Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Revision No.8 of 2019

Har Mohinder Pal Singh S/o Late Sardar Inder Singh, R/o 28 (45, 45/1) Malviya Road, Lakshman Chowk, Dehradun

…. Revisionist

Vs.

Rajendra Pal Singh S/o Late Sardar Bachan Singh
R/o Malviya Road, Lakshman Chowk, Dehradun

.... Respondent

Counsels:
Mr. Pooran Singh Rawat, Advocate for the revisionist
Mr. Aditya Singh, Advocate for the respondent

JUDGMENT

Hon'ble Lok Pal Singh, J.

This civil revision, under Section 25 of The Provincial Small Cause Courts Act, 1887 *(hereinafter to be referred as the Act)* is directed against the judgment and decree dated 08.01.2019 passed by Judge, SCC/First Additional District Judge, Dehradun in S.C.C. Suit No.03 of 2012 Har Mohinder Pal Singh vs. Rajendra Pal Singh, whereby the Judge SCC has dismissed the revisionist/plaintiff's suit.

2. Factual matrix of the case is that the plaintiff/revisionist filed SCC suit no.03 of 2012 for a decree of ejectment, arrears of rent and mesne profit against the defendant/respondent stating that the plaintiff is the owner and landlord of property

no.28(45/45/1) Malviya Road Lakshman Chowk, Dehradun. Some other co-owners are residing in abroad and in other cities, due to which the plaintiff/revisionist is the landlord/co-owner of suit property. It was stated that a part of the suit property, comprising of three rooms, one common drawing room, kitchen, toilet and bathroom, was let out on rent to the defendant/respondent for a period of 11 months at the rate of Rs.2200/- per month vide agreement dated 15.05.2008. The tenancy of the respondent/defendant has come to an end on 14.04.2009 but even then the defendant has not vacated the suit property despite the request of the plaintiff. It was further stated that the defendant has paid the rent upto 15.09.2008 only and thereafter he has not paid any rent. Besides this, the electricity and water charges are also due on the defendant. Whenever the plaintiff demanded the rent and other charges, the defendant used to abuse and commit marpeet with him. Therefore, the plaintiff sent a legal notice dated 22.04.2010 to the defendant demanding the rent and electricity and water charges, but despite receiving the said notice, the defendant has neither paid the rent and other charges, nor has handed over the vacant possession of the suit premises to him. Thus, the plaintiff constrained to file the present suit, for a decree of eviction, arrears of rent and other charges amounting to Rs.64,100/- along with interest @ 12 % per annum and mesne profits @ Rs.300/- per day w.e.f. 19.05.2010.

3. The respondent/defendant contested the suit and filed his written statement and denied the plaint averments. He admitted that initially the suit property was let out to him by the plaintiff and the tenancy

commenced from 15.05.2008 for 11 months @ c#2200/- per month. He stated that subsequently he came to know that plaintiff has no share and there are about 7 co-owners of this property, who are residing abroad. The plaintiff clandestinely with ulterior motives and for unjust enrichment under deep conspiracy is trying to sell the property without any right or authority. It is stated that the suit is legally not maintainable. Provisions of the Act No.13 of 1972 are applicable to the suit property. He further stated that the plaintiff has executed a rent agreement dated 05.07.2011 on the following terms and conditions: (i) that the plaintiff has taken Rs. 2 lakhs from the defendant as security and this amount will not bear any interest and the same is to be returned by the plaintiff after the expiry of the lease period within two months and the rent period is upto 4.6.2012. There is no rent etc. due towards the defendant; (ii) That the rate of rent has been fixed Rs.1200/- per month, which includes the house tax as well as water tax; (iii) that the plaintiff will install a separate sub electric meter and will charge as per reading. The defendant further stated that he has paid the amount of rent, cost of suit, interest and other expenses vide tender dated 01.08.2012 for Rs.20,000/- and thus he is entitled to the benefit of Section 20(4) of the Act No.13 of 1972. The rent from January 2012 upto September 2012 has been deposited through tender.

