

18. Consequently, **while allowing the review application in part** to the extent of earlier omission to answer question No. (e), now having been answered in favour of the respondents, there would be no change in the final decision rendered by this Court, i.e., **dismissal of Second Appeal No. 2565 of 1984 shall remain intact.**

19. Since, despite dismissal of Second Appeal in December 2024, the execution proceedings have not been concluded for about five months, may be on account of pendency of this review application without there being any interim order and, considering the fact that the suit was instituted 43 years ago in the year 1982, it is directed that execution proceedings will be finalized by the court concerned **positively on or before 15.07.2025** and without issuing any further notices to any party, as both sides have hotly contested the Second Appeal as well as this review application by referring to execution proceedings too and have full knowledge of the same and due representation therein.

(2025) 5 ILRA 1767
REVISIONAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.05.2025

BEFORE

THE HON'BLE JASPREET SINGH, J.

Civil Revision No. 80 of 2011

Jugeshwar Prasad **...Revisionist**
Versus
Hanuman Prasad **...Opp. Party**

Counsel for the Revisionist:
Aftab Ahmad, Aftab Ahmad

Counsel for the Opp. Party:

Shyam Mohan, Ankit Mishra, Mohammad Raza Khan , Mohd. Ali

Civil Law -The Provincial Small Cause Court Act 1887-Section 23 & 25---

The Court of Small Causes is not denuded from considering the issue of title which incidentally arises in a suit before it. While considering an application under section 23 PSCC, the SCC court is not obligated to mechanically refer the suit to be decided by a regular court. In all cases where the issue of title is raised, the Court is required to consider the case and only if it finds that intricate questions of title are involved can it refer and return the plaint to be presented before the regular court. The power conferred under section 23 is discretionary in nature but even discretion which is to be exercised, should be within the four corners of law--- A suit for arrears of rent and ejection is seen on the parameters of subsistence of relationship between the parties as that of landlord and tenant. The question of title is never to be decided by the SCC Court and in case if it is incidentally raised by a party then the Court is competent to decide the same, prima facie, for the purposes of adjudicating a SCC Suit and in any case any such incidental finding is always subject to the decision of a suit filed and decided by regular courts.

Petition dismissed. (E-15)

List of the cases referred:-

1. 2019 (12) ADJ 281 (LB), Zubair Ahmad Khan Vs Court of Judge, Small Causes Court/A.D.J., Court No.4, Lakhimpur Kheri and other
2. Shamim Akhtar Vs Iqbal Ahmad & anr.2000 (2) ARC S C page 770
3. Budhu Mal Vs Mahabir Prasad & ors. AIR 1987 SC page 1772
4. Smt. Munni Devi & ors. Vs Xth Addl. District & Sessions Judge, Agara & ors. 1990 (16) ALR page 555,

5. Sahid Ahmed & ors. Vs Additional District Judge III, Saharanpur & ors. 2002 (2) ARC page 303

6. Sangam Lal Yadav Vs Brahm Swarup Tiwari 2012 ACJ 2376

7. Fazalur Rehman Vs Gopal Sahu 2016 SCC OnLine Allahabad 2643

(Delivered by Hon'ble Jaspreet Singh, J.)

1. Heard Shri Yusuf Saifi, learned counsel appearing under the authority of Shri Aftab Ahmad learned counsel for the revisionist and Shri Shyam Mohan learned counsel for the respondent.

2. The instant SCC revision has been preferred by the revisionist-defendant against the order dated 26.07.2011 passed by the Additional District Judge, Court No.2, Balrampur (acting as Judge Small Causes) in SCC Suit No.3/2001/1995 whereby an application under Section 23 of the Provincial Small Cause Court Act 1887 (hereinafter referred to as PSCC) moved by the revisionist bearing paper No.170 Ga was rejected.

3. In order to appreciate the controversy involved in the instant revision, brief facts are being noticed hereinafter.

4. Smt. Sampata Devi, the original plaintiff instituted SCC Suit No.3/2001/1995 against the revisionist namely Jugeshwar Prasad. It was stated in the plaint that Smt. Sampata Devi was the owner landlord of house No.135, situate in Puraniya Talab, District Balrampur. The property had been let out to the defendant Jugeshwar Prasad on a monthly rent of Rs.750/-. Since the defendant defaulted in

the payment of rent since June 1995, hence a composite notice for demand an ejection under Section 106 of the Transfer of Property Act was issued by Smt. Sampata Devi through counsel dated 02.07.1995. Since the defendant did not comply with the notice, hence the SCC suit seeking a decree of arrears of rent and ejection as well as damages for wrongful use an occupation was filed by Smt. Sampata Devi.

5. Jugeshwar Prasad, the original defendant filed his written statement and contested the suit on the ground that the property in question was ancestral. It belonged to Mahadev, who is the father of the defendant-revisionist and husband of Smt. Sampata Devi. It was stated that after the death of Mahadev, the property being ancestral the defendant himself had a right in the property alongwith his two other brothers, namely, Bhagwan Prasad and Hanuman Prasad. It was also urged that there was no relationship of land-lord and tenant between the plaintiff and the defendant and this was also made known to the plaintiff when the defendant sent its reply dated 06.08.1995 in reply to the notice dated 02.07.1995 issued by the plaintiff under Section 106 of the Transfer of Property Act.

6. During pendency of the suit several subsequent events took place as a consequence amendment were made in the plaint and in reply thereto, the defendant filed an additional written statement in response to the amended plea.

