



IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Civil Revision No. 97 of 2022

Udasin Karshni Narain Ashram
and others.

.....Revisionists.

Versus

Mahendra Taneja.

.....Respondent.

Present:

Mr. Rakesh Khanna, learned Sr. Advocate, assisted by Mr. Aditya Khanna and Mr. Yogesh Sharma, learned counsel for the revisionist.

Mr. Piyush Garg, learned counsel for the respondent.

Hon'ble Mr. Justice Rakesh Thapliyal, J.

1. The instant civil revision has been preferred under Section 25 of the Provincial Small Cause Courts Act, 1887 against the judgment and decree dated 31.08.2022 passed by learned Addl. District & Sessions Judge, Haridwar in SCC Suit No. 05 of 2014 titled as "Udasin Karshni Narain Ashram Trust (Regd.) and others Vs. Mahendra Taneja" whereby suit of the plaintiffs / revisionists for recovery of rent, damages and eviction has been dismissed.

2. Relevant facts of the case necessary for adjudication of the issue involved in this revision are as follows:

3. Plaintiffs / revisionists preferred a suit for recovery of arrears of rent, damages and eviction against the defendant / respondent inter alia with the averments that plaintiff no. 1 is the Trust, plaintiff no. 2 is Managing Trustee and plaintiff no. 3 is the Manager of the revisionist Trust. It is contended in the plaint that respondent-defendant is the tenant of plaintiff Trust in two shops i.e. shop no. 4 and 5 and rent was paid only upto 31.07.2012 and thereafter, for August and September, 2012 rent was due but not paid and the shops in question are new



construction and since the same is owned by plaintiffs it is used for public religious and charitable purposes and as such, the provisions of the U.P. Act No. 13 of 1972 are not applicable. It was further pleaded by the plaintiffs in the SCC Suit that since there was default in payment of arrears of rent on the part of the defendant respondent, as such, a notice was served upon him on 22.09.2012 through the counsel of the defendant thereby terminating the tenancy on expiry of one month notice from the date of receipt of the notice but defendant respondent refused to accept the notice and plaintiffs ultimately preferred the suit with the following reliefs:

“i. To pass a decree for eviction in favour of the plaintiff and against the defendant to the effect that the defendant hands over actual possession of the suit property within the time stipulated by the court to the plaintiffs.

ii. To pass a decree in favour of the plaintiffs and against the defendants to the effect that the defendants to pay arrears of rent of Rs. 4110 to the defendant.

iii. To pass a decree in favour of the plaintiff and against the defendant of the effect that the defendant pay the mesne profits from 01.01.2012 to 05.01.2014 i.e. Rs. 86400/- and Rs. 200 from the date of filing of suit till the date of actual possession towards unauthorized use and occupation.”

4. In the aforesaid plaint, the defendant respondent filed the written statement and denied all the averments, as made in the plaint and questioned the maintainability of the suit as well as *locus standi* of the plaintiff Trust in instituting the suit. In the written statement, there is no denial with regard to landlord



tenant relationship and in fact, defendant admitted such relationship and he also stated that payment of rent upto 31.07.2012 was made, however, it was contended that rent for subsequent months were remitted via money order due to landlord's refusal to accept the same and as such, denied arrears of rents or default in paying the rent. Apart from this, defendant - respondent took a specific plea questioning the title and ownership of the Trust over the property in question and specifically pleaded that property in question is not "Trust Property" since the same belongs to "Udasin Karshni Narain Ashram Trust". A further averment was made that construction of the structure was completed prior to 1984 and as such, cannot be presumed to have a character of public religious charitable institution and therefore, falls within the purview of U.P. Act No. 13 of 1972 and therefore, respondent - defendant is entitled to get benefit of statutory provision, as provided under the Act. In addition to this, a further averment was made with regard to non service of statutory notice dated 22.09.2012 and in absence of such notice, tenancy remained untermiated. Respondent - defendant also questioned about over valuation of the suit, lack of authorised representation and as such, suit filed by the plaintiff is not maintainable and is liable to be dismissed.