4. The revisionist/plaintiff filed replica to the written statement and reiterated the plaint averments. He further stated that the defendant has stated that the plaintiff has executed the rent deed by fraud whereas the true fact is that the defendant, on the basis of said rent deed, has filed a suit for prohibitory injunction

against the plaintiff in the court of Civil Judge (Junior Division) Dehradun being O.S. No.471 of 2008, wherein an order of interim injunction has been granted in his favour, and the suit is still pending. The plaintiff denied the contents and execution of rent deed dated 05.07.2011. He further stated that the defendant has prepared the forged and fabricated rent deed 05.07.2011. He further reiterated that he is co-owner of the suit property alongwith others and because other co-owners are residing in abroad and other cities, he is co-owner and landlord of the suit property. There is landlord-tenant relationship between the parties, which can be proved from the fact that whenever the tenant paid the rent to the plaintiff, the plaintiff has always given him receipt, which the defendant produced in the court while obtaining order of injunction in O.S. No.471 of 2008. He further stated that the defendant has averred that he has deposited an amount of Rs.20,000/- vide tender deposit dated 01.08.2012 but he has not given any particulars of the deposit made by him. He further stated that the provisions of U.P. Act No.13 of 1972 are not applicable to the suit premises.

5. On the pleadings of parties, learned Judge SCC framed the following issues:-

(i) Whether there was landlord-tenant relationship between the plaintiff and defendant?

(ii) Whether the tenancy of the defendant has been terminated by the notice sent by the plaintiff?

(iii) Whether rent deed dated 05.07.2011 was executed between the plaintiff and defendant?

(iv) Whether the plaintiff has a right to receive rent and terminating the tenancy of the defendant after he has sold out the suit property?

(v) Whether the plaintiff is entitled to get the relief sought?

6. Thereafter both the parties led their oral and documentary evidence. In oral evidence, the plaintiff Har Mohinder Pal Singh got examined himself as PW1 and filed notice, original copy of postal receipt, acknowledgment, rent deed, police report, copy of FIR, rent receipt, order passed in O.S. No.471 of 2008, copy of application moved to SSP, plaint of O.S. No.471 of 2008, etc. On behalf of defendant, DW1 Rajendra Pal Singh, DW2 Yashpal Singh, DW3 Vinod Sharma, DW4 Manjeet Singh and DW5 Ranjan Singh were got examined. In documentary evidence, he filed original copy of tender, copy of affidavit, tender paper, original copy of notice dated 29.08.2019, receipt of house tax, certified copy of the order of Hon'ble High Court, copy of sale deeds, agreement, etc.

7. After hearing the learned counsel for the parties and on perusal of evidence led by the parties, the trial court, on issue no.1, recorded a finding that a rent deed dated 15.05.2008 was executed with regard to the suit property and after execution of the same, there established landlord-tenant relationship between the plaintiff and respondent. Thus, the issue no.1 was decided in favour of the plaintiff. On issue no.2, the trial court held that the notice issued by the plaintiff thereby demanding arrears of rent and terminating his tenancy, was duly served upon the defendant, and accordingly,

this issue was also decided in favour of the plaintiff. On issue no.3, the trial court recorded a finding that the defendant has pleaded that one other rent deed dated 05.07.2011 was executed by the plaintiff, whereby the tenancy of the defendant was extended, and it was asserted by the defendant that the original copy of the said rent deed is with the plaintiff. In order to prove the execution of rent deed dated 05.07.2011, besides the defendant Rajendra Pal Singh (DW1), DW2 Yashpal Singh and DW5 Ranjan Ginni were also examined, who deposed that rent deed dated 05.07.2011 was executed before them. The defendant had given Rs.2.00 lakhs cash to the plaintiff and as per the agreement, parties agreed for rent @ Rs.1200/- per month. The trial court recorded finding that witness to the agreement i.e. DW2 Yashpal Singh and DW5 Ranjan Ginni have proved the execution of rent deed and accordingly held that rent deed dated 05.07.2011 was executed between the parties and decided issue no.3 in favour of defendant. On issue no.4, the trial court recorded a finding that the suit property admeasuring 1542 sq. mtr. was divided among seven sons of Sadhu Singh and each of them received 1/7th share in the property and all the parts of the property have been sold out, and if it is assumed that the plaintiff is residing as co-owner, in that event also, it is not known as to in which portion the plaintiff is having his possession, and in this regard, the plaintiff has not been able to prove that he is co-owner in the suit property and it appears that he has no rights over the property which is under the tenancy of the defendant. The trial court, thus, recorded finding that after the parts of the suit property has been sold out, the plaintiff has no right over the suit property. On issue no.5, the trial court recorded finding as the entire

suit property has been sold out, the plaintiff does not have any right over the suit property, and thus the plaintiff's suit is liable to be dismissed. On the basis of findings recorded, the trial court, vide judgment and decree dated 08.01.2019, dismissed the plaintiff's suit.