7. One important stage in the suit arrived when the original plaintiff, namely, Smt. Sampata Devi expired, upon her death, the other brother of the defendant, namely, Hanuman Prasad claimed right of

substitution in place of Smt. Sampata Devi on the basis of a Will said to have been executed by Smt. Sampata Devi on 30.11.1979 in his favour which was brought on record and marked as exhibit-26 Ka. This matter came to be contested as another person, namely, Santosh Chandra Gupta (son of the original defendant, namely, Jugeshwar Prasad) who also claimed right on the property stating that Smt. Sampata (grand mother of Santosh Chandra Gupta) had executed an unregistered Will dated 03.11.1996 in his favour. The trial court found that Hanuman Prasad was claiming on the basis of registered Will and it found favour with the trial court and his name was substituted. This came to be challenged by Santosh Chandra Gupta in a revision preferred before this Court bearing no.264 of 2003 and the same came to be disposed of by means of order dated 17.09.2007 with a direction to the trial court to decide the contesting claims of Hanuman Prasad (uncle of Santosh Chandra Gupta) and Santosh Chandra Gupta himself. In pursuance of the directions of the High Court, the trial court also permitted the parties to lead evidence on their respective Will and thereafter the matter was again decided and it was found that in place of Smt. Sampata the name of Hanuman Prasad be incorporated.

8. At this point of time, the said order of substitution was not challenged by Santosh Chandra Gupta and the matter proceeded. However, since the matter was being delayed hence Hanuman Prasad thereafter preferred a petition under Article 227 of the Constitution of India bearing No.3794 (M/S) of 2011 which came to be disposed of vide order dated 07.07.2011 directing the trial court to decide the SCC suit preferably within a period of six months.

9. At this stage the original defendant Jugeshwar Prasad filed an application bearing paper no.Ga 170 under section 23 of the Provincial Small Cause Court Act 1887 stating therein that the instant SCC suit involved intricate questions of both title and possession and in such circumstances the SCC suit was liable to be referred to be presented before the regular court for deciding the issue of title.

10. This was contested by the plaintiff of the suit by filing his objections bearing paper no.171 Ga. It was stated in the objections that there was no question of title involved; inasmuch as there were clear admission on behalf of the defendant that the property belonged to Smt. Sampata Devi and upon her death the property devolved on Hanuman Prasad on the basis of her Will and he has also been substituted in place of Smt. Sampata Devi hence only to delay the proceedings and overcome the direction given by the High Court for deciding the suit within a period of six months, the said application has been moved which deserves to be rejected.

11. The trial court after hearing the parties by means of order dated 26.07.2011 dismissed the application and the order of dismissal has been challenged in this revision before this Court. The record also indicates that a Co-ordinate Bench of this Court by means of order dated 25.08.2011 had stayed the operation and implementation of the order dated 26.07.2011.

12. In the aforesaid backdrop, the counsel for the revisionist has assailed the impugned order on the premise that the trial court incorrectly rejected the application under Section 23 of PSCC. It was urged that there were complicated question of

title involved in the suit which has not been taken note of, accordingly, the order impugned is bad.

13. It was further urged by the counsel for the revisionist that the property was ancestral in nature which came in the hands of Mahadev the father of the defendant Jugeshwar Prasad and husband of Smt. Sampata. It was urged that the property had been mortgaged which was redeemed by eldest son of Mahadev on behalf of the other brothers that included Hanuman Prasad as well as Jugeshwar Prasad. Reference was made to several documents indicating that there was clear dispute of title and neither the facts relating to the earlier litigation was mentioned, hence by ignoring the material the trial court has rejected the application which is not in sound exercise of jurisdiction.

14. It has been urged that the trial court had committed an error in saying that the issue stood concluded by admission of the revisionist which was incorrect; inasmuch as it was a case of misreading of pleadings and statement and it did not amount to any admission. It was also urged that the reliance placed by the trial court on the ownership certificate, issued by the municipal authority, could not be taken to be the basis nor any such certificate could confer title on Smt. Sampata.

15. It was further urged that even though the plaintiff/respondent had filed municipal receipts regarding payment of tax but that also could not be taken as a document of title. The tax receipts at best were only for fiscal purposes and that did not confer any title nor could be important for proving the title, hence the entire premise upon which the trial court had passed the order dated 26.07.2011 was

erroneous and patently bad hence deserves to be set aside after allowing the SCC revision.

16. Learned counsel for the revisionist has relied upon the decisions of this Court in *Smt. Sughra Begum Vs. Additional District Judge XIIth, Lucknow and others* 1999 (1) A.R.C., page 582, 2005 (3) ARC, page 599 *Ram Kishore Vs. IInd Additional District Judge, Mirzapur and others and Munshi Khan Vs. District Judge Ghaziabad & others*, 2002 (2) ARC, page 393.

17. In so far as the decisions cited by the counsel for the revisionist is concerned, they have been passed on the facts of the said case which are quite different from the case in hand especially the material which has been brought forward, hence the said decisions do not come to the rescue of the revisionist.

18. Shri Shyam Mohan, learned counsel for the respondent has submitted that the application preferred by the revisionist under Section 23 PSCC was apparently malafide. The suit was instituted in the year 1995 and it was being contested hotly. The matter had already come up before the High Court on an earlier occasion where the son of the defendant had contested the substitution application moved by the respondent, upon the death of Smt. Sampata.

