

## Jagdish Prasad vs Smt. Angoori Devi on 15 March, 1984

**Equivalent citations:** 1984 AIR 1447, 1984 SCR (3) 216, AIR 1984 SUPREME COURT 1447, 1984 ALL. L. J. 379, 1984 (1) ALL RENT CAS 679, 1984 ALL CJ 475, 1984 UJ (SC) 641, (1984) 97 MAD LW 107, 1984 (1) SCWR 315, 1984 (1) RENTLR 538, 1984 MPRCJ 90, 1984 (1) RENT CR 524, (1984) 10 ALL LR 281, (1984) 1 RENCJ 485, 1984 BBCJ 78, (1984) ALL WC 375, 1984 (2) SCC 590

**Author:** Misra Rangnath

**Bench:** Misra Rangnath, D.A. Desai

PETITIONER:

JAGDISIH PRASAD

Vs.

RESPONDENT:

SMT. ANGOORI DEVI

DATE OF JUDGMENT 15/03/1984

BENCH:

MISRA RANGNATH

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DESAI, D.A.

CITATION:

1984 AIR 1447

1984 SCR (3) 216

1984 SCC (2) 590

1984 SCALE (1) 502

ACT:

Constitution of India Arts. 226 & 227-Writ of certiorari-Scope of-C Whether High Court can correct an error of fact.

U.P. Act No. 13 of 1972-s. 12(1)(b) and 12(2) read with s.25-Interpretation of-Allegation of sub-tenancy-How and by whom should be proved

Provincial Small Case Courts Act, 1887-s. 25-Revisonal jurisdiction-Scope of.

HEADNOTE:

The respondent-landlord filed a suit for eviction of the appellant-tenant in a town in U.P. On the ground that the tenant had created a sub-tenancy of the premises in

favour of a trading company. The landlord filed a photograph showing the son of the proprietor of the trading company standing in the shop. Adopting the approach that if any person other than a tenant was found sitting in the shop, the tenant had to lead evidence to show that a sitting person was not a sub-tenant, the small cause court Judge assumed that there was a sub-tenancy; held against the tenant and ordered his eviction. Allowing the revision petition filed by the tenant the Additional District Judge held that it was for the landlord to lead good and positive evidence to prove that the business in fact at the shop was being carried by the trading company and not by the tenant himself. The Additional District Judge looped into the evidence and held against the landlord. In an application under Art. 227 the High Court held that under s. 25 of the U.P. Act No. 13 of 1972 read with sec. 12(1)(b) and s. 12(2) of the aforesaid.- Act a tenant would be deemed to have sub-let the accommodation if he had allowed it to be occupied by any person who was not a member of his family. The High Court further held that the Additional District Judge exceeded his jurisdiction under s. 25 of the Provincial Small Cause Courts Act, 1887 in setting aside the findings of the trial court on a mere re-appraisal of the evidence on record. Hence this appeal.

Allowing the appeal,

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HELD: As long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of a person other than the tenant in the shop cannot be assumed. The U.P. Act No. 13 of 1972 does not require the Court to assume a sub-tenancy merely from the fact of presence of an outsider. [220G]

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In the instant case the allegation that the premises had been sublet to a trading company had to be proved as a fact by the landlord and merely on the basis of the photograph showing the presence of the son of the proprietor of the trading company within the room, sub-letting could not be presumed. The approach of the trial Judge was totally vitiated. [220 D-E]

The revisional jurisdiction under s. 25 of the Provincial Small Cause Courts Act is not as wide as the appellate jurisdiction under s. 96 of the Code of Civil Procedure; yet in a case of this type this Court does not think fault could be found with the revisional court for pointing out the legal error committed by the trial court in its approach to this material aspect. The legal position having been totally misconceived by the trial court and there being an assumption of the position which the landlord was required to prove by evidence, the revisional authority was entitled to point out the legal error and rectify the defect. [221B-D]

The jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the court is not entitled to act as a court of appeal. That necessarily means that the finding of fact arrived at by the inferior court or tribunal is binding. An error of law apparent on the face of the record could be corrected by a writ of certiorari but not an error of fact, however, grave it may appear to be. [221F-G]

Syed Yakoob v. K.S. Radhakrishnan & Ors., [1964] 5 S.C.R. 64 referred to.

In the instant case the High Court exceeded its jurisdiction in interfering with the order of the Additional District Judge. [221G]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2147 of 1980.

