Ram Murti Devi vs Pushpa Devi on 11 July, 2017

Equivalent citations: AIR 2018 SC (SUPP) 544, 2017 (15) SCC 230, (2017) 2 RENCR 486, (2017) 2 RENTLR 650, (2018) 1 SCALE 564, (2017) 124 ALL LR 840, (2017) 6 MAD LJ 652, (2017) 3 ALL RENTCAS 510, (2018) 1 CIVILCOURTC 1

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Bench: Ashok Bhushan, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8954/2017
ARISING OUT OF SLP(C) NO. 26342 OF 2013

RAM MURTI DEVI … APPELLANT

VERSUS

PUSHPA DEVI AND OTHERS … RESPONDENTS

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. This appeal has been filed against judgment of Allahabad High Court dated 08.04.2013 by which judgment High Court while allowing the revision filed by the tenant set aside the order passed by Judge Small Causes Court directing the tenant to hand over the possession of the disputed shop to the landlord and to pay rent and damages.

3. The brief facts of the case, giving rise to this appeal are:

> The appellant in this appeal is landlord who let out a shop situated at ground floor of the house to tenant named Amar Nath(since deceased). Landlord issued a notice terminating the tenancy of the tenant.

Landlord filed suit in the Court of Judge Small Causes Court praying for decree of eviction of the tenant on the grounds of arrears of rent as well as subletting.

Appellant claimed that monthly rent was Rs. 950 per month along with house tax and water charges. The tenant is in default of the rent since 01.01.1995. It was further pleaded that defendant□tenant had kept another person, namely, Mohd. Ezaj Khan, S/o Mohd.

Zafar as sub□tenant in one portion of the shop and rent is being taken at the rate of Rs. 50 per day from him.

The Ezaj Khan was undertaking the repair work of the watches in the above shop. Defendant□tenant had rebutted the averments made in the plaint, it was pleaded that rate of monthly rent is Rs. 710/□ It was denied that tenant is in arrears of rent. It was also mentioned in written statement that defendant□tenant had never kept Moh. Ezaj as sub□tenant and in fact he was a worker in the shop of the defendant□tenant.

4. Appellant□plaintiff had filed various documentary evidence and in oral evidence Ram Murthi Devi PW.1, PW.2 Vineet Kumar, Pratap Singh PW.3 and Zalim Singh PW.4 were examined. On behalf of the defendants□tenants certain documentary evidence were filed and Kishan Kumar appeared as DW.1 and Dilip Kumar appeared as DW.2. Trial Court framed several issues. Issue No. 4 was with regard to sub□tenancy, which was to the following effect:

"4. Whether defendants have kept Shri Moh. Ezaj as a sub□tenant at the shop in question for Rs. 50 per day or for consideration of some other amount. If so, its effect?”

5. Trial Court after considering the evidence on record held that tenants were in arrears of rent and were not entitled to the benefit under Section 20(4) of the U. P. Urban Building(Regulation of Letting, Rent and Eviction)Act 1972 (hereinafter referred to as 'Act 1972'). On Issue No. 4, it was held that Moh. Ezaj had been kept as sub□tenant, who was held to be in partial possession of the shop. The suit was decreed directing the defendant□tenant to hand over the vacant possession. The defendant□tenant was also held liable to pay rent and damages.

6. Aggrieved by the judgment dated 21.02.2013 of Judge Small Causes Court, a Revision under Section 25 of Provincial Small Cause Act, 1887 (hereinafter referred to as 'Act 1887')was filed by the tenant in the High Court. The High Court vide its impugned judgment has set aside the judgment of the Trial Court. High Court held that tenant was not in arrears of rent and the Trial Court committed an error in accepting the case of the appellant that tenant had sublet to Moh. Ezaj sub□tenant.

7. Aggrieved by the the judgment of the High Court appellant has come up in this appeal. We have heard Miss Aruna Gupta, learned counsel for the appellant and Shri

S. R. Singh, learned senior counsel, assisted by Shri Mangal Prasad Yadav for the respondents.

8. Learned counsel for the appellant has not seriously questioned the finding of the High Court to the effact that tenant was not in arrears and had deposited the entire arrears of rent and damages and was entitled to protection under Section 20(4) of the 'Act 13 of 1972'.