19. It was further pointed out that after the matter was remitted by the High Court, did the application bearing no. Ga 170 was moved, by the defendant only with the intention to delay the proceedings. More than ten years have lapsed when the said application was moved and prior thereto the defendant never ever disputed

the title of Smt. Sampata or raised any such objection.

20. It was further urged that the plaintiff had filed certain documents to indicate that earlier in the year 1979 a suit for recovery of money was filed by M/S Shanti Cloth House against the revisionist and in the said suit the defendant had admitted that he was a tenant of the premises in question and that the premises belonged to Smt. Sampata. In the said suit, evidence was led wherein Jugeshwar Prasad who was the defendant gave his statement and admitted that the property in question to belonged to Smt. Sampata Devi and he also admitted that he was its tenant. It is at a much later stage that the defendant tried to develop a case regarding disputing the title of Smt. Sampata and as such the documents filed by the plaintiff indicating the title of Smt. Sampata and the said documents clearly established the same which also included the stand of the son of the defendant, namely, Santosh Chandra Gupta who had claimed the right of substitution in the instant suit on the basis of a Will executed by Smt. Sampata in favour of Santosh Chandra Gupta.

21. It is urged that all the aforesaid documents were taken note of and it was found that the application filed by the revisionist under section 23 PSCC was malafide hence it was dismissed and in the aforesaid circumstances, this revision too deserves to be dismissed.

22. The Court has heard the learned counsel for the parties and also perused the material on record.

23. At this stage it will be apposite to consider the scope of a revision under Section 25 of the Provincial Small Cause

Court Act 1887 and this Court *in 2019 (12) ADJ 281 (LB), Zubair Ahmad Khan Vs. Court of Judge, Small Causes Court/A.D.J., Court No.4, Lakhimpur Kheri and others* had noticed the same with the aid of decisions of the Apex Court. The relevant portion from para-12 to 14 are being reproduced hereafter:-

12. At the outset, it would be necessary to notice the scope of a revision under Section 25 of the Provincial Small Cause Court Act. The Hon'ble Apex Court in the case of Ram Murti Devi v. Pushpa Devi and others, 2017 (15) SCC 230, while considering the scope of revision under Section 25 of the Provincial Small Cause Courts' Act has stated in following words which reads as under :

"29. The High Court was hearing a revision under Section 25 of the 1887 Act. What is the scope of Section 25 of the 1887 Act came for consideration before this Court in Hari Shankar v. Rao Girdhari Lal Chowdhury [Hari Shankar v. Rao Girdhari Lal Chowdhury, AIR 1963 SC 698], where this Court laid down the following in para 9: (Hari Shankar case [Hari Shankar v. Rao Girdhari Lal Chowdhury, AIR 1963 SC 698], AIR p. 701)

"9. The section we are dealing with, is almost the same as Section 25 of the Provincial Small Cause Courts Act. That section has been considered by the High Courts in numerous cases and diverse interpretations have been given. The powers that it is said to confer would make a broad spectrum commencing, at one end, with the view that only substantial errors of law can be corrected under it, and ending, at the other, with a power of interference a little better, than what an appeal gives. It is useless to discuss those cases in some of

which the observations were probably made under compulsion of certain unusual facts. It is sufficient to say that we consider that the most accurate exposition of the meaning of such sections is that of Beaumont, C.J. (as he then was) in Bell & Co. Ltd. v. Waman Hemraj [Bell & Co. Ltd. v. Waman Hemraj, 1937 SCC OnLine Bom 99 : AIR 1938 Bom 223] where the learned Chief Justice, dealing with Section 25 of the Provincial Small Cause Courts Act, observed: (SCC OnLine Bom paras 3-4)

"3. The object of Section 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law.

4. The section does not enumerate the cases in which the Court may interfere in revision, as does, Section 115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at.

"This observation has our full concurrence.

" 30. Further, in Mundri Lal v. Sushila Rani [Mundri Lal v. Sushila Rani, (2007) 8 SCC 609] which was a case arising from Act 13 of 1972 and a revisional jurisdiction under Section 25 of the 1887 Act, in paras 22 and 23, this Court held that the jurisdiction under Section 25 of the Provincial Small Cause Courts Act, is wider than Section 115 CPC. It is further held that pure finding of the fact based on appreciation of evidence although may not be interfered but there are several circumstances in which the Revisional Court can interfere with the finding of fact. In paras 22 and 23 following was stated: (SCC pp. 617-18)

"22. There cannot be any doubt whatsoever that the revisional jurisdiction of the High Court under Section 25 of the Provincial Small Cause Courts Act is wider than Section 115 of the Code of Civil Procedure. But the fact that a revision is provided for by the statute, and not an appeal, itself is suggestive of the fact that ordinarily revisional jurisdiction can be exercised only when a question of law arises.

23. We, however, do not mean to say that under no circumstances finding of fact cannot be interfered therewith. A pure finding of fact based on appreciation of evidence although may not be interfered with but if such finding has been arrived at upon taking into consideration irrelevant factors or therefor relevant fact has been ignored, the Revisional Court will have the requisite jurisdiction to interfere with a finding of fact. Applicability of the provisions of Section 2(2) of the Act may in that sense involve determination of mixed question of law and fact."

13. Similarly in the case of Trilok Singh Chauhan v. Ram Lal, 2018 (2) SCC

566, once again while considering the scope of Revision under Section 25 of the Provincial Small Cause Courts Act the Apex Court has stated and the relevant portion reads as under :

"14. The High Court was exercising the jurisdiction under Section 25 of the 1887 Act, which provision is as follows:

"25. Revision of decrees and orders of Courts of Small Causes.-The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit."