5. In response to the written statement, plaintiffs - revisionists filed a replica by reiterating the averments that shops, in question, belong to the Trust and the construction was raised after sanction of the map and the same is new construction and same is recorded in the Municipal record in April, 2001 and therefore, the property, in question, is outside the purview of U.P. Act No. 13 of 1972.



6. The SCC Court framed as many as 7 issues and dismissed the suit filed by the plaintiffs - revisionists by judgment and decree dated 31.08.2022 and being aggrieved with the same, now the instant revision has been preferred.

7. Mr. Rakesh Khanna, learned Sr. Advocate for the revisionists argued that SCC Suit was filed by the revisionists - plaintiffs with a specific plea that two shops i.e. shops no. 4 and 5 are in fact newly constructed building, which were constructed after sanction of the map by the Development Authority and thereafter, newly constructed building was reassessed by the Municipal Corporation in 2001 and monthly rent as shown in the Assessment Register is Rs. 1370 per month for two shops and in the Assessment Register, defendant - respondent is shown as tenant. Mr. Khanna, further submits that relevant copy of the Assessment Register was filed before the SCC Court and it was marked as Exhibit. In addition to this, Original Trust Deed was also filed and he pointed out that there is no specific denial with regard to the new construction and only this much averment was made by defendant that structure was old one and constructed prior to 1980.

8. Mr. Khanna, learned Sr. Advocate further submits that the SCC Court totally on the wrong premises dismissed the suit by holding that Trust Deed was not proved, though as a matter of fact Original Trust Deed was placed on record, which is a legal and valid document in terms of Section 90 of the Indian Evidence Act. He further argued that defendant himself admitted that "Ambadutt Pant" was receiving the rent on behalf of the Trust, therefore, in terms of Section 116 of the Indian Evidence Act, defendant - respondent cannot take a plea that "Ambadutt Pant" is the actual owner or landlord of the



shops in question. Mr. Khanna, learned Sr. Advocate further argued that the SCC Court has wrongly dismissed the suit of plaintiffs - revisionists since the suit was filed on the basis of assessment made by Municipal Corporation in the year 2001 but the SCC court completely on wrong premises proceeded with the assessment made in the year 1971 - 1987. He further argued that it was a specific case of the plaintiffs before the SCC court that after sanction of the map, new construction was raised for which assessment was made by the Municipal Corporation in the year 2001, therefore, the shops in question are completely outside the purview of U.P. Act No. 13 of 1972 and as such, the judgment and decree passed by the SCC Court is completely illegal, unsustainable and liable to be set aside. In reference to the submissions, as above Mr. Khanna, further submits that admittedly, Trust Deed was placed before the SCC Court and not only this, even the plaintiff Trust was reconstituted on 06.01.1988 and Board of Trustees decided that the Trust will function in the name and style of "Udasin Karshni Narain Ashram Trust" and the management of the trust property will be managed by the Board of Trustees, which was reconstituted in 1988 and the reconstitution of Board of Trustees was primarily contained in the gift deed dated 13.07.1930 executed by Lala Narayan Das and how the property of the Trust will be managed and utilised it is clearly mentioned in reconstitution deed. He also pointed out that reconstitution deed also makes provision for appointment of new trustees and also clearly set forth aims and objects of the Trust which is charitable one. He further submits that respondent - defendant paid rent to Ambadutt Pant, who was admittedly the Manager of the plaintiff Trust and there is an



admission of the respondent defendant in paragraph 3 of the additional plea of written statement. Para 3 is read as under:

“यह की प्रश्नगतसंपत्ति ट्रस्ट संपत्ति नहीं है बल्कि प्रश्नगत संपत्ति श्री उदासीन क्रिष्णी नारायण आश्रम के नाम से चली आती है और अम्बादत्तपंत बतौर लैंडलॉर्ड किरायेदारों से किराया वसूल करते चले आते हैं / इसकेविरुद्ध कुल कथन वादीगण गलत , मिथ्या, निराधार है।”

