



2026:AHC:102856

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**S.C.C. REVISION No. - 16 of 2026**

Suresh Shah Sisodiya

.....Revisionist(s)

Versus

Jai Prakash Yadav

.....Opposite Party(s)

---

Counsel for Revisionist(s) : Devendra Dahma  
Counsel for Opposite Party(s) : Shishir Kumar Tiwari

---

**Court No. - 35**

**HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.**

Heard Sri Devendra Dahma, learned counsel for the revisionist and Sri Shishir Kumar Tiwari, learned counsel for the opposite party.

2. The present S.C.C. Revision under Section 25 of the Provincial Small Cause Courts Act, 1887 has been preferred by the revisionist–plaintiff assailing the judgment and decree dated 30.10.2025 passed by the Judge, Small Cause Court/Additional District Judge, Court No.1, Etah in S.C.C. Suit No.11 of 2010, whereby the suit instituted for ejectment, arrears of rent, possession and damages has been dismissed.

3. Briefly stated, the case of the revisionist–plaintiff is that he became owner/landlord of the disputed tenanted premises on 07.11.2008 by virtue of a registered lease deed executed by the managers of the temple property, namely Shri Raj Rajeshwar Maharaj Mahadev Ji Maharaj Virajman Mandir. It is asserted that the opposite party was already occupying the premises as a tenant at a monthly rent of Rs.3,500 and, upon execution of the said lease deed, the revisionist stepped into the shoes of the erstwhile landlord.

4. It is further pleaded that the tenant committed default in payment of rent, whereafter notices terminating the tenancy were duly issued. Despite service thereof, the tenant failed to vacate the premises or clear the arrears, compelling the revisionist to institute S.C.C. Suit No. 11 of 2010 seeking eviction, recovery of arrears of rent and damages for use and occupation.

5. The defendant–tenant contested the suit by specifically denying the existence of any relationship of landlord and tenant with the revisionist. He set up an independent and competing chain of title through one Shishupal Singh, supported by registered sale deeds tracing back to earlier transactions, and asserted that he continued to be tenant under the said Shishupal Singh and not under the plaintiff.

6. The trial court, upon appreciation of the oral and documentary evidence on record, recorded findings to the effect that the plaintiff failed to establish the relationship of landlord and tenant, that two rival chains of title had been set up by the parties, and that the dispute regarding title was serious, substantial and *bona fide* in nature. However, despite recording such findings, the trial court did not exercise jurisdiction under Section 23 of the Provincial Small Cause Courts Act, 1887 for return of the plaint, and instead proceeded to dismiss the suit on merits.

7. Learned counsel for the revisionist submits that the trial court has committed a manifest error of jurisdiction in dismissing the suit on merits despite having itself recorded a categorical finding that a serious

and *bona fide* dispute regarding title exists between the parties. It is contended that once the trial court found two rival and competing chains of title requiring adjudication upon detailed evidence, the jurisdiction of the Small Cause Court stood circumscribed by Section 23 of the Provincial Small Cause Courts Act, 1887, and the only course open to it in law was to return the plaint for presentation before a court of competent regular jurisdiction.

8. It is further urged that Section 23 does not contemplate dismissal of the suit in such circumstances, but is specifically designed to prevent summary adjudication of complex title disputes by a court lacking jurisdiction to finally determine the same. The trial court, by proceeding to decide the matter on merits, has failed to exercise jurisdiction vested in it and has caused serious prejudice to the revisionist. It is, therefore, submitted that the impugned judgment is legally unsustainable and liable to be set aside with a direction for return of the plaint in accordance with law.

9. Learned counsel appearing for the respondents, while not admitting the stand taken by the revisionist in its entirety, has not disputed the legal position with regard to the scope and ambit of Section 23 of the Provincial Small Cause Courts Act, 1887. It has also not been controverted on behalf of the respondents that where the Court of Small Causes forms an opinion that adjudication of the dispute would necessarily involve determination of complex and substantial questions relating to title, the proper course in law would be to return the plaint for presentation before a court of competent jurisdiction rather than to proceed to decide the suit finally on merits.