15. The scope of Section 25 of the 1887 Act, came for consideration before this Court on several occasions. In *Hari Shankar v. Rao Girdhari Lal Chowdhury* [*Hari Shankar v. Rao Girdhari Lal Chowdhury*, AIR 1963 SC 698], in paras 9 and 10, this Court laid down the following: (AIR p. 701)

"9. The section we are dealing with, is almost the same as Section 25 of the Provincial Small Cause Courts Act. That section has been considered by the High Courts in numerous cases and diverse interpretations have been given. The powers that it is said to confer would make a broad spectrum commencing, at one end, with the view that only substantial errors of law can be corrected under it, and ending, at the other, with a power of interference a little better than what an appeal gives. It is useless to discuss those cases in some of which the observations were probably made under compulsion of certain unusual facts. It is sufficient to say that we consider that the most

accurate exposition of the meaning of such sections is that of *Beaumont, C.J.* (as he then was) in *Bell & Co. Ltd. v. Waman Hemraj* [*Bell & Co. Ltd. v. Waman Hemraj*, 1937 SCC OnLine Bom 99 : (1938) 40 Bom LR 125 : AIR 1938 Bom 223], where the learned Chief Justice, dealing with Section 25 of the Provincial Small Cause Courts Act, observed: (SCC OnLine Bom paras 3-4).

"3. ... The object of Section 25 is to enable the High Court to see that there has been no miscarriage of justice, that the decision was given according to law.

4. The section does not enumerate the cases in which the Court may interfere in revision, as does, Section 115 of the Code of Civil Procedure, and I certainly do not propose to attempt an exhaustive definition of the circumstances which may justify such interference; but instances which readily occur to the mind are cases in which the Court which made the order had no jurisdiction, or in which the Court has based its decision on evidence which should not have been admitted, or cases where the unsuccessful party has not been given a proper opportunity of being heard, or the burden of proof has been placed on the wrong shoulders. Wherever the Court comes to the conclusion that the unsuccessful party has not had a proper trial according to law, then the Court can interfere. But, in my opinion, the Court ought not to interfere merely because it thinks that possibly the Judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at. '

This observation has our full concurrence.

10. What the learned Chief Justice has said applies to Section 35 of the Act, with which we are concerned. Judged

from this point of view, the learned Single Judge was not justified in interfering with a plain finding of fact and more so, because he himself proceeded on a wrong assumption."

16. Another judgment which needs to be noted is judgment of this Court in *Mundri Lal v. Sushila Rani* [Mundri Lal v. Sushila Rani, (2007) 8 SCC 609]. This Court held that jurisdiction under Section 25 of the 1887 Act, is wider than the revisional jurisdiction under Section 115 CPC. But pure finding of fact based on appreciation of evidence may not be interfered with, in exercise of jurisdiction under Section 25 of the 1887 Act. The Court also explained the circumstances under which, findings can be interfered with in exercise of jurisdiction under Section 25. There are very limited grounds on which there can be interference in exercise of jurisdiction under Section 25; they are, when (i) findings are perverse or (ii) based on no material or (iii) findings have been arrived at upon taking into consideration the inadmissible evidence or (iv) findings have been arrived at without consideration of relevant evidence."

14. The scope of Section 25 of the Provincial Small Cause Court Act also came to be considered by a Coordinate Bench of this Court in the case of *Suresh Chandra v. Radhey Shyam Agrawal and others*, 2015(5) ADJ 449. The relevant paras reads as under :

"76. The language of Section 25 is different than the Revisional Court's powers conferred on Civil Court under Section 115 C.P.C.

77. Act, 1887 constitute Small Cause Courts not of exclusive but

preferential and limited jurisdiction. The class of suits not cognizable by small causes is listed in the schedule appended to Act, 1887. The provisions of Civil Procedure Code inapplicable to Small Cause Court are provided in Section 7 of C.P.C. By Section 40 of Bengal, Agra and Assam Civil Courts Act, 1887 certain provisions thereof, i.e., Sections 15, 32, 37, 38 and 39 have been applied to Small Cause Courts. vide Section 7, applicability of Sections 96, 112 and 115 C.P.C. is made inapplicable to Small Causes Court, meaning thereby its judgment is made non-appealable. The Trial in Small Cause Court is summary and its decision is final subject to revision under Section 25 only. It is in these circumstances, one has to make a distinction between power of Revisional Court under Section 25 and other appellate and revisional powers under C.P.C. or other provisions of procedural statutes.

78. The circumstances where Revisional Court to find out whether decision of Small Cause Court is in accordance with law, may look into the facts without assessment have been explained in para 19 and 20 of judgment of Division Bench in *Laxmi Kishore and another v. Har Prasad Shukla*, 1981 ARC 545 and it says:

"19. If it finds that there is no evidence to sustain a finding on a particular issue of fact, it can ignore that finding. Same will be the case where the finding is based only on admissible evidence. In such case, the Court will be justified in deciding the question of fact itself, because the evidence is all one way. No assessment is needed. The Court can also decide the revision if only a question of law or some preliminary point of law, viz. validity of notice, is sufficient for its decision.