9. Learned counsel for the appellant, however, has challenged the decision of the High Court, in so far as, the High Court held that sub□tenancy was not proved by the landlord. It is submitted by the learned counsel for the appellant that there was a specific pleading regarding sub□tenancy in favour of Moh. Ezaj and the defendants having come up with the case that Moh. Ezaj was their worker, it was incumbent upon them to prove that he was employed by them and was also paid salary in which they miserably failed. It is contended that the sub□tenant was in possession, was a fact which was not denied. Burden lay on the tenant to prove that he was there in the shop not as sub□tenant but as an employee.

10. Learned counsel for the respondents□tenants refuting the submission of the learned counsel for the appellant contends that High Court has rightly reversed the judgment of the Trial Court since Trial Court did not consider the evidence in correct perspective.

There was no proper pleading on behalf of landlord owner. Landlord did not discharge its burden of proving sub□tenancy in favour of Moh. Ezaj.

11. We have considered the submission of learned counsel of the parties and have perused the record. The statutory provisions which govern letting, rent and eviction in the State of U. P. is U.P. Urban Building(Regulation of Letting, Rent and Eviction)Act 1972. Section 20(2)(e) and Section 25 which are relevant for the present case are as follows:□"Section 20(2)(e) reads as under:

"20. Bar of suit for eviction of tenant except on specified grounds□.....

(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely . . . . . .

(e) that the tenant has sub□let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building;

The above provision takes this Court to Section 25 of Act, 1972 and it would be appropriate to notice Section 25 also, which reads as under:

"25. Prohibition of sub-letting.--(1) No tenant shall sub-let the whole of the building under his tenancy.

(2) The tenant may, with the permission in writing of the landlord and of the District Magistrate, sub-let a part of the building.

Explanation.--For the purposes of this section--

(i) where the tenant ceases, within the meaning of clause (b) of sub-section (1) or sub-section (2) of Section 12, to occupy the building or any part thereof, he shall be deemed to have sub-let that building or part;

(ii) lodging a person in a hotel or a lodging house shall not amount to sub-letting." (emphasis added)"

12. Before we look into the judgment of the High Court, it is necessary to refer to the evidence on record and findings returned by Trial Court on the issue of sub-tenancy. The Trial Court have noted that appellant had pleaded in the plaint that Moh. Ezaj had been kept as sub-tenant by the defendant-tenant at the rate of Rs. 50/- per day. The defendant-tenant in Para 18 of the written statement had denied the above pleading and pleaded that Moh. Ezaj was not a sub-tenant but was a worker of the tenant. DW.1 in his deposition had admitted that Moh. Ezaj was undertaking repair work of music systems and electronic watches in the shop as a worker, at the salary of Rs. 1500 per month from the year 1995-96 to 2000, however, no accounts of salary etc. were maintained.

13. The Trial Court after considering the pleadings of the parties and evidence brought on record returned the findings that Moh. Ezaj was proved to be a sub-tenant. It is useful to refer to the discussion of the Trial Court and findings:- "It is the specific averment of the Appellant that Shri Moh. Ezaj had been kept as sub-tenant by the Defendants. In their written statement, Defendants had written that the above person was a worker in their above shop and not sub-tenant. It is the contention of the learned counsel for the Appellant that as per Shop & Commercial Establishment Act or any other enforcing Acts, Defendants had not produced any such certificate to this effect that above Moh. Ezaj worked as worker/skilled worker in their shop. Even it had not been mentioned by the Defendants in their written statement that the above person had been working as a worker in their shop. Suit had been filed in the year 1997 and about 15 years had lapsed by that time, but the Defendants had not produced any employment certificate of any worker under Shop & Commercial Establishment Act. It is required in law that if presence of any person is possible as a sub-tenant on any shop or landlord can make such allegation, then it is necessary for the tenant that he should get registered such employee under the Evidence Act and make clear his bonafide. In the present case, Defendants had failed to produce any such evidence. Since, in the photograph, Moh. Ezaj had been shown sitting on the shop and the Defendants had admitted his presence at the shop and therefore, this inference could be drawn that he was present in the shop in the capacity of the sub-tenant because Defendants had not proved that he is their employee. Mere oral evidence of the Defendants had no significance in this regard because presence of Moh. Ezaj should be supported by law. Defendant No. 1 had mentioned in Para No. 11 of his examination in chief that Ezaj undertook

repairing work of music system and electronic watches and he was a worker in the shop and he had quit the job and gone away about 12 years before etc. In the cross-examination, he had stated that he used to pay the salary of Rs. 1500/- per month from the year 995-96 to 2000, but he had not maintained the accounts of salary etc., he had not paid income tax.