Appeal by Special leave from the Judgment and order dated the 19th August, 1980, of the Allahabad High Court in C.M.W.P. No. 7578 of 1979.

Pramod Swarup for the Appellant.

M.K. Garg and V.K. Jain for the Respondent.

The Judgment of the Court was delivered by RAANGANATH MISRA, J. The tenant of one room which is a part of a premises located within the township of Alighrah in the State of Uttar Pradesh is in appeal before this Court after obtaining special leave under Article 136 of the Constitution. The respondent landlord asked for his eviction on the ground of the tenant having created a sub-tenancy of the premises sometime in October, 1976, in favour of M/s. Pavan Trading Company, a soap manufacturing concern. The tenant denied the allegation of sub-letting. The main issue raised in the proceeding was whether the tenant had sub-let the accommodation as alleged by the landlord. The SCC Judge started dealing with this issue by saying:

"Under Sections 12, 13 and 20 of the Act if tenant has allotted a non-family member to occupy the accommodation, he should be deemed to have sub-let the accommodation. If it is found that Pavan Trading Co. Or if any of his partner is carrying on business in the accommodation, the tenant in fact shall be deemed to have sub-let. the accommodation. In Delhi Rent Control Journal 1971 page 492 (Abdul Aziz v. Yakub Khan) it was held by the Court that if any person other than a tenant is found sitting in the shop, the tenant has to lead evidence to show that a sitting person is not the sub-tenant. Thus the burden is on the defendant to explain the circumstances under which partner of the Pavan Trading Co. is sitting in the accommodation. 21/C-I a photograph has been proved. Even the defendant has admitted this photograph during his cross-examination; the person standing in the

shop has been identified by the parties to be the son of the proprietor of Pavan Trading Co.. " .

He looked for evidence from the tenant against sub-letting by assuming from the presence of the son of the proprietor of Pavan Trading Company that there was a sub-tenancy; held against the tenant and directed his eviction from the premises. The Additional District Judge before whom the tenant's revision petition came for disposal took note of the erroneous approach of the trial court and came to hold:

"In the present case, it has not at all been admitted by the defendant that Pavan Trading Company or any member of the said company has been carrying on business in the shop alongwith him or by himself. The mere presence of a member of Pavan Trading Company in the shop at a certain time will not be sufficient to say all that the business is being carried on by Pavan Trading Company in the shop. In these circumstances, it was for the plaintiff to lead good and positive evidence to prove that the business in fact at that shop was being carried on by the Pavan Trading Company and not A by the defendant himself." -

He looked into the evidence and came to hold: "The evidence of the plaintiff was not at all sufficient to shift the burden of proof to the defendant and on consideration of the evidence of the plaintiff it is not at all possible to say that the plaintiff has been able to prove the fact of Pavan Trading Company carrying on the business at the shop which may amount to sub-letting of the shop by the defendant." .

The appellate authority, therefore, allowed the revision and reversed the order of eviction and directed dismissal of the petition of the landlord. The landlord filed an application under Article 227 of the Constitution. Referring to the contention of the landlord, the High Court observed:

"Learned counsel for the petitioner submitted that the learned Additional District Judge clearly misconceived his jurisdiction under Section 25 of the Provincial Small Cause Court Act. It is urged that it was not permissible for the learned Judge to, re-appraise the evidence on record on the issue purely on fact. The learned counsel contended that whether it was defendant 'who was doing business in the shop in dispute of M/s. Pavan Trading Company is undoubtedly a pure issue of fact, the findings on which could not be disturbed in revision under Section 25 of the Provincial Small Cause Court Act", and held: "The Simple question for determination before both the courts below was whether defendant had sub-let the shop in dispute to M/s. Pavan Trading Company. This question depended on the facts of the present case wholly on the answer to the question whether it was the defendant or the proprietor of the said company who was doing business in the disputed shop. This question was determined by the trial court on the basis of direct oral and documentary evidence adduced by the plaintiff to the effect that in point of fact it was the proprietor of M/s. Pavan Trading Company who was doing business in the shop

in question instead of the defen-

dant. This finding is not based on any notion of burden of proof. It was a pure and simple finding arrived at on the analysis of the evidence on record without reference to the question of burden of proof. On the answer to this question depends entirely the fate of the case in as much as under Section 25 of the U.P. Act No. XIII of 1972 read with Section 12(1)(b) and Section 12(2) of the aforesaid Act, a tenant would be deemed to have sub-let the accommodation, if he has allowed it to be occupied by any person who is not a member of his family. Whether the tenant has allowed the shop to be occupied by someone not a member of his family is indisputably a pure question of fact.