20. *But, if it finds that a particular finding of fact is vitiated by an error of law, it has power to pass such order, as the justice of the case requires; but it has no jurisdiction to reassess or reappraise the evidence in order to determine as issue of fact for itself. If it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guidelines. It cannot enter into the evidence, asses it and determine an issue of fact."*

79. *The bar, in effect, is with respect to reassessment of evidence and substitute its conclusion of fact but not where relevant evidence has not been considered or finding is based on inadmissible evidence or finding is without any evidence etc. In Dr. D. Sankaranarayanan v. Punjab National Bank, 1995 Supp. (4) SCC 675, the Apex Court reiterate that reassessment of evidence is not permissible to substitute its own inference but not where the decision is not in accordance with law. If the Revisional Court does not agree with finding, that by itself cannot be a ground since it is within the realm of assessment of evidence. This is what has been observed by Apex Court in Rafat Ali v. Sugni Bai and others, JT 1998(8) SC 157; Sri Raj Laxmi Dyeing Works v. Rangaswami, JT 1998(4) SC 46; Sarla Ahuja v. United Insurance Company Ltd., JT 1998 (7) SC 297; and, Ramdoss v. K. Thangavelu, JT 1999(10) SC 51."*

24. Now its time to consider the provision of section 23 PSCC which reads as under:-

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 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.

25. The aforesaid section 23 PSCC has been made the subject matter of consideration by this Court as well as the Apex Court and certain relevant decisions on this point are being noticed hereinafter:- In ***Shamim Akhtar Vs. Iqbal Ahmad and another 2000 (2) ARC S C page 770***, the Apex Court had the occasion to consider the scope of Section 23 of the Provisional Small Cause Court Act and it held that it is within the powers of the Court of Small Causes to consider upon the prove or disprove of a title to immovable property and if it comes to a conclusion that the title cannot be determined by the said court then it is open for the Court to return the plaint to be presented before the Court having jurisdiction to determine the title. However, the power exercised under Section 23 of the Provincial Small Causes Court Act is discretionary. The relevant portion of the said judgment paragraph-12 reads as under:-

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 Cause Courts Act. Section 23(1) provides that when the right of a plaintiff and the relief claimed by him in a Court of Small Causes 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 Cause 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 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 Cause 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 Cause Court to determine*

finally the title to the property. The respondent tenant 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 Cause Courts Act.

The Apex Court in ***Budhu Mal Vs. Mahabir Prasad & others AIR 1987 SC page 1772***, again taking note of the powers under section 23 of the PSCC Act in paragraph-9 has held as under:-

9. *It is true that Section 23 does not make it obligatory on the Court of Small Causes to invariably return the plaint once a question of title is raised by the tenant. 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 Causes in this behalf could not be res judicata in a suit based on title. It cannot, however, be gainsaid that in enacting Section 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. On the facts of the instant cases we feel that these are such cases in which in order to do complete justice between the parties the plaints ought to have been returned for presentation to a court having jurisdiction to determine the title. In case the plea set up by the appellants that by the deed dated December 8, 1966 the benefit arising out of immovable property which itself constituted immovable property was transferred and in pursuance of the information conveyed in this behalf by Mahabir Prasad to them the appellants started paying rent to Smt*

Sulochna Devi and that the said deed could not be unilaterally cancelled, is accepted, it is likely not only to affect the title of Mahabir Prasad to realise rent from the appellants but will also have the effect of snapping even the relationship of landlord and tenant, between Mahabir Prasad and the appellants which could not be revived by the subsequent unilateral cancellation by Mahabir Prasad of the said deed dated December 8, 1966. In that event it may not be possible to treat the suits filed by Mahabir Prasad against the appellants to be suits between landlord and tenant simpliciter based on contract of tenancy in which an issue of title was incidentally raised. If the suits cannot be construed to be one between landlord and tenant they would not be cognizable by a Court of Small Causes and it is for these reasons that we are of the opinion that these are such cases where the plaints ought to have been returned for presentation to appropriate court so that none of the parties was prejudiced.

A Coordinate Bench of this Court in *Smt. Munni Devi & others Vs. Xth Addl. District & Sessions Judge, Agara & others 1990 (16) ALR page 555*, considering the provisions of Section 23 and relying upon the earlier decision of the Apex Court in *Budhu Mal* has held as under:-

10. In a recent case reported in (1988) 4 SCC 194 : AIR 1988 SC 1772 *Budhumal v. Mahabir Prasad*, it has been held:

“Section 23 of the Small Cause Court Act does not make it obligatory on the Court of Small Causes to invariably return the plaint once a question of title is raised by the tenant in a suit for eviction.

Also 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 any finding recorded by a Judge Small Causes in this behalf could not be res judicata in a suit based on title.”

11. In my opinion the Judge Small Cause had jurisdiction to decide the question of title incidentally involved in the case. The effort on the part of the petitioners' counsel for getting the case remanded to the Judge Small Causes to frame an issue and decide would be only a futile exercise in the absence of any material on record. Moreover in the reply dated 31-1-1967 sent by the petitioners it has been stated that rent up to 31-1-1967 has been paid by them to the plaintiff-landlord. This amounts to an admission of the relationship of landlord and tenant. The objection of the petitioners on this question does not appear to be a bona fide one

Another Co-ordinate Bench of this Court in *Sahid Ahmed & others Vs. Additional District Judge III, Saharanpur & others 2002 (2) ARC page 303* has considered the earlier decisions and held in paragraph-4 as under:-

4. In view of the law laid down in my opinion the trial court as well as the revisional court has not committed any error of law. This Court in the case reported in 1987 Vol. (1) ARC page 89, para 10, which is reproduced below has held that:

“10. On a reading of this subsection (1), it is apparent that a discretion has been conferred on the Court to return the plaint if it is satisfied that a question of title is involved in the suit which it cannot

finally determine. It is only in such a situation that it is open to the Court of Judge, Small Causes to exercise a discretion whether return the plaint or not. A mere allegation in the written statement that the title vests in a defendant in a suit filed for ejection and arrears of rent, is by itself not sufficient to establish that the question of title is involved in a suit. Only after evidence has been produced and the Court is of the opinion that a question of title is involved in the suit, which the Court of Judge, Small Causes cannot finally determine, it is open to the Court to return the plaint. In the present case, only a written statement had been filed in which the title had been set up. Mere filing of the written statement does not entitle the defendant-petitioner to move an application for return of the plaint to the proper court. In view of the above, I am of the opinion that the Court below was right in refusing to exercise a discretion under Section 23 of the Act at this stage.”