Since any Salary Register or Attendance Register of Moh. Ezaj had not been produced by the Defendant, therefore, in my opinion, above statement of the Defendant No. 1 was not supported by any admitted evidence and is not reliable. Similarly, statement of the Defendant No. 2 is also not reliable. It was not within the knowledge of the Defendant No. 2 that they used to take how much money from Ezaj in respect of the shop. Thus, this statement of the witness is insignificant. Thus, statement of this witness is insignificant and Ezaj is proved to be a sub-tenant."

14. High Court has reversed the judgment of the Trial Court, referring to the principles laid down by this Court in several judgments regarding proof of sub-tenancy. High Court further held that the pleadings on behalf of the plaintiff that tenant had parted away exclusive possession of whole or part of tenanted premises is missing and further Trial court nowhere recorded any finding that Moh. Ezaj had the specific control or possession, wholly or partly, of the tenanted accommodation. High Court in its judgment referred to various decisions of this Court. It is sufficient to refer to few decisions of this Court to find out the ratio laid down by this Court, in the context of sub-letting and the burden of proof, and the manner of proving of such sub-letting.

15. This Court in Associated Hotels of India Ltd. Vs. S. B. Sardar Ranjit Singh, AIR 1968 SC 933 had occasion to consider a case, wherein suit was filed by landlord for eviction of tenant from the hotel building on the ground of sub-letting. In the above context, this Court in Para 5 laid down the following:- "5....The onus to prove sub-letting was on the respondent. The respondent discharged the onus by leading evidence showing that the occupants were in exclusive possession of the apartments for valuable consideration. The appellant chose not to rebut this prima facie evidence by proving and exhibiting the relevant agreements. The documents formed part of the appellant's case. The appellant had no right to withhold them from the scrutiny of the Court. In the absence of the best evidence of the grants, the Courts below properly inferred sub-lettings from the other materials on the record."

16. In Jagdish Prasad Vs. Smt. Angoori Devi, (1984) 2 SCC 590, which has also been referred by the High Court, this Court has held that merely from the presence of a person other than tenant in the shop sub-letting cannot be presumed. Several instances in which a person other than tenant may be found staying in the shop which does not amount to sub-letting were enumerated. In Para 2 of the judgment following was stated:- "2. ....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 attended to; 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 subtenancy merely from the fact of

presence of an outsider....."

17. It is relevant to note that allegation of sub-letting to Moh. Ezaj in the present case does not come in any of the examples as was enumerated in the above case. Here allegation was that Moh. Ezaj was present in the shop and carrying on his own business for which, a rent of Rs. 50/- per day had been charged by the landlords. In Dipak Banerjee versus Lilabati Chakraborty, (1987) 4 SCC 161, this Court has again examined the question of proof of sub-letting. The ingredients which are required to be proved for a sub-tenancy were pointed out in Para 6 of the judgment which is to the following effect:

> "6....But in order to prove tenancy or subtenancy two ingredients had to be established, firstly the tenant must have exclusive right of possession or interest in the premises or part of the premises in question and secondly that right must be in lieu of payment of some compensation or rent....."