10. Heard learned counsel for the parties and perused the record. The principal question which arises for consideration in the present revision is whether, after having recorded a finding that the controversy between the parties involved a serious, substantial and *bona fide* question of title so as to attract Section 23 of the Provincial Small Cause Courts Act, 1887, the court below was justified in proceeding to dismiss the suit on

merits, or whether the only course open to it in law was to return the plaint for presentation before a court of competent jurisdiction.

11. In order to appreciate the controversy, it would be apposite to notice Section 23 of the Provincial Small Cause Courts Act, 1887, which reads as under:

“23. Return of plaints in suits involving questions of title.—(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of Section 57 of the Code of Civil Procedure and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Limitation Act, 1877 be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.”

12. The scope of Section 23 of the Provincial Small Cause Courts Act, 1887 assumes significance in determining whether a suit instituted before a Court of Small Causes ought to be tried on merits or returned for presentation before a regular Civil Court. The provision embodies a jurisdictional limitation on the summary powers of the Small Cause Court and operates as a mechanism to ensure that disputes requiring final adjudication of title are not decided in a forum not competent to conclusively determine such issues. It thus preserves the distinction between the summary jurisdiction exercised in rent and eviction matters and the plenary jurisdiction vested in ordinary Civil Courts for adjudication of complex proprietary disputes. In essence, it reserves substantial questions of title and proprietary rights for courts of regular civil jurisdiction equipped to undertake a full-fledged trial.

13. A careful reading of the provision shows that though it employs the expression “may”, return of plaint is not to be understood as an unguided discretion. The discretion conferred is judicial in nature and has to be exercised upon examination of the real controversy between the parties. Only where the plaintiff’s right to relief is substantially dependent upon proof or disproof of title incapable of final determination by the Small Cause Court does the occasion arise for invoking Section 23.

14. It is equally well settled that a mere denial of title by the defendant does not *ipso facto* attract Section 23. In suits for eviction and arrears of rent, the principal issue ordinarily is the existence of the *jural* relationship of landlord and tenant and not adjudication of absolute title. For deciding such relationship, the Small Cause Court is competent to incidentally examine questions of title to a limited extent. Such incidental scrutiny does not amount to a final declaration of ownership.

15. In **Shamim Akhtar v. Iqbal Ahmad**<sup>1</sup>, the Supreme Court has clarified that a Court of Small Causes can incidentally examine questions of title for the limited purpose of determining the existence of landlord–tenant relationship, and that such incidental findings do not amount to final adjudication. It was further held that the power under Section 23 is to be exercised only where the relief claimed is inseparably dependent upon final determination of title, and that a tenant cannot avoid eviction proceedings merely by denying the landlord’s title or raising collateral disputes.

16. Section 23 embodies the principle that jurisdiction is determined not by the ingenuity of pleadings, but by the true nature of the relief claimed. A defendant cannot, by merely raising a plea of title, convert a summary eviction proceeding into a regular title suit. The provision must, therefore, be construed in a manner that prevents procedural subversion while at the same time preserving the legislative object of providing a speedy remedy in landlord–tenant disputes.

---

1 (2000) 8 SCC 123

17. Thus, a tenant cannot be permitted to frustrate summary proceedings by setting up a bald, illusory or superficial dispute of title. Equally, where the controversy is genuine, substantial and supported by material disclosing competing claims of ownership going to the very root of the landlord–tenant relationship, the Court must recognise the limits of its summary jurisdiction and adopt the course contemplated by law.

18. The jurisprudence underlying Section 23 is intended to maintain a balance between the expeditious disposal of tenancy disputes and the full adjudication of serious civil rights before a competent forum. The law permits incidental examination of title so as to avoid delay in summary proceedings, yet simultaneously recognises that complex and *bona fide* disputes involving competing proprietary claims ought to be adjudicated by a competent civil court. The distinction between *incidental examination of title* and *final adjudication of title* is, therefore, crucial. While the former is permissible to the limited extent necessary for determining whether a landlord–tenant relationship exists, the latter lies outside the normal province of the Court of Small Causes.