Again *in Sangam Lal Yadav Vs. Brahm Swarup Tiwari 2012 ACJ 2376* a Co-ordinate Bench of this Court in paragraphs 10 to 18 has held as under:-

10. A bare reading of the provision shows that it gives an option to the Court to return the plaint to be presented to a Court having jurisdiction to determine title but before that it has to be satisfied that right of the plaintiff and the relief claimed by him depend upon the proof or disproof of a title to immovable property.

11. Section 23 of Act, 1887, therefore, does not oust jurisdiction of Small Cause Court to decide the question of title outright. It has been repeatedly held that question of title cannot be finally

decided in a small cause suit, but it can be decided incidentally for the purpose of deciding the main issue, in a case, which otherwise is within the jurisdiction of the Small Cause Court.

12. Section 23 of Act, 1887 has been construed by a three Judges judgment of Apex Court in Budhu Mal v. Mahabir Prasad (1988) 4 SCC 194 and the Court said:

“It is true that section 23 does not make it obligatory on the Court of small causes to invariably return the plaint once a question of title is raised by the tenant. 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 Causes in this behalf could not be res judicata in a suit based on title. In cannot, however, be gainsaid that in enacting section 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. On the facts of the instant cases we feel that these are such cases in which in order to do complete justice between the parties the plaints ought to have been returned for presentation to a Court having jurisdiction to determine the title.”

13. The Court has further said that, if the suit cannot be construed to be one between landlord and tenant, that would not be cognizable by Court of Small Causes.

14. Again in Shamim Akhtar v. Iqbal Ahmed (2000) 8 SCC 123, the Apex Court said that the Small Cause Court is entitled to decide the question of title only incidentally and for the purposes of a suit

in between alleged landlord and alleged tenant but such decision is subject to the decision of the regular Civil Court.

15. *To the same effect is the decision of this Court in Sheel Chand v. IInd A.D.J., Jhansi 2006 (1) ARC 359 .*

16. *In the authority cited by the petitioner also, there is echo of the same view, consistent with what I have referred to above. In Harnam Singh (supra) in para 4 the Court said, "It is well settled in law that if any suit filed on the basis of relationship of landlord and tenant, question of title incidentally arises, the Judge, Small Cause Court should decide the said question."*

17. *Similarly in Iqbal Ahmad (supra) in para 5 of the judgment the Court said:*

"A bare perusal of section 23 of the Small Causes Court Act makes it clear that in order to attract the same, the Court has to come to the conclusion that the relief claimed by the plaintiff in the suit depends upon proof or disproof of title to the immovable property involved, which such Court cannot finally adjudicate because the proceedings before the Small Cause Court are of summary nature and for determining the question of title an elaborate enquiry is required which has to be left to be held by a competent Court having jurisdiction for determining the said question. It will not be a correct proposition of law to say that the Court Small Causes has no jurisdiction at all to go into the question of title, therefore, whenever the title of the plaintiff is disputed the Judge Small Causes Court is bound to return suit for presentation before the proper Court. It has also the power to go into such question incidently for

determining the real issue before it. For this view support may be had from the decision rendered in writ petition No. 22390 of 1991, Rakesh Kumar v. Vith Addl. District Judge, decided on 7.4.1998 (reported in 1998 (2) ARC 178)."

18. *The above authorities clearly show that a mere dispute of title raised would not oust the jurisdiction of Small Cause Court in proceeding to decide a suit filed before it and it is not bound to return the plaint on such dispute. Section 23 clearly says only when the Court comes to the conclusion that it cannot decide the right of the plaintiff and relief claimed by him since that would depend upon the proof or disproof of a title to immovable property, it may return the plaint and not otherwise.*

Again in **Fazalur Rehman Vs. Gopal Sahu 2016 SCC OnLine Allahabad 2643**, the Co-ordinate Bench of this Court in paragraphs-8 and 9 has held as under:-

8. *In this case there appears to be no dispute qua the heirs of the erstwhile landlord with regard to inheritance of the property in suit and it is also not in dispute that the erstwhile owner/landlord was the grandfather of the plaintiff, whose Will has been set up by the plaintiff, after his death. A perusal of the written statement also reveals that the defendant has neither set up title in himself nor on anybody else though he has claimed that to prove the Will the burden is on the plaintiff who had set up the same. It is well settled that while considering a plea to return the plaint to a Court of competent jurisdiction, in exercise of power under section 23 of the Provincial Small Causes Court Act, the JSCC Court is vested with a discretion to return or not to return the same and it is not obligatory on*

the Court to return the plaint once a question of title is raised by the tenant because such questions of title can be incidentally gone into while deciding the question of landlord-tenant relationship between the plaintiff and defendant. In Shamim Akhtar v. Iqbal Ahmad, the Apex Court took the view that the power vested, under section 23(1) of the Provincial Small Causes Court Act, in the Court is discretionary. It was observed that 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. Following the said decision in the case of Ram Sewak v. Pramod Kumar, this Court approved examination by the JSCC Court of a question relating to valid execution of Will by the erstwhile landlord in favour of the plaintiff by holding that such questions could be incidentally gone into while deciding the question of landlord-tenant relationship between the plaintiff and defendant. In fact, the correctness of the decision in Ram Sewak's case (supra), has not been doubted, rather it has been accepted, in the decision of Mst. Bhagwati Devi (supra), vide paragraph 32 of the report, which has been relied upon by the learned Counsel for the revisionist.