18. In Smt. Rajbir Kaur and Another versus M/s S. Chokesiri and Co., (1989) 1 SCC 19, while considering a case of eviction on the ground of sub-letting, following pertinent observations were made in Para 59:

> "59..... lf exclusive possession is established, and the version of the respondent as to the particular and the incidents of the transaction is found acceptable in the particular facts and circumstances of the case, it may not be impermissible for the Court to draw an inference that the transaction was entered into with monetary consideration in mind. It is open to the respondent to rebut this. Such transactions of subletting in the guise of licences are in their very nature , clandestine arrangements between the tenant and the subtenant and there and there can not be direct evidence got. It is not, unoften, a matter for legitimate inference. The burden of making good a case of subletting is, of course, on the appellants. The burden of establishing facts and contentions which support the party's case is on the party who takes the risk of non-persuasion. If at the conclusion of the trial, a party has failed to establish these to the appropriate standard, he will lose. Though the burden of proof as a matter of law remains constant throughout a trial, the evidential burden which rests initially upon a party bearing the legal burden, shifts according as the weight of the evidence adduced by the party during the trial....."

19. This Court held in the above case that transaction of sub-letting in their very nature are clandestine arrangements between tenant and sub-tenant and there cannot be any direct evidence and even it is a matter of legitimate inference. It was further held that burden of proof of establishing fact although lays on the landlord but it may shift according to the weight of evidence adduced by the party during the trial.

20. In Kala and Another versus Madho Parshad Vaidya, (1998) 6 SCC 573, again the Court held that the onus of proof is on the landlord and if he establishes the parting of with the possession in favour of third party, the onus would shift to the tenant to explain. In Para 16 following has been explained:

> "16....The onus to prove sub□letting is on the landlord and if he establishes parting of with the possession in favour of a third party, the onus would shift to the tenant to explain. In the instant case, however, the landlord did not discharge the initial onus and although it was not required, yet, the tenant explained how Appellant 2 had the permissive possession of the shop as its Manager...."

21. This Court in Joginder Singh Sodhi versus Amar Kaur, (2005) 1 SCC 31 had occasion to consider various aspects of sub□letting. After noticing the various earlier judgments of this Court, this Court reiterated the law in Para 13 to Para 17, which are to the following effect:

> "13. Regarding sub□letting, in our opinion, the law is well settled. It is observed in the leading case of Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh that in a suit by the landlord for eviction of tenant on the ground of sub□letting, the landlord has to prove by leading evidence that (i) a third party was found to be in exclusive possession of the rented property and
>
> (ii) parting of possession thereof was for monetary consideration.

14. The above principle was reiterated by this Court from time to time. In Shama Prashant Raje v. Ganpatrao the Court stated that on sub□letting, there is no dispute with the proposition that the two ingredients, namely, parting with possession and monetary consideration therefor have to be established.

15. In the instant case, a finding of fact has been recorded by the Rent Controller, confirmed by the Appellate Authority as also by the High Court that the property was let out to deceased Mukand Singh and he was the tenant. A rent note executed by the tenant also proves that fact. It was stated in the rent note that the property was rented to him for his business. The tenant had also given an undertaking that he would neither part with possession of the property nor would permit anyone else to occupy it. A further finding was also recorded that Respondent 2, appellant herein, was found in exclusive possession of the property. The authorities have also held that father and son were staying separately. In the light of these facts, therefore, it can be concluded that it was proved that the tenant had parted with possession in favour of his son who was found to be in exclusive possession though he was staying separately.

16. The contention of the learned counsel for the appellant, however, is that even if it is assumed that one of the ingredients of sub□letting was established, the second ingredient, namely, parting of possession with "monetary consideration" was not established. The counsel urged that there is no evidence on record that any amount was paid either in cash or in kind by Respondent 2 to Respondent 1. In absence of such evidence sub□tenancy cannot be said to be established and the landlady was not entitled to get an order of eviction against the tenant.

17. We are unable to appreciate the contention. As observed by this Court in Bharat Sales Ltd. v. Life Insurance Corporation of India sub□tenancy or sub□letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in

exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that tenant to whom the property was let out has put some other person into possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub□tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub□let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub□lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub□let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to draw its own inference upon the facts of the case proved at the trial, including the delivery of exclusive possession to infer that the premises were sub□let."