8. I have heard learned counsel for the parties and perused the entire material available on record.

9. Learned counsel for the revisionist/plaintiff would submit that the learned Judge SCC has erred in law in entering into the question of title and ownership of the revisionist/plaintiff over the suit property in a suit for eviction and recovery of rent. He would further submit that on issue no.1 the trial court has recorded a categorical finding that there exists landlord-tenant relationship between the plaintiff and defendant whereas on the issue no.4 and 5, contradictory findings have been recorded by the trial court that after the part of suit property has been sold out, the plaintiff has no right over the suit property and that the suit is liable to be dismissed.

10. Per contra, learned counsel for the respondent/defendant would support the judgment and decree passed by the Judge SCC and would submit that the findings recorded by Judge SCC, on issue nos.3, 4 and 5, are based on appreciation of evidence. Thus, being essentially a finding of fact based on appreciation of evidence, the same cannot be interfered with and disturbed in exercise of revisional jurisdiction under Section 25 of the Act. To bolster his submission, he would place reliance on a judgment of Hon'ble Supreme Court rendered in the case of **Trilok Singh Chauhan**

vs. Ram Lal (Dead) and others (2018) 2 SCC 566 and would refer to following paragraphs:-

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

> **"Sec. 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 Act, 1887 came for consideration before this Court on several occasions. In Hari Shankar & Ors. Vs. Rao Girdhari Lal Chowdhury, AIR 1963 SC 698, in Para Nos. 9 and 10, this Court laid down the following:

> "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, (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:
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> "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.
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> 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 may 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 plan 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 Vs. Sushila Rani(Smt) & Anr., (2007) 8 SCC 609. This Court held that jurisdiction under Section 25 of the Act, 1887 is wider than the Revisional Jurisdiction under Section 115 C.P.C. But pure finding of fact based on appreciation of evidence may not be interfered with, in exercise of jurisdiction under Section 25 of the Act,

1887. 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 evidences or (iv) Findings have been arrived at without consideration of relevant evidences.

17. The present is not a case where High Court set aside the finding of the Trial Court on any of above grounds where Revisional Court under Section 25 can interfere. High Court has not even referred to the reasons given by the Trial Court while coming to the conclusion that the rate of rent is Rs. 1500/- per month. We thus are of the view that judgment of the High Court is unsustainable."

11. A perusal of the plaint averments would reveal that the plaintiff has specifically pleaded in the plaint that as the other co-owners/co-sharers of the suit property are residing abroad he is the co-owner/landlord of suit property no.28(45/45/1) Malviya Road. Further, he has pleaded that vide a rent deed dated 15.05.2008, suit property which comprises three rooms, a common drawing room, kitchen, toilet and bathroom, was let out on rent for a period of 11 months to the defendant at the rate of Rs.2200/- per month. In the written statement, the defendant has not denied the landlord-tenant relationship between him and the plaintiff, and has admitted in para-3 of the written statement, that he is the tenant in one part of the suit property at the rent of Rs.2200/- per month. But, thereafter, in subsequent paragraphs, the defendant has made contrary pleadings

that the rent of the demised premises is only Rs.1200/- per month, which includes water as well as house tax, etc. and that the plaintiff have executed a rent agreement dated 05.07.2011.

12. It has come on record that the defendant Rajinder Pal Singh has also filed a suit being O.S. No.471 of 2008 for a decree of prohibitory injunction against the plaintiff/revisionist in respect of same property, wherein he has categorically pleaded that the plaintiff herein is owner and landlord of property and that he is tenant in the same at the rate of Rs.2200/- per month. In the said suit, he has admitted the execution of rent agreement dated 15.05.2008 and that the same was executed for a period of 11 months and was effective upto 14.04.2009. In such facts and circumstances, it is abundantly clear, that there is no dispute with regard to landlord-tenant relationship between the parties, as also the fact that the suit premises was given on rent to the defendant at the rate of Rs.2200/- per month. Although the respondent/defendant has not challenged the findings recorded on issue nos.1 and 2, but in exercise of revisional jurisdiction, it is the duty of this Court to examine the veracity of the findings recorded by the trial court on issue nos.1 and 2. After going through the material available on record as well as the admission made by the defendant, this Court is of the view that the trial court has rightly recorded findings on issue nos.1 and 2 on the basis of pleadings and appreciation of evidence. Thus, the findings recorded by the trial court on issue no.1 and 2 stand affirmed.