9. In the instant case, there is no dispute qua the heirs of the erstwhile landlord therefore it is open to the Court below to incidentally examine the question relating to execution of the Will in favour of the plaintiff, particularly in view of the fact that obtaining of probate on a Will is not mandatory for a Will to be set up in respect of property located within the State of U.P. (vide : Nobat Ram v. Gayatri Devi.)

26. From the perusal of the aforesaid decisions it could be clear that the Court of Small Causes is not denuded from considering the issue of title which incidentally arises in a suit before it. While considering an application under section 23 PSCC, the SCC court is not obligated to mechanically refer the suit to be decided by a regular court. In all cases where the issue of title is raised, the Court is required to consider the case and only if it finds that intricate questions of title are involved can it refer and return the plaint to be presented before the regular court. The power conferred under section 23 PSCC is discretionary in nature but even discretion which is to be exercised, should be within the four corners of law.

27. Applying the principles as noticed above to the facts of the instant case, it would reveal that admittedly since the inception of the suit in the year 1995 till today the defendant namely Jugeshwar Prasad never instituted any proceedings either seeking title or on its basis. This assumes significance for the reason that even though the defendant claims that the property was ancestral but the fact remains that the suit proceedings were initiated in the year 1995 and if there was any misgiving in the mind of the defendant, he could have instituted a suit of title/declaration/partition of his rights. However, the same was never done. A feeble plea, stating that the property was ancestral in nature, was raised but neither the defendant nor any other person claimed any right or title which was contrary to the right of Smt. Sampata Devi nor any evidence was introduced.

28. As far as the property bearing house no.135, Puraniya Talab, District Balrampur is concerned, the same has been

recorded in the name of Smt. Sampata Devi since decades. The record would also reveal that even though the municipal receipts as well as the title certificate issued by the municipal authority may not decide the issue of title but the fact remains that all these documents were placed on record by Smt. Sampata Devi and after her by Hanuman Prasad (brother of the defendant) yet no suit was filed by the Jugeshwar Prasad in his life time challenging the same despite he in his life time was very well aware of the fact that Hanuman Prasad his brother was claiming rights in the property on the basis of a Will executed by Smt. Sampata.

29. What is significant to note that the Will executed by Smt. Sampata in favour of Hanuman Prasad on 30.11.1979 which is bearing exhibit no.25 Ka was witnessed by Jugeshwar Prasad himself, thus it could not be said that Jugeshwar Prasad was not aware of the same and when the written statement was filed on record yet he did not raise any challenge to it.

30. Another aspect that unfolds from the record is the fact that upon the death of Smt. Sampata while Hanuman Prasad claimed rights in the property on the basis of a Will, this was never disputed by Jugeshwar Prasad himself. On the contrary, the son of Jugeshwar Prasad, namely, Santosh Chandra Gupta filed an application seeking his impleadment/substitution in the suit claiming right on the basis of a Will executed by Smt. Sampata in her favour.

31. It will be relevant to notice that the moment Santosh Chandra Gupta claimed rights in the property on the basis of an alleged Will executed by Smt. Sampata Devi it demonstrates that Santosh

Chandra Gupta accepted that the property belonged to Smt. Sampata and she had the right to execute the said Will. This indicates that son of Jugeshwar Prasad admits that the property belonged to Smt. Sampata Devi and the father of Santosh Chandra Gupta i.e. Jugeshwar Prasad did not challenge the said averment nor instituted any suit stating that these facts are not correct nor the Will of Smt. Sampata was ever challenged by Jugeshwar Prasad irrespective of the Will which was executed by Smt. Sampata Devi in favour of Hanuman Prasad or in favour of Santosh Chandra Gupta.

32. What is further revealed from the record is the fact that it is Santosh Chandra Gupta who filed a suit bearing no.59 of 2011 before Civil Judge (Senior Division), Balrampur seeking declaration on the basis of an unregistered Will said to have been executed by Smt. Sampata Devi in his favour on 03.11.1996. This clearly indicates that even though the son of Jugeshwar Prasad may have instituted a suit claiming title on the basis of the Will but the fact remains that as Santosh Chandra Gupta, while seeking declaration of his right on the basis of the Will executed by Smt. Sampata Devi, but nevertheless, he tacitly and expressly admitted the title and ownership of Smt. Sampata Devi.