22. A Three Judge Bench in Mahendra Saree Emporium(II) versus G. V. Srinivasa Murthy, (2005) 1 SCC 481 had occasion to consider the question of sub□letting (sub□tenancy) and question of burden of proof. In Para 16, the Court had elaborated the concept of sub□letting and laid down the following:

> "16. The term "sub□let" is not defined in the Act □□new or old. However, the definition of "lease" can be adopted mutatis mutandis for defining "sub□lease". What is "lease" between the owner of the property and his tenant becomes a sub□lease when entered into between the tenant and tenant of the tenant, the latter being sub□ tenant qua the owner□landlord. A lease of immovable property as defined in Section 105 of the Transfer of Property Act, 1882 is a transfer of a right to enjoy such property made for a certain time for consideration of a price paid or promised. A transfer of a right to enjoy such property to the exclusion of all others during the term of the lease is sine qua non of a lease. A sub□lease would imply parting with by the tenant of a right to enjoy such property in favour of his sub□tenant. Different types of phraseology are employed by different State Legislatures making provision for eviction on the ground of sub□letting. Under Section 21(1)(f) of the Old Act, the phraseology employed is quite wide. It embraces within its scope sub□letting of the whole or part of the premises as also assignment or transfer in any other manner of the lessee's interest in the tenancy premises. The exact nature of transaction entered into or arrangement or understanding arrived at between the tenant and alleged sub□ tenant may not be in the knowledge of the landlord and such a transaction being unlawful would obviously be entered into in secrecy depriving the owner□landlord of the means of ascertaining the facts about the same. However still, the rent control legislation being protective for the tenant and eviction being not permissible except

> on the availability of ground therefor having been made out to the satisfaction of the court or the Controller, the burden of proving the availability of the ground is cast on the landlord i.e. the one who seeks eviction. In Krishnawati v. Hans Raj reiterating the view taken in Associated Hotels of India Ltd. Delhi v. S.B. Sardar Ranjit Singh this Court so noted the settled law: (SCC p.293, para 6) "[T]he onus of proving sub□ letting is on the landlord. If the landlord prima facie shows that the occupant, who was in exclusive possession of the premises, let out for valuable consideration, it would then be for the tenant to rebut the evidence."

Thus, in the case of sub□letting, the onus lying on the landlord would stand discharged by adducing prima facie proof of the fact that the alleged sub□tenant was in exclusive possession of the premises or, to borrow the language of Section 105 of the Transfer of Property Act, was holding right to enjoy such property. A presumption of sub□letting may then be raised and would amount to proof unless rebutted……"

23. From the pronouncements of this Court as noticed above, following statement of law can be culled out:

> (i) In a suit by the landlord for eviction of the tenant on the ground of sub□letting the landlord has to prove by leading evidence that
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> (a) A third party was found to be in exclusive possession of the whole or part of rented property.
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> (b) Parting of possession thereof was for monetary consideration.
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> (ii) The onus to prove sub□letting is on the landlord and if he has established parting of possession in favour of a third party either wholly or partly, the onus would shift to the tenant to explain.
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> (iii) In the event, possession of the tenant wholly or partly is proved and the particulars and the instances of the transactions are found acceptable, in particular facts and circumstances of the case, it is not impermissible for the Court to draw an inference that the transaction was entered with monetary consideration. It may not be possible always to give direct evidence of monetary consideration since such transaction of sub□letting are made between tenant and the sub□tenant behind the back of the landlord.

24. In each case, the proof of sub□letting / sub□tenancy thus, has to be established on the parameters of law, as laid down in the above cases. Whether, in particular facts and circumstances landlord has successfully discharged the burden of proving sub□tenancy depends on pleading and evidence in each case?

25. The, High Court in Para 24 and Para 25 has stated that in the present case very pleading that tenant had parted away exclusive possession wholly or partly is missing. High Court in Para 25 has referred to Para 4 of the plaint which is quoted below:

> "25. In the present case surprisingly I find that the very pleading is missing this necessary ingredient and statement of fact. Copy of plaint is Annexure-1 to the affidavit filed in support of stay application(hereinafter referred to as the "Affidavit"). The only averment in respect of sub-letting is contained in para 4 which reads as under:
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> "4. That the deceased defendant no. 1 and defendant no. 2 beside non payment of allowed one Sri Mohd. Aizaz son of Mohd. Zafar as his sub-tenant without the consent of the plaintiff of a portion of the shop in question and realizing a handsome amount of Rs. 50/- per day as rent from him and as such the defendants have sub-let a portion of the shop to the said Aizaz Ahmad who is carrying on the business of watch repairs thereon."

