counsel for the respondents vehemently opposed the submission as advanced by Mr. Vashistha, and argued that earlier an application was filed by one of the Trustee under Order 1 Rule 10 of Code of Civil Procedure for impleadment in the suit i.e. Paper No. 37 (Ga) and 38 (Ga) in order to intervene in the suit and the same was rejected by IInd Addl. District Judge, Kashipur on 08.04.2022 but never been challenged. She further argued that the status of the present revisionist is nothing but of a tenant, therefore, the revisionist has no right to object on the competency of plaintiff no. 2 with regard to termination of tenancy. She further argued that defendant/revisionists being a tenant of the shop in question have also no right to question the *Will* though the *Will* is challenged by the other Trustee in another regular suit which is pending for adjudication in which the plaintiff/respondent is one of the defendant and there is no interim order and as on date the *Will* is existing and is in operation.

Apart from this, she further argued that the revisionists also moved an application under Section 23 of Small Cause Courts Act, i.e. paper no. 27(Ga) which was also rejected by the SCC court on 24.09.2021, and the said order was also not challenged by the revisionists, therefore, on this account also the revisionists has no right to raise an issue that plaintiff no. 2 has no right to terminate the tenancy and, as such, the arguments as advanced by Mr. Vashistha in this regard is completely misconceived. Apart from this Mrs. Pant argued that the judgments as relied upon by

Mr. Vashistha, have no relevance in respect of the issue involved in this revision. She further argued that the defendants were examined by the SCC Court wherein Smt. Rekha Bhatnagar was cross-examined and she admits in her cross-examination that she paid rent to Baba Hansdevdas the Trustee of the Trust and receipt of rent is given with the signature of Baba Harjender Das who executed the *Will* on 09.01.2014 in favour of plaintiff no. 2. Further in para 18 of the cross examination she admits that plaintiff no. 2 terminate thier tenancy.

9. Mrs. Pant further argued that the letter dated 27.09.2025 have been enclosed in the revision which were in fact procured by the revisionist after the judgment of SCC court. She submits that this letter cannot be taken into consideration, since, the same were procured by the revisionist after disposal of the SCC suits. She submits that in the cross-examination the revisionist admits that the rent receipt was given with the signature of Baba Harjender Das who executed the *Will* in favour of the plaintiff no. 2 and despite such admission the revisionists procured the letter and placed on record by way of an affidavit only in order to mislead the Court, though, no such evidence was produced by the defendant in the SCC court. She also placed before this court copy of the *Will* dated 09.01.2014, which is also part of the record.

By referring the copy of registered *Will* dated 09.01.2014 Ms. Pant argued that on close scrutiny of the contents of the *Will* it is very clear that the plaintiff

have an absolute right to terminate the tenancy which has also been admitted by the revisionist in her cross-examination. Finally Mrs. Pant concluded her arguments by submitting that firstly the application moved under Order 1 Rule 10 of CPC by one of trustee in order to intervene in the proceeding was rejected by the Small Cause Court, but, the same was not been challenged, secondly the revisionists/defendants have no right to question the validity of the *will* which is the subject matter of different proceeding in a regular suit and lastly the application moved by the defendant under Section 23 of the Act was also rejected that too was also not challenged and, therefore, both the revisions are liable to be dismissed with cost since two letters dated 27.09.2025 were procured by the revisionist after the judgment and decree passed by the SCC court, though, there was no occasion to procure these letters in order to place on record by way of an affidavit, particularly when no such evidence was produced before the SCC court with regard to the deposit of rent the reference of which has been given in these letters.

10. At this juncture, Mr. Vashistha respond to the submission of Ms. Pant by submitting that the order rejecting the application under Section 23 of the Act is now merged into the final judgment and decree which is subject matter of the instant revision, therefore, arguments as advanced by Ms. Pant is misconceived and furthermore, two letter dated 27.09.2025, filed along with the revision were procured for the purposes to get stay of the judgment and decree passed by the SCC court in terms Order 41 Rule 5 of CPC.