13. It is the admitted case of the defendant that being the co-owner of the suit property the suit property was let out to the defendant through rent deed dated 15.05.2008 for a period of 11 months. However, as after expiry of three months period only, the plaintiff requested the defendant to vacate the suit premises, the defendant instituted the suit being Original Suit No.471 of 2008 Rajinder Pal Singh vs. Har Mohinder Pal Singh in the court of Civil Judge (Senior Division) for a decree of prohibitory injunction against the plaintiff to restrain the plaintiff from evicting the defendant and interfering in the peaceful possession of the defendant.

14. On the other hand, in the present suit, the defendant set up a new case in the written statement that another rent deed was executed between the plaintiff and defendant on 05.07.2011 whereby rate of rent was fixed as Rs.1200/- per month including house and water tax, and the defendant gave an amount of Rs.2,00,000/- to the plaintiff towards security. However, the defendant did not file the original copy of rent deed dated 05.07.2011 in the court and stated that the original is with the plaintiff. In support of this pleading, the defendant got examined DW2 Yashpal Singh and DW5 Ranjan Singh. The trial court, having considered the statements of DW2 Yashpal Singh and DW5 Ranjan Singh, arrived at the conclusion that it can be presumed that the rent agreement dated 05.07.2011 was executed between the parties.

15. It is apt to note here that initially the suit property was let out by the plaintiff to the defendant @ Rs.2200/- per month for a period of 11 months vide rent deed dated 15.05.2008 which commenced from

15.05.2008 and was to be ended on 14.04.2009 but looking to the conduct of the defendant the plaintiff issued a letter/notice dated 11.9.2008 asking him to vacate the suit premises, as evident from the plaint of O.S. No.471 of 2008. As after a period of three months only, the plaintiff wanted to evict the defendant from the suit property, pursuant to which O.S. No.471 of 2008 was filed by the defendant, there was no occasion for the plaintiff to execute another rent deed dated 05.07.2011. Furthermore, the defendant never brought on record the original copy of the alleged rent deed dated 05.07.2011 and absolved him from the said liability by merely saying that the original copy of the rent deed is with the plaintiff. In case, as alleged by the defendant, the original copy of the rent deed dated 05.07.2011 was in possession of the plaintiff, then he should have followed the procedure prescribed for leading the secondary evidence, but neither he moved any application in this respect nor made any attempt so as to bring on record the alleged rent deed before the trial court. In such circumstances, it was the duty cast upon the court to separate the grain from the chaff. But, in the instant case, the trial court has relied upon the false theory of rent agreement dated 05.07.2011 set up by the defendant, ignoring the legal proposition that photocopy of a document is not admissible in evidence unless non-production of primary document is satisfactorily accounted for, meaning thereby, that unless, it is established that the original documents are lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot be accepted.

16. The Hon'ble Apex Court in the case of **Rakesh Mohindra vs. Anita Beri and others (2016) 16 SCC 483** while dealing with the effect of Sections 63 and 65 of the Evidence Act has held as under:-

> "15. The pre-conditions for leading secondary evidence are that such original documents could not be produced by the party relied upon such documents in spite of best efforts, unable to produce the same which is beyond their control. The party sought to produce secondary evidence must establish for the non-production of primary evidence. Unless, it is established that the original documents is lost or destroyed or is being deliberately withheld by the party in respect of that document sought to be used, secondary evidence in respect of that document cannot be accepted.
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> 20. It is well settled that if a party wishes to lead secondary evidence, the Court is obliged to examine the probative value of the document produced in the Court or their contents and decide the question of admissibility of a document in secondary evidence. At the same time, the party has to lay down the factual foundation to establish the right to give secondary evidence where the original document cannot be produced. It is equally well settled that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispense LatestLaws.com FAO (OS) 19/2019 Page 7 of 7 with its proof, which is otherwise required to be done in accordance with law."

17. In view of the above, it is held that the finding recorded by the trial court on issue no.3 is vitiated in law. The same is thereby set-aside.

18. Now, this Court has to examine whether co-owner/landlord can maintain a suit for ejectment and recovery of rent and whether the trial court is justified in dismissing the plaintiff's suit after arriving at the conclusion that the suit property has been sold out, when no such pleading was made by the defendant in his written statement.