26. When the appellant pleaded that tenant had allowed one Moh. Ezaj to stay in a portion of the establishment and was realising a handsome amount of Rs. 50/- per day, we fail to see how it can be said that there was no pleading of parting of possession wholly or partly. Appellant further has clearly pleaded that said Ezaj was carrying a business of repairing watches, more so, when the defendant-tenant himself admitted that Moh. Ezaj was working in the shop, lack of pleading of parting of possession as found by High Court is misplaced.

27. The Trial Court had referred to deposition of PW.1 as extracted above, who had mentioned and proved that Moh. Ezaj undertook the repair work of music systems and watches and was paying at the rate of Rs. 50/- per day. Thus, the ingredients of pleading that tenant had parted with the possession of shop partly, is fully proved and High Court erred in observing that there is no pleading to that effect.

28. High Court in Para 29 has further observed that Trial Court had nowhere recorded any finding that Moh. Ezaj had the exclusive control or possession, wholly or partly of tenanted accommodation.

29. We have carefully looked into the order of the Trial Court. Trial Court at Page 56 of paper book had stated as below:

> "...It is admittedly proved that Moh. Ezaj had the partial possession on the shop. Defendants had failed to prove that he was a servant. Witnesses of the Appellant had specifically stated that Moh. Ezaj had been kept as sub-tenant at the rate of Rs. 50/- per day. In my opinion, since Moh. Ezaj admittedly used to undertake the repairing work of watches while sitting outside the disputed shop, therefore, this inference would definitely be drawn that he would be paying something to the Defendant in lieu thereof. Thus, this averment of the witnesses of the Appellant that Moh. Ezaj had been paying something to the Defendant at the rate of Rs. 50/- per day is admissible.

" Thus the above two reasons given by the High Court cannot be sustained.

30. There is one more reason due to which the judgment of the High Court deserves to be interfered with. The High Court was hearing a revision under Section 25 of the 'Act 1887'. What is the scope of Section 25 of the 'Act 1887' came for consideration before this Court in Hari Shankar and Others versus Rao Girdhari Lal Chowdhury, AIR 1963 SC 698, where this Court laid down following in Para 9:

> "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 where the learned Chief Justice, dealing with section 25 of the Provincial Small Cause Courts Act, observed:
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> "The object of s. 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. The section does not enumerate the cases in which the Court may interfere in revision, as does s.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."
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> This observation has our full concurrence."

31. Further in Mundri Lal versus Sushila Rani(Smt) and Another, (2007) 8 SCC 609 which was a case arising from Act 13 of 1972 and a Revisional Jurisdiction under Section 25 of 'Act 1887'. In Para 22 and 23, this Court held that the jurisdiction under Section 25 of Provincial Small Cause Courts Act, is wider than Section 115 of 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 Para 22 and 23 following was stated:

"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."

32. Present is not a case wherein Trial Court had considered any irrelevant factor or has ignored any relevant factor. It may be noticed that Trial Court had also held that although defendants□tenants claimed that Mohd. Ezaj was their worker but they had not brought on record any evidence to prove the same. Requisite proof of the intimation of name of Mohd. Ezaj had not been given, as required by statutory provisions of UP Shops & Commercial Establishments Act 1962.

33. It is relevant to look into the statutory provisions of Uttar Pradesh Dookan Aur Vanijya Adhishthan Adhiniyam, 1962 and U.P. Dookan aur Vanijya Adhishthan Niyamavali, 1963. According to Section 4□B every owner of a shop or commercial establishment shall within three months of the commencement of such business or within three months of the commencement of the Uattar Pradesh Dookan Aur Vanijya Adhishthan (Sanshodhan) Adhiniyam 1976, whichever is later apply to the Chief Inspector for registration of his shop or commercial establishment. Section 4□B is quoted below:

4□B.Registration.—(1)Every owner of a shop or commercial establishment shall within three months of the commencement of such business or within three months of the commencement of the Uttar Pradesh Dookan Aur Vanijya Adhishthan (Sanshodhan) Adhiniyam, 1976, whichever is later, apply to the Chief Inspector for registration of his shop or commercial establishment.