19. The discretionary nature of Section 23 is rooted in the principle that such discretion must be exercised judicially. Where the dispute of title is real, substantial and goes to the root of the matter, and is incapable of being decided in a summary manner, the Court must decline to adjudicate the suit on merits. As explained by the Supreme Court in **Budhu Mal v. Mahabir Prasad**<sup>2</sup>, the power to return the plaint is to be exercised in those cases where doing so is necessary to ensure complete justice between the parties and to avoid prejudice arising from adjudication by an inappropriate forum.

20. The legal position governing Section 23 of the Provincial Small Cause Courts Act, 1887 is well settled. A mere plea of title raised by the defendant does not, by itself, oust the jurisdiction of the Court of Small Causes, which may proceed where such plea is unsubstantial or lacking

---

<sup>2</sup> (1988) 4 SCC 194

*bona fides*. However, where the dispute of title is real, substantial, supported by material on record, and goes to the root of the landlord–tenant relationship, the Court must examine whether the controversy can be satisfactorily decided within the limits of its summary jurisdiction. If adjudication of the plaintiff’s right and relief necessarily depends upon determination of a substantial and intricate question of title, the proper and judicious course would be to return the plaint for presentation before the competent civil court.

21. A Court of Small Causes is intended to adjudicate suits of a comparatively simple nature. Therefore, where determination of the rights of parties involves an intricate and substantial question of title, such disputes are more appropriately tried by a regular Civil Court. Section 23 of the Provincial Small Cause Courts Act, 1887 is specifically designed to meet such situations by empowering the Court to return the plaint where adjudication of the plaintiff’s right depends upon proof or disproof of title which cannot be satisfactorily decided in summary proceedings. The object of the provision is to ensure that disputes involving serious questions of title, requiring full-fledged evidence and carrying consequences of finality, are determined by a competent court of ordinary civil jurisdiction.

22. Once such a conclusion is reached, the Court is required to refrain from deciding the suit on merits and to adopt the course statutorily prescribed, namely, return of the plaint for presentation before a competent civil court. Section 23 does not contemplate dismissal of the suit in such circumstances, for that would defeat the very purpose of the provision and may seriously prejudice the rights of the parties by foreclosing adjudication before the proper forum.

23. While Section 23 is couched in discretionary terms and does not render return of the plaint mandatory in every case, such discretion must be exercised judiciously and upon sound principles. Where the dispute of title is *bona fide*, substantial and incapable of summary adjudication, it would be a proper and prudent exercise of jurisdiction for the Court of

Small Causes to return the plaint for presentation before the competent civil court rather than proceed to determine the controversy within the confines of its limited summary jurisdiction.

24. In the present case, the trial court has itself recorded a categorical finding that there exist two competing chains of title and that the dispute is serious, substantial and *bona fide* in nature. Having reached such a conclusion, it ought to have exercised jurisdiction under Section 23 of the Provincial Small Cause Courts Act, 1887 by returning the plaint for presentation before the competent civil court.

25. The dismissal of the suit on merits, despite such findings, amounts to a jurisdictional error, inasmuch as the court below has failed to exercise the jurisdiction vested in it by law and, at the same time, assumed jurisdiction to decide issues falling beyond the permissible scope of its summary powers.

26. In the result, the judgment and decree dated 30.10.2025 passed by the Judge, Small Cause Court/Additional District Judge, Court No. 1, Etah in S.C.C. Suit No.11 of 2010 are hereby set aside. The Judge, Small Causes is directed to return the plaint to the plaintiff for presentation before the appropriate court, as contemplated under Section 23 of the Provincial Small Cause Courts Act, 1887.

27. The revision is, accordingly, **allowed**.

**(Dr. Yogendra Kumar Srivastava,J.)**

**May 05, 2026**

Neetu-RKK/-