9. By referring the aforesaid of the respondent defendant made in addition plea, Mr. Khanna, learned Sr. Advocate submits that the defendant - respondent clearly admits that the property, in question, continues to be in the name of Trust namely “Udasin Karshni Narain Ashram Trust” and therefore, the contention that property in question is not Trust Property is thoroughly misconceived and misleading one. He further submits that the SCC Court did not examine the recital of the reconstitution deed as well as admission of defendant - respondent in paragraph 3 of the additional plea and as such, the finding as drawn by the SCC Court that the property in question is not a Trust Property is completely unsustainable. He submits that since the property in question is a Trust Property and therefore, the same is exempted from the operation of U.P. Act No. 13 of 1972 in terms of Section 2 (1) (bb) of the U.P. Act No. 13 of 1972.

10. Mr. Khanna, further argued that the suit in question was preferred under the provisions of the Provincial Small Causes Act and therefore, the SCC Court was not required to examine the title and ownership of the property in question, since is only the subject matter of the regular suit. He further submits that in this particular case, there is an admission of the



defendant - respondent that property in question is the property of the Trust and as such, the question of ownership need not require further adjudication, even is not germane to the issue as raised in the SCC suit. With regard to existence of landlord and tenant relationship, it is argued that in the plaint there was specific averment that respondent - defendant is tenant of the Trust and his tenancy was terminated by issuing notice under Section 106 of the Transfer of Property Act and this fact has been admitted by the respondent - defendant in paragraph 2 of the written statement that he is tenant of shops in question and not only this, even in paragraph 4 of the written statement defendant - respondent admits that he paid rent till 31.07.2012 through receipts and property, in question, continues to be in the name of Trust "Udasin Karshni Narain Ashram Trust" and in fact, Ambadutt Pant received the rent from tenants.

11. It is argued that Ambadutt Pant was the sole witness of the plaintiffs, who reiterated the contents of the plaint and during his cross examination, defendant - respondent could not controvert the assertions made in the plaint. Moreover, the recital of the written statement were not proved by adducing any defence witness and since, as per the case of the defendant -respondent, Ambadutt Pant used to realise the rent from the tenants is more than sufficient to establish the relationship of landlord and tenant between the parties. It is further argued that defendant neither led any oral evidence nor documentary evidence in support of his defence and there is nothing to disapprove the version of the plaintiffs rather admission of the defendant - respondent goes against him. He further argued that even the rate of rent was not disputed by the defendant -



respondent and therefore, there was existence of tenant and landlord relationship between the parties.

12. Learned Sr. Advocate for the revisionist has placed reliance of the judgment of Hon'ble Supreme Court in the case of **Chowdamma (D) by LR and another Vs. Vankatappa (D) by LRs 2025 INSC 1038** wherein the Hon'ble Supreme Court has held as under:

"59.A Court of law cannot offer refuge to studied silence where a duty to disclose exists. The plaintiffs anchored their claim in measured and unwavering testimony of P.W.2 (Hanumanthappa), an account rooted in personal knowledge and long-standing familiarity, which withstood the rigours of cross-examination. His evidence, unshaken and consistent, found further corroboration in the genealogical chart presented by the plaintiffs. It, therefore, stands established that the plaintiffs have discharged the evidentiary burden imposed upon them by law. In contrast, the defendants, bereft of probative material or candour, resorted solely to denials. When measured against the touchstone of preponderance of probabilities, the scales unambiguously tilt in favour of the plaintiffs"

13. Learned Sr. Advocate further submits that the Hon'ble Apex Court in the afore-mentioned judgment has also placed reliance upon judgment in the case of **"Vidhyadhar v. Manikrao and Anr. reported as under AIR 1999 SC 1441"** wherein the Hon'ble Apex Court has held as under:

"17. Where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a



presumption would arise that the case set up by him is not correct"