(2) Every application for registration under sub□section (1) shall be in such form and shall be accompanied by such fees as may be prescribed.

(3) The Chief Inspector shall, on being satisfied that the prescribed fee has been deposited, register the shop or commercial establishment in the register maintained under Section 4-A and shall issue a certificate of registration to the owner in such form and in such manner, as may be prescribed."

34. Rules, 1963 provide for mechanism and necessary particulars which are required to be sent by an owner for registration under the Act. Rule 2A(2) provides for making an application in Form 'L' to the Inspector concerned for registration of his shop or commercial establishment.

35. Rule 2-A sub-rule (2) which requires making of an application in Form 'L' is as follows:

"Section 2A -Form of Register to be kept by the Inspector concerned of the shop or commercial establishment and the fees charged for their registration and its validity (1) .....

(2) The owner of every shop or commercial establishment shall within the period as specified in sub-section (1) of Section 4-B of the said Act, make an application in Form "L" to the Inspector concerned for registration of his shop or commercial establishment. The application shall be signed by the owner and accompanied by a Treasury Challan/Bank Draft (crossed) in favour of the Inspector concerned in proof of payment of registration fee as specified below. The maximum number of employees employed in the shop or commercial establishment on any day during the financial year in respect of which the registration is sought will be taken into consideration for deciding the amount of fee leviable.

... ..."

36. Form 'L' is a part of Rules, 1963, Column 9 of which is as follows:

"9. Names of employees:

(1) in managerial, confidential and supervisory capacity.

(2) Total number of employees."

37. Section 33 of the Act provides that any person, who contravenes, or fails to comply with any of the provisions of this Act, or of the rules made thereunder, other than those of sub-section (1) of Section 20, shall be guilty of an offence under this Act. Thus, registration under the Act, 1962 is a mandatory requirement and in the Form to be submitted for registration the name of the employee of the shop has to be mentioned. Rule 2-A sub-rule(1) further mandates that owner shall communicate in Form 'N' to the Inspector concerned any change in the name and address of the shop or commercial establishment, name or names of the employees or change in the number of

employees within 15 days of the date of occurrence of such change.

38. The Trial Court has observed that no document has been produced by the tenant to prove that the name of Mohd. EZaj is intimated as employee of the shop which is required as per above statutory requirement. The Trial Court did not commit any error in drawing adverse inference against the tenant to the effect that Mohd. Ezaj was not the employee of the tenant, in view of the non□producing of any relevant document which could have been produced by the tenant had Mohd. Ezaj been an employee of the shop.

39. The above reason was also a valid consideration on which Trial Court based its decision. We are of the view that judgment of the High Court deserves to be set aside and that the judgment of Judge Small Causes Court dated 21.2.2013 is to be restored.

40. Learned counsel for the respondents lastly prayed that shop being with the defendants□ respondents, who have been carrying on a business for quite a long time, time of one year be allowed to the respondents to vacate the premises. We accept the aforesaid prayer of the learned senior counsel for the respondents and we provide that on necessary undertaking being filed by the respondents before the Trial Court within four weeks from today, the tenants shall be allowed to remain in possession for the period of one year from this date.

41. The appeal is allowed accordingly.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN) NEW DELHI, JULY 11, 2017.

ITEM NO.5 COURT NO.7 SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No. 26342/2013 (Arising out of impugned final judgment and order dated 08-04-2013 in CR No. 134/2013 passed by the High Court of Judicature at Allahabad) RAM MURTI DEVI Petitioner(s) VERSUS PUSHPA DEVI & ORS. Respondent(s) Date : 11-07-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI HON'BLE MR. JUSTICE ASHOK BHUSHAN
For Petitioner(s) Ms. Aruna Gupta, Adv.

Mr. Anish Maheshwari, Adv.

Mr. Zain Ali Khan, Adv.

Mr. Prashant Chaudhary, AOR For Respondent(s) Mr. S. R. Singh, Sr. Adv.

Mr. Mangal Prasad, Adv.

Mohd. Muztaba, Adv.

Ms. Shweta Yadav, Adv.

Ms. Asha Gopalan Nair, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed reportable judgment is placed on the file.]