19. At this juncture, it would apt to reproduce Section 116 of The Indian Evidence Act, 1872, which is as under:-

> **116. Estoppel of tenant; and of licensee of person in possession.**—No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

20. In the case of **State of Andhra Pradesh and others vs. D. Raghukul Pershad (dead) by LRs. and others (2012) 8 SCC 584** the Hon'ble Supreme Court considering Section 116 of the Evidence Act held that the tenant who is in possession of demised premises is estopped from questioning landlord's title so long as tenant does not surrender possession to landlord.

21. In the case of **Rajendra Tiwary vs. Basudeo Prasad AIR 2002 SC 136** the Hon'ble

Supreme Court has held that existence of relationship of landlord and tenant between the parties is sine qua non for granting the relief. The question of title of the parties to suit premises is not relevant and is beyond scope of Court.

22. In **Shamim Akhtar v. Iqbal Ahmad (2000) 8 SCC 123**, the Hon'ble Apex Court has held as under:-

> "11. From the resume of the facts of the case stated in the foregoing paragraphs it is clear that the proceedings initiated by the landlady for eviction of the tenant has been pending in the courts over a period of nearly two decades. On perusal of the orders passed by the lower courts and the judgment of the High Court we find that time has been devoted to consideration of the objection against maintainability of the suit in the Small Causes Court. The basic fact which appears to have been lost sight of in the smokescreen created over the jurisdictional issue is that the petition was filed under section 20 of the Act by the plaintiff claiming to be landlady of the house in question against the respondent who undisputedly was a tenant in occupation of the said premises. As noted earlier respondent No.1 has all through denied that the plaintiff- appellant had any title to or interest in the suit property and also denied that there was any relationship of landlord and tenant between them. He had also pleaded the case that one Mohd. Ibrahim was his landlord and he had been paying rent for the suit house to him. In the facts and circumstances of the case, the question to be determined was whether the case of the plaintiff that she was the landlady of the respondent and she was entitled to a decree of eviction in her favour on the grounds of denial of her title by the latter and non payment of rent by him. The learned single Judge has observed in the judgment under challenge and in our view rightly, the question of title to the suit property could be gone into incidentally while deciding the case of the plaintiff seeking a decree

of eviction. The question of title to the property was not to be finally determined in the proceeding instituted under the Act. If this position is kept in mind it becomes clear that the issue of maintainability of the suit in the Small Causes Court loses its relevance and consequentially, the objections raised on the basis of the provisions of the Evacuee Property Act, 1950 and the Enemy Property Act, 1968 which were introduced subsequently by the respondent lose their significance for the purpose of disposal of the proceeding. Our attention has not been drawn to any material on record to show that in any duly constituted proceeding under any of the aforementioned Acts the competent authority has declared the suit property to be either evacuee property or enemy property. From the discussions in the orders passed by the lower courts it also appears that an attempt was made by the tenant to initiate a proceeding before the District Magistrate, Varanasi-cum-Custodian of Enemy Property which ultimately did not succeed. It appears to us that these questions were belatedly introduced in the proceeding by the tenant with a view to prolong the proceedings so that he could continue in possession of the premises for as long a period as possible. To an extent his attempt appear to have succeeded resulting in repeated remands of the proceeding to the Trial Court for disposal of the question of jurisdiction as a preliminary issue or for determining merits of the case. It is unfortunate that the learned single Judge of the High Court could not analyse the case properly to reach at the core question which, as stated earlier, was whether the plaintiff was entitled to a decree of eviction against the tenant.

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."

23. Hon'ble Apex Court in the case of **Dr. Ranbir Singh vs. Asharfi Lal, (1995) 6 SCC 580** has held as under:-

"9. It may be pointed out that it is well-settled law that the question of title of the property is not

> germane for decision of the eviction suit. In a case where a plaintiff institutes a suit for eviction of his tenant based on the relationship of the landlord and tenant, the scope of the suit is very much limited in which a question of title cannot be gone into because the suit of the plaintiff would be dismissed even if he succeeds in proving his title but fails to establish the privity of contract of tenancy. In a suit for eviction based on such relationship the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title if disputed, may incidentally be gone into, in connection with the primary question for determining the main question about the relationship between the litigating parties. In LIC v. India Automobiles & C.o (SCC pp. 300-02, para 21) this Court had an occasion to deal with similar controversy. In the said decision this Court observed that in a suit for eviction between the landlord and tenant, the Court will take only a prima facie decision on the collateral issue as to whether the applicant was landlord. If the Court finds existence of relationship of landlord and tenant between the parites it will have to pass a decree in accordance with law. It has been further observed that all that the Court has to do is to satisfy itself that the person seeking eviction is a landlord, who has prima facie right to receive the rent of the property in question. In order to decide whether denial of landlord's title by the tenant is bonafide the Court may have to got into tenant's contention on the issue but the Court is not to decide the question of title finally as the Court has to see whether the tenant's denial of title of the landlord is bona fide in the circumstances of the case."