33. The record also indicates that in a suit instituted by M/S Shanti Cloth House bearing Regular Suit No.106 of 1979 wherein a decree of recovery of money was sought against Jugeshwar Prasad. In the said suit, Jugeshwar Prasad in his pleadings as well as in his statement had stated that the property in question belonged to Smt. Sampata Devi. The statement as well as written statement of Jugeshwar Prasad in

Regular Suit No.106 of 1979 has been placed on record and from the perusal thereof there is a clear admission of Jugeshwar Prasad in this regard. Thus, it cannot be said that there was no admission of Jugeshwar Prasad in this regard or that the trial court had incorrectly appreciated the said admission. It may be correct to some extent to state that the house tax receipts or certificate issued by the municipal stating that the property belonged to Smt. Sampata may not be conclusive proof of title but considering the facts and circumstances and the manner in which these entries have been continuing since several decades and had not been challenged by any of the brother of the defendant, does lend some credence to the fact that the suit filed by Smt. Sampata Devi for arrears of rent an ejectment could not be sidelined merely because at the fag and of the suit and issue of alleged title had been raised by the defendant.

34. There was no explanation offered from the side of the revisionist as to what prevented the revisionist to raise the issue of title in the first instance when the suit was contested. There was also no explanation that in what circumstances the son of the revisionist himself claimed rights in the property which tacitly accepted the title of Smt. Sampata Devi and despite all these facts known to the revisionist he did not take any steps to get his right declared or initiate any worth while proceedings to get his right vindicated.

35. Another fact which could not be disputed by the revisionist was that a suit had been filed by M/S Shanti Cloth House wherein Jugeshwar Prasad in his written statement had stated that the property was that of Smt. Sampata Devi and he was its tenant. It is also to be seen

that even though the revisionist had attempted to dispute the title of Smt. Sampata Devi but he has not indicated in whom does the title vest whether it was with him or in any other person.

36. A suit for arrears of rent and ejectment is seen on the parameters of subsistence of relationship between the parties as that of landlord and tenant. The question of title is never to be decided by the SCC Court and in case if it is incidentally raised by a party then the Court is competent to decide the same, prima facie, for the purposes of adjudicating a SCC Suit and in any case any such incidental finding is always subject to the decision of a suit filed and decided by regular courts.

37. Having said that this Court finds that neither the revisionist has claimed title in himself nor through the entire litigation which commenced in 1995, the revisionist made any attempt to get his rights declared rather the attempt has been to raise contention without following it to its logical conclusion. In the aforesaid facts and circumstances, this Court does not find that the decision rendered by the SCC Court dated 26.07.2011 suffers from any patent error which may persuade this Court to intervene.

38. This revision has been pending before this Court since 2011 and more than fourteen years have lapsed. There is already an earlier order for the trial court to decide the proceedings within a period of six month, hence this Court does not wish to provide any further direction except that henceforth the period of six months shall be reckoned from the date of this judgment so that the proceedings can be finally decided by the trial court as expeditiously as

possible by fixing dates on weekly basis. The parties shall appear before the trial court on 27th of May, 2025.

39. With the aforesaid directions and observations, this Court finds that the revisions lacks merit and is, accordingly, **dismissed**. The order passed by the trial court dated 26.07.2011 is upheld. Costs are made easy.

40. The record of the trial court shall be remitted to the court concerned most expeditiously by sending a special messenger within a week from today.

(2025) 5 ILRA 1783

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 12.05.2025

BEFORE

**THE HON'BLE MRS. MANJU RANI
CHAUHAN, J.**

CrI. Misc. Application U/S 482 No. 39316 of
2023

Dr. Neeraj Kumar ...Applicant
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Applicant:

Sri Shekhar Chaudhary, Sri Vishal Kashyap,
Sri G.S. Chaturvedi (Sr. Advocate)

Counsel for the Respondents:

Sri Anuruddh Chaturvedi, Sri Dinesh Kumar
Sharma, G.A.

Criminal Procedure Code, 1973 - Section 482 — Indian Penal Code, 1860 - Sections 304 & 304A — Medical negligence — Prosecution of doctor — Scope of criminal liability — Confessional St.ment to police — Inadmissibility — Medical Board exonerating the applicant — Magistrate's failure to consider expert opinion before

summoning — Held, confession recorded under Section 161 Cr.P.C. inadmissible — Medical practitioner cannot be prosecuted under Section 304, 304AIPC unless gross or reckless negligence of a very high degree is proved- Proceedings quashed. (Paras 29, 48, 55, 59, 66 and 69)

HELD:

Coming to the merits of the case, two issues have been touched upon by learned counsel for the applicant. The primary issue for consideration is whether a St.ment recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure can form the basis for initiating criminal proceedings against the applicant, and whether such a St.ment is admissible as evidence for that purpose. (Para 29)

In light of the legal principles established in Jacob Mathew (supra) case, the liability of a doctor for medical negligence must be assessed carefully. A doctor who diligently treats and cures a patient should not be held criminally liable for mere errors in judgment or minor lapses. However, those doctors who act with gross negligence, demonstrating a blatant disregard for standard medical practices, can be held accountable under criminal law. (Para 48)

In Jacob Mathew Vs St. of Punj. & anr.11 , the Hon'ble Apex Court, in paragraph 12 of the judgment, held that mere lack of care or an act of negligence, which may give rise to civil liability, is not sufficient to attract criminal liability. The Court emphasized that negligence, for the purpose of establishing a criminal offence, must be of a gross or very high degree. Only such aggravated negligence can amount to a criminal act warranting penal consequences. (Para 55)

It is an admitted position that the applicant was a qualified doctor. There are no specific allegations of any act of omission or commission against the accused persons in the entire plethora of documents relied upon by learned counsel for the parties. The act of giving injections as attributed to the doctor, even if accepted to be true, could be described as an act of negligence as there may have been a lack of due care and precaution prior to giving the