
(2014) 01 AHC CK 0150

In the Allahabad High Court

Case No : Writ Petition Nos. 20, 21 and 22 (R/C) of 1993

Ahmadunnisa

APPELLANT

Vs

IVth Additional District Judge

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 23

Citation : (2014) 107 ALR 52

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : Arif Khan, Adil Khan and Aslam Khan, Advocate for the Appellant;
Ishtiaq Ahmad, Farooq Ahmad and T.A. Khan, Advocate for the Respondent

Judgement

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Sibghat Ullah Khan, J.—Order dated 13.11.2013 passed in these writ petitions (on the order sheet of first writ petition) is quoted below:

"Heard Shri M.A. Khan, learned Senior Counsel assisted by Shri Mohd. Moiuddin Khan learned Counsel for the petitioner in all the three writ petitions and Shri Farooq Ahmad, learned Counsel for the Waqf Board. Shri Ishtiaq Ahmad, learned Counsel appearing for tenants opposite parties No. 2 and 3 did not appear even though the case was taken up in the revised list. Shri Farooq Ahmad learned Counsel for respondent No. 4 U.P. Sunni Central Board of Waqf stated that he had also filed application for impleadment of present mutwalli Shri S.A. Husain.

Judgment reserved."

Impleadment application in each case is allowed.

Petitioners claiming that they had purchased the property in dispute in each writ petition from Noor-Ul-Hasan, the Mutwalli of the waqf after a valid permission for sale granted by the U.P. Sunni Central Board of Waqf filed three suits for eviction

against the tenants of each property, i.e., Muzaffar Ali O.P. No. 2 in the first Writ petition, Mohd. Usman O.P. No. 2 in the second writ petition and Aziz Hasan and Shabir Hasan O.P. No. 2 and 3 in the third writ petition. The properties in dispute are three adjoining shops. Each shop in tenancy occupation of the tenant O.Ps. in each writ petition. The sale-deed was executed on 23.7.1985 under the alleged permission by the Waqf Board dated 11.7.1983. The tenants were continuing in possession as tenants since before it was purchased by the petitioners.

The suits for eviction and recovery of possession were registered as S.C.C. suit No. 19 of 1986, 18 of 1986 and 14 of 1986. J.S.C.C./Munsif (East) Hardoi decreed the suits on 30.3.1988. Against the said decrees three revisions were filed being S.C.C. revision No. 13, 12 and 14, all of 1988. The revisions were decided by 4th ADJ Hardoi on 20.10.1992. Revisions were allowed, decrees passed by the Trial Court dated 30.3.1988 were set-aside. In the revisions Waqf Board had filed applications for impleadment. The applications were allowed and the suits were remanded to the Trial Court directing to implead the Waqf Board as one of the defendants and permit the same to file written statements and thereafter fresh issues should be framed and after providing opportunity to adduce evidence to the parties suits should be decided. The judgments and orders passed by the Revisional Court have been challenged through these writ petitions.

2. The tenant in each suit had raised the plea that plaintiffs were not owners and as complicated question of title was involved, hence, plaint should be returned under section 23 of P.S.C.C. Act for filing before the Appropriate Court. In respect of the alleged deed of permission for sale dated 11.3.1983 by Waqf Board, Trial Court in its judgment mentioned that Israr Ali an employee of the Waqf Board who had been examined as D.W. 1 stated that neither the document contained the stamp of the competent officer of Waqf Board nor the signatures and that original file had been brought by him which did not contain the document pertaining to permission. The Trial Court held that Israr Ali had not brought complete records hence permission stood proved.

3. Waqf Board had initiated proceeding under section 49-B/57-A of U.P. Muslim Waqf Act, 1960 by writing letter to the Collector dated 29.10.1987 for getting the possession.

4. In the revision Waqf Board filed application on 21.2.1990 for being impleaded as party. Waqf Board had also given notice to the tenants to pay rent to it and through order dated 11.12.1989 Waqf Board appointed Chaudhari Mohd. Sami Siddiqui as administrator of the Waqf after removing Shri Noor-ul-Hasan, the previous Mutvalli who had sold the property. Noor-ul-Hasan in a case relating to the waqf had stated before the SDM Sandila on 8.8.1985 that he was the mutvalli of the property in dispute and in contemplation of the permission he had sold the same. The Revisional Court referred to section 68 of U.P. Muslim Waqf Act 1960 according to which in any suit or proceedings where title to Waqf property is in dispute Waqf Board should be made a party.

5. Tenants had deposited the rent under section 30(2) of U.P. Act No. 13 of 1972.
6. As the factum of the alleged permission was in dispute, hence, waqf Board was a necessary party.
7. In the written statement filed by the tenants they asserted that Waqf Board was landlord of the premises.
8. It was also argued by the learned Counsel for the petitioners that some compromise was entered into by Aziz Hasan, one of the tenants/O.Ps. in third writ petition however, in para 15 of the counter-affidavit by opposite party No. 3 it was stated that the said compromise was dismissed as not pressed on 28.1.1989.
9. The Waqf Board was rightly directed to be impleaded in the suit. In another proceeding the seller earlier mutwalli has asserted that in contemplation of the permission he had sold the property hence it was extremely essential to implead the waqf board. Accordingly, I do not find any error in the impugned judgments.

Writ petitions are therefore dismissed.