11. Heard and perused the records of the SCC suit.

12. This is an admitted fact that the shops in question which are under tenancy of the revisionists are owned by the Trust, namely, "Udaseen Mandir Shrichand Charitable Trust" and there is no dispute on this that plaintiff no. 2 is the Manager of the Trust in favour of whom on 09.01.2014, a registered *will* was executed by Baba Harjender Das, the then life Manager and the Trustee of the Trust and in the capacity of the Manager of the Trust, plaintiff no. 2 instituted the SCC suits for ejectment and arrear of rent of the revisionists. This is also undisputed fact that some of the Trustees, in order to intervene in the proceedings of both the SCC suits, moved an application under Order 1 Rule 10 of C.P.C. and the same was rejected but never been challenged, though, the *Will* executed in favour of appellant no. 2 was challenged by the Trustees of the Trust in a different proceeding by way of regular suit which is pending for adjudication. In view of the fact that there is no challenge to the order rejecting application under Order 1 Rule 10 of CPC moved by the other trustee, the revisionist cannot take plea that the plaintiff no. 2 is not competent to file the suit. This plea was available to other trustees and the trustees are not before this Court, therefore, the argument, as advanced by Mr. Vashistha to this extent is not acceptable.

13. Apart from this, admittedly, the revisionists also filed an application under Section 23 of the Small Cause Courts Act, i.e., Paper No. 27 (Ga) however the same

was also rejected by the SCC court on 24.09.2021, but the same was never been challenged by the revisionist and the revisionists participate in the proceedings without challenging the same and finally the Small Cause Court decreed the suit on 18.09.2025, i.e., after more than three years of rejection of application under Section 23 of the Small Cause Courts Act. Now, the argument of Mr. Vashistha that the order dated 24.09.2021 is now merged in the final judgment and decree appears to be misconceived. Admittedly, in the application under Section 23 of the Small Cause Courts Act, revisionist raised an issue about the competency of plaintiff no. 2 and the same was dealt by the SCC court while rejecting the application by order dated 24.09.2021 which attains finality. If the revisionist questioned the competency of plaintiff no. 2 by moving a separate application under Section 23 of the Act, then he has to challenge the order rejecting the said application at relevant point of time. Since, there is no challenge to the order dated 24.09.2021, therefore, at this juncture when the Small Cause Court decreed the suit, the revisionist cannot take such plea which he has already taken in the application under Section 23 of the Small Cause Courts Act. Thus, argument as advanced by Mr. Vashistha in this regard is out rightly rejected.

14. Even otherwise, on perusal of the *Will* it reveals that plaintiff no. 2 derived all rights pursuant to the registered *Will* dated 09.01.2024 executed by Late Baba Harjender Das, and, as per the Trust deed plaintiff no. 2 being Manager of the Trust have absolute right to terminate the tenancy particularly when the revisionist-

Rakhi Bhatnagar in her cross-examination also admits that the rent receipts was given with the signature of Baba Harjender Das, who executed the *Will* in favour of plaintiff no. 2, and also admits that after his death when the rent was not paid, plaintiff no. 2 terminate the tenancy. Once the defendant/revisionist admits in her cross-examination about the rent receipt then the revisionist has no right to raise any issue with regard to the competency of plaintiff no. 2. Further, since, plaintiff no. 2 derived all rights for terminating the tenancy by virtue of registered *will* which is subject matter of the proceeding of another civil suit instituted by other Trustees, therefore, the revisionists, being a tenant cannot take any such plea with regard to right derive from the *will* by the plaintiff no. 2.

15. So far as letters filed along with the revision are concerned, there was no occasion to procure such letters in respect of which not a single piece of evidence were produced before the SCC court by the revisionist. The submission of Mr. Vashistha in this regard that only for a limited purpose these two letters have been placed on record appears to be after thought and misconceived for the simple reason that no such evidence with regard to the contents of these letters were placed before the SCC court. Admittedly, the revisionists were fully aware that the application moved by some of the Trustee under Order 1 Rule 10 of CPC is already rejected which was never been challenged and the *Will* is the subject matter of the proceeding of another regular suit filed by other Trustees, therefore, procuring these two letters that too after disposal of SCC suits reveals that only in

order to make out a case, the revisionists procured these letters from other Trustees and then placed before this Court.

Making such an attempt in the opinion of this Court reveals that, the revisionists have not approached this Court with clean hands, therefore, this Court is of the view that the revisionists does not deserve for any relief on this account also.

16. In view of the discussion as above, I do not find any merit in both the revisions and the same are dismissed being devoid of merits. In addition to this, since the revisionists have not approached with clean hands, a cost of Rs. 25,000/- is imposed upon each of the revisionist to be paid in the account of Advocates' Welfare Fund within a month.

17. Record of the Small Cause Court is remitted back.

(Rakesh Thapliyal, J.)