24. Since it is admitted case of the parties that the property was let out to the defendant vide rent a deed dated 15.05.2008, thus, in view of provisions of Section 116 of the Evidence Act, the defendant/respondent is estopped from denying the title

of the plaintiff/revisionist over the suit property. It is not only the defendant who is estopped from denying the title, a duty is also cast upon the SCC court to consider that in a simpliciter suit for ejectment and recovery of rent, question of title and ownership has no significance. But, in the instant case, the trial court has not only gone into the issue of ownership but has also recorded perverse findings.

25. A perusal of record would further reveal that no plea has been taken by the defendant in the written statement that the suit property has been sold out through registered sale deeds, it was only asserted that the plaintiff is co-owner and landlord of the suit property. However, subsequently, the defendant led evidence and filed sale deeds to show that the property has been sold out. In the absence of plea in the written statement, firstly the trial ought not to have allowed the defendant to lead evidence and secondly should not have considered the inadmissible evidence. It is settled position in law that in the absence of pleadings, evidence, if any, produced by the parties cannot be considered. No party should be permitted to travel beyond its pleadings and all necessary and material facts should be pleaded by the party in support of the case set up by it.

26. Hon'ble Apex Court in the case of **L. Ponnayal Vs. Karuppannan (Dead) thr. L.R. Sengoda Gounder & Ors., (2019) 11 SCC 800** in which the Apex Court has held as under:

> "11. We have perused the written submissions filed by the Appellant in-person. The Appellant has relied upon the Partition Deed dated 6th

December, 1937 and the Deed of Settlement dated 6th August 1942. According to the Appellant, the Deed of Partition dated 6th December, 1937 was entered into between her grandfather late Shri Appavu Gounder and his two sons late Shri Karunappanan Gounder (Defendant No.1) and late Shri Athappa Gounder. The Deed of Settlement dated 6th August 1942 executed by her father Athappa Gounder in favour of her grandfather Appavu Gounder showed the inability of Athappa Gounder to cultivate his land. According to the said Settlement Deed dated 6.8.1942, the property should be handed over to the legal heirs of Athappa Gounder. As the said two documents were neither part of the pleadings in the Suit nor was an issue framed regarding the said documents, we are afraid that we cannot adjudicate on the issues pertaining to the said documents. Civil Suits are decided on the basis of pleadings and the issues framed and the parties to the Suit cannot be permitted to travel beyond the pleadings."

27. In **Bondar Singh and others v. Nihal Singh and others report (2003) 4 Supreme Court Cases 161**, it has been held as under:

"6. It appears that having failed to obtain possession of the suit land through lawful means, the defendants tried to dispossess the plaintiffs forcibly which led to the present suit being filed on 15.4.1972. The claim of the defendants regarding taking possession of suit land from plaintiffs in 1957-58 having been found to be false, it follows that the defendants never came into possession of the suit land. Another significant conclusion which follows from these facts is that the defendants

started asserting their title to the suit land since at least 1956 when they issued the notice Exhibit P.6 while the plaintiffs have been denying their title to the suit land and were setting up their own title to the same. This lends support to the plea of adverse possession set up by the plaintiffs. It will be seen from this clear and clinching evidence on record that the plaintiffs were in continuous and uninterrupted possession of the suit land since 1931 and they had been setting up a hostile title thereto as against the defendants. The defendants were asserting their title to the land since 1956. They had however failed to get possession of the suit land. The plea of adverse possession raised by the plaintiff is thus clearly established.

7. As regards the plea of sub tenancy (shikmi) argued on behalf of the defendants by their learned counsel, first we may note that this plea was never taken in the written statement the way it has been put forth now. The written statement is totally vague and lacking in material particulars on this aspect. There is nothing to support this plea except some alleged revenue entries. It is settled law that in the absence of a plea no amount of evidence led in relation thereto can be looked into. Therefore, in the absence of a clear plea regarding sub tenancy (shikmi) the defendants cannot be allowed to build up a case of sub tenancy (shikmi). Had the defendants taken such a plea it would have found place as an issue in the suit. We have perused the issues framed in the suit. There is no issue on the point."