14. By referring the aforesaid judgments, Mr. Khanna, learned Sr. Advocate, argued that respondent - defendant could not substantiate his case with regard to applicability of U.P. Act No. 13 of 1972 and even his version is not supported by any evidence. On the contrary, plaintiffs placed on record the reconstitution deed to establish that property in question is a trust property. He further argued that respondent - defendant also fails to even prima facie show his bona fide with regard to compliance of Section 20 (4) of the Act and has miserably failed to show that he deposited any rent or admitted rent along with other heads as envisaged under Section 20 (4) of the Act in the trial court, as it was incumbent upon for the defendant - respondent to pay rent on the first date of hearing and as such, there is no compliance of Section 20 (4) of the U.P. Act No. 13 of 1972. Neither the defendant led any evidence to show that he has complied with the requirement of the law nor deposited the rent due with arrears. He further submits that burden to prove that he continuously deposited the rent since the date of institution of the suit was on the defendant but he could not prove the same and furthermore, it is not clear whether any deposit since the date of institution of the suit i.e. from 01.04.2015 till 30.11.2015 was made and in what manner or mode rent was deposited.

15. In reference to Order XV Rule 5 of CPC, reliance has been placed by Mr. Khanna, of one of the judgment of the Hon'ble Apex Court in the case of **Asha Rani Gupta Vs. Vineet Kumar (2023) 20 SCC 273** wherein the Hon'ble Apex Court in paragraph 40 and 41 has held as under:



“40. In a suit of the present nature, where the defendant otherwise has not denied his status as being the lessee, it was rather imperative for him to have scrupulously complied with the requirements of law and to have deposited the arrears of rent due together with interest on or before the first date of hearing and in any case, as per the second part of sub-rule (1) of Rule 5 Order 15CPC, he was under the specific obligation to make regular deposit of the monthly amount due, whether he was admitting any such dues or not.

41. In the context of the proposition of denial of title of the plaintiff and denial of relationship of landlord and tenant between the plaintiff and defendant, we may also observe that such a denial simpliciter does not and cannot absolve the lessee/tenant to deposit the due amount of rent/damages for use and occupation, unless he could show having made such payment in a lawful and bona fide manner. Of course, the question of bona fide is a question of fact, to be determined in every case with reference to its facts but, it cannot be laid down as a general proposition that by merely denying the title of the plaintiff or relationship of landlord-tenant/lessor-lessee, a defendant of the suit of the present nature could enjoy the property during the pendency of the suit without depositing the amount of rent/damages.”

16. On the other side, Mr. Piyush Garg, learned counsel for the respondent - defendant has seriously opposed the submissions of the learned Sr. Advocate by submitting that property in question does not belong to the Trust and as such, respondent defendant is not tenant of the Trust and also denied that the fact about new construction since property was constructed much prior to 1984 and therefore, U.P. Act No. 13 of 1972 is fully applicable. Apart from this, he submits that no notice with regard to termination of tenancy was served. He further submits that PW1 / plaintiff no. 3 Ambadutt Pant himself admit that construction was old and the plaintiffs failed to prove that construction was raised after 1985 rather it was categorical case of the plaintiffs that it was old construction and first assessment was made in the year 1971, which is evident



from the admission of PW 1 – Ambadutt Pant, who admitted that it was old construction and first assessment was made in the year 1971.

17. Apart from this, Mr. Garg, submits that no document has been produced to prove that the Trust, in question, is a religious and charitable trust and plaintiffs did not lead any evidence of religious and charitable work.

18. Mr. Garg also submits that even the plaintiffs failed to lead evidence to establish the landlord and tenant relationship and plaintiffs also failed to prove that plaintiff Trust is landlord or owner of the property, in question and no further document has been relied upon by the plaintiffs to show document for transfer of property, as the trust deed is the deed of appointment of trustees and the property cannot be transferred by such deed and deed of appointment of new trustees cannot be considered as document of transfer of property and document remained unproved.

19. In reference to the arguments, as advanced by Mr. Khanna, with regard to Section 90 of the Evidence Act Mr. Garg submits that the said presumption regarding execution only and has not contained authority to execute the document, therefore, no document for transfer of property was proved in this regard.

20. Mr. Garg further submits that evidence cannot be re-appreciated at the stage of revision and as such, the finding of facts cannot be disturbed under Section 25 of the Provincial Small Cause Courts Act. In support of his contention, he has placed reliance on the judgment of Hon'ble Apex Court in the case of **Union of India Vs. Ibrahimuddin (2012) 8 SCC 148**. In addition to this, Mr. Garg further placed reliance on another



judgment in the case of Sanjay Agarwal Vs. DJ, Haridwar (2017) Supreme UK 80.