That being so, the learned District Judge exceeded his jurisdiction under Section 25 of the Provincial Small Cause Court Act in setting aside the finding of the trial court on a mere re-appraisal of the evidence or record. The finding of the trial court was not vitiated by any error of law. The impugned order is thus ex-facie illegal."

Having heard counsel for the parties we are of the view that the High Court was clearly wrong in reversing the decision of the Additional District Judge. The application for eviction was based on the allegation of sub-tenancy. The allegation that the premises had been sub-let to Pavan Trading Company had to be proved as a fact by the landlord and merely on the basis of photograph showing the presence of the son. Of the proprietor of Pavan Trading Company within the room, sub-letting could not be presumed. We must indicate that the approach of the trial Judge was to tally vitiated. Merely from the presence of a person other than the tenant in the shop sub-letting cannot be presumed. There may be several situations in which a person other than the tenant may be found sitting in the shop for instance, he may be a customer waiting to be attendant a distributor who may have come to deliver his goods at the shop for sale; a creditor coming for collection of the dues; a friend visiting for some social purpose or the like. As long as control over the premises is kept by the tenant and the business run in the premises is of the tenant, sub-letting flowing from the presence of a person other than the tenant in the shop cannot be assumed. The Act does not require the Court to assume a sub-tenancy merely from the fact of presence of an outsider. Obviously the law has intended and we must assume that the rule in the Abdul Aziz's case (referred to by the trial court) proceed on the footing A that the person was sitting in the shop in exercise of his own right and not in a situation as indicated by us. The trial court unwarrantedly drew the presumption and looked at the evidence of the tenant to find out whether the presumption had been rebutted. There is no warrant in law for such a situation. The Additional District Judge rightly took exception to this approach to the matter by the trial court and since the evidence of the plaintiff had not been scrutinised under the erroneous impression of the legal position, the same was looked into to find out whether the claim of the sub-tenancy had been established. This was not an attempt to re-assess evidence but to take into consideration the evidence which had not been looked into by the trial court. The revisional jurisdiction under Section 25 of the Provincial Small Cause Court Act is not as wide as the appellate jurisdiction under Section 96 of the Code of Civil Procedure; yet in a case of this type we do not think fault could be found with the revisional court for pointing out the legal error committed by the trial court in its approach to this material aspect. The legal position having

been totally misconceived by the trial court and there being an assumption of the position which the landlord was required to prove by evidence, the revisional authority entitled to Point out the legal error and rectify the defect. This is all that had been done by the Additional District Judge.

In the case of Syed Yakoob v. K.S. Radhakrishna & Ors., a Constitution Bench of this Court indicated the scope of interference in a certiorari proceeding by saying that a writ of certiorari is issued for correcting the errors of jurisdiction committed by the courts or tribunals in cases where they exceed their jurisdiction or fail to exercise it or exercise it illegally or improperly. i.e. where an order is passed without hearing the party sought to be affected by it or where the procedure adopted is opposed to principles of natural justice. A caution was indicated by saying that the jurisdiction to issue a writ of certiorari is a supervisory one and in exercising it, the court is not entitled to act as a court of appeal. That necessarily means that the findings of fact arrived at by the inferior court or tribunal are binding. An error of law apparent on the face of the record could be corrected by a writ of certiorari, but not an error of fact, however, grave it may appear to be. The rule in Yakoob's case when applied to the present facts would lead to the conclusion that the High Court exceeded its jurisdiction in interfering with the order of the Additional District Judge. We are, therefore, inclined to agree with the appellant's contention that the High Court .. wrongly interfered with the decision of the Additional District Judge that the landlord failed to establish sub-tenancy. The circumstances in which the son of the proprietor of Pavan Trading Company was in the shop have been clearly explained and we are inclined to agree that there is no material on the record to doubt the explanation placed by way of evidence in the proceeding.

The appeal is accordingly allowed and the order of the High Court is vacated and that of the Additional District judge is restored. The net effect is the application for eviction of the appellant tenant is dismissed with- costs throughout. Hearing fee in this Court is assessed at Rs. 1,000.

H.S.K.

Appeal allowed.