28. Thus, in view of the above well enunciated proposition of law, it is ample clear that the trial court has not only committed illegality in framing irrelevant

point no.4, without there being any pleading in this regard by the parties, but has also erred further in recording perverse findings thereon by appreciating the inadmissible evidence. Therefore, the findings recorded by trial court on issue no.4 is set-aside.

29. Now, as regards the findings recorded by trial court on issue no.5, regarding the relief, a perusal of impugned judgment and decree would reveal that the trial court on the basis of findings arrived at on issue no.4 that after the suit property has been sold out, the plaintiff has no right over the suit property, has declined the relief to the plaintiff and has dismissed the suit. As it has been held by this Court in preceding paragraphs that there exists landlord-tenant relationship between the parties and the issue of title and ownership of the plaintiff over the suit property is irrelevant and perverse findings have been recorded by the trial court in this regard, this Court has to see whether the defendant has committed default in payment of rent. Again, I would make reference of the original suit no.471 of 2008 filed by the respondent/defendant, wherein a specific pleading was made by him that the rent payable by him was @ Rs.2200/- per month. Vide judgment and decree dated 01.11.2013, said suit was decreed for a relief of prohibitory injunction against the revisionist/plaintiff. On the other side, in the instant suit, the plaintiff, on rejection of application moved by him under Order 15 Rule 5 CPC seeking striking off defense of the defendant, by the court below, preferred the civil revision no.31 o 2017 before this Court. A Coordinate Bench of this Court, vide judgment dated 21.12.2017, while issuing direction to the respondent/tenant for

depositing the rent amount @ Rs.2200/- per month as admitted by him, has recorded following reason:-

> "5. Apparently, this theory of the rent having been determined @ Rs.1200/- per month based on the rent agreement dated 05.07.2011 as claimed by the tenant do not repose confidence for the reason that the fact of the said agreement having been executed between them was not made as the part of the pleading of the Suit No.471 of 2008 "Rajendra Pal Singh v. Har Mohinder Pal Singh" by virtue of invoking Order 6 Rule 17 making an amendment in pleadings, hence theory of rent agreement dated 05.07.2011 cannot be read being beyond the evidence, as no evidence could be read beyond pleadings."

30. As despite the court's order dated 21.12.2017 the rent was not paid by the defendant/tenant, the revisionist/plaintiff again moved an application under Order XV Rule 5 CPC before the trial court, which however was dismissed by the court below, where-against the revisionist/plaintiff again preferred a revision being CLR No.68 of 2018 which was disposed of with the direction to the SCC Court to conduct the hearing of the suit on day-to-day basis and conclude the same expeditiously.

31. In view of the above, it is abundantly clear that the tenant has not only committed default in payment of rent for the period mentioned in the plaint but it is a case of continuous default of non-payment of rent by the tenant, despite terminating of tenancy.

32. Insofar as the jurisdiction of the revisional court under Section 25 of the Provincial Small Cause

Courts Act, 1887 is concerned, the decision in Trilok Singh Chauhan (supra) cited by the learned counsel for the respondent/defendant is of no help to the defendant, rather it strengthens the case of revisionist/plaintiff. In paragraph 16 of this judgment, the Hon'ble Apex Court while referring to its earlier judgment in Mundri Lal v. Sushila Rani, has held that though 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, but there are certain circumstances under which there can be interference in exercise of such jurisdiction, which are (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.

33. In the case at hand, as has been observed above, findings have been arrived at by the SCC court upon taking into consideration the inadmissible evidence. Thus, the present case falls in third category under which the findings can be interfered with by this Court.

34. Therefore, in view of the reasons recorded above, instant civil revision stands allowed. Impugned judgment and decree dated 08.01.2019 passed by Judge, SCC/Ist Additional District Judge, Dehradun is hereby set aside. Revisionist/plaintiff's suit for ejectment, arrears of rent and mesne profit is decreed. The respondent/defendant shall pay rent @ Rs.2200/- per month as well as the mesne profit/damages at the same rate, from the date it was due till the date

peaceful and vacant possession of the suit premises is handed over. Let a decree be prepared accordingly.

35. Lower court record be sent back.

(Lok Pal Singh, J.)

25.01.2021
Rajni