21. Heard learned counsel for the parties.

22. Undisputedly, by way of registered Trust Deed dated 06.01.1988, the trustees reconstituted the trust as public, religious and charitable trust under Section 73 of the Trust Act in the name of "Udasin Karshni Narain Ashram Trust" and the property has been vested in it, which had been gifted by registered deed dated 13.07.1930 under Section 75 of the Indian Trust Act. After the reconstitution deed, the trust got the map sanctioned from Municipal Corporation for reconstruction on 23.10.1989 and thereafter, the trust constructed 13 shops, which were rented including two shops rented to respondent defendant.

23. This is also undisputed fact that after reconstruction first assessment of property tax was made in the name of "Udasin Karshni Narain Ashram Trust" on 01.04.2001 wherein in column 4 name of the Trust is shown. Moreover, the defendant is also recorded as tenant of two shops which was subject matter of the suti. Furthermore, there is no denial on the part of the respondent that respondent defendant was paying rent of the shops in question to Ambadutt Pant - plaintiff no. 3 and rent was paid upto 31.07.2012. Thereafter, rent was sent by money order which was purportedly was not taken by plaintiffs and in written statement, respondent - defendant admits that the property, in question, belongs to Udasin Karshni Narain Ashram Trust. Plaintiffs no. 3 Ambadutt Pant in his examination in chief prove exhibit deed 06.01.1988, notice of termination of tenancy, postal receipt and acknowledgment of refusing to accept the notice, certified copy of the first



assessment of the property tax after reconstruction as well as original trust deed.

24. Undisputedly, defendant did not lead any oral or documentary evidence nor came into witness box and failed to produce certified copy of the first tax assessment from the year 1971 to 1987 in the name of Udasin Karshni Narain Ashram Trust, though as a matter of fact, after sanction of the map shops were reconstructed and first assessment was made in the year 2001. The SCC Court totally overlooked all these aspects that after reconstruction assessment was made in the year 2001. The plaintiffs in support of their case filed documentary evidence but surprisingly the defendant never came forward to come in the witness box despite this, the SCC Court dismissed the suit, particularly, when the respondent defendant admits that he was paying rent to plaintiff no. 3 - Ambadutt Pant, who was admittedly the Manager of the Trust and being Manager of the Trust, he received rent on behalf of the plaintiffs Trust.

25. Arguments as advanced by Mr. Piyush Garg are totally untenable that it was an old construction based on old assessment by ignoring this fact that property was reassessed in 2001 after reconstruction and as such, old assessment has no relevance.

26. On perusal of the judgment of the trial court / SCC Court it reveals that the trial court / SCC court has failed to apply it's judicial mind and dismissed the suit in a very cursory manner. The SCC Court has also completely failed to consider this aspect that Original Trust Deed is legal and valid document in terms of Section 90 of the Indian Evidence Act and furthermore, there is admission on behalf of the respondent defendant that Ambadutt Pant was receiving the rent on behalf of the Trust



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and as such, in terms of Section 116 of the Indian Evidence Act, respondent defendant cannot take a plea that property is not owned by the Trust but owned by Ambadutt Pant, though as a matter of fact, Ambadutt Pant was receiving rent on behalf of Trust since he was Manager.

27. The stand of the respondent / defendant that construction was old one appears to be misconceived and this aspect has been totally overlooked by the trial Court / SCC court that in fact, when the new construction was raised reassessment was done by the Municipal Corporation in the year 2001 and the finding of the SCC Court that it was old construction cannot sustain.

28. In view of the discussion and observation as above, this Court is of the view that judgment and decree passed by the SCC Court is unsustainable since the provisions of the U.P. Act No. 13 of 1972 is not applicable in the present case and as such, present civil revision is allowed and the judgment and decree passed by the trial court is set aside.

29. No order as costs.

(Rakesh Thapliyal, J.)

27.03.2026

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