
(2016) 08 AHC CK 0147
In the Allahabad High Court
Case No : S.C.C. Revision No. 328 of 2015

Anand Kumar Gupta	Vs	APPELLANT
Umakanti Gupta (Died)		RESPONDENT

Date of Decision : 22-08-2016

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2016) 119 ALR 752 : (2016) 3 ARC 255 : (2017) 134 RD 314

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Murli Manohar and K.R. Sirohi, Advocates, for the Revisionist;
Manish Tandon and Seema Shukla, Advocates, for the Opposite Party

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—; Heard Sri K.R. Sirohi, Senior Counsel assisted by Sri Murli Manohar, for defendant revisionist. Sri G.K. Singh, Senior Counsel has appeared for the plaintiff respondents assisted by Ms. Seema Shukla.

2. This revision under Section 25 of the Provincial Small Causes Court Act, 1887 has been filed against the judgement and order dated 01.09.2015 passed by the Additional District Judge/Small Causes Court, Kanpur Nagar decreeing S.C.C. Suit No. 11 of 2010, Smt. Umakanti Gupta through her heirs and legal representatives v. Anand Kumar Gupta.

3. The first submission of Sri Sirohi, learned counsel for the defendant revisionist is that Smt. Umakanti Gupta had no locus to institute the suit inasmuch as she had transferred her share in the property to one Maya Gupta in the year 2002.

4. The court below in dealing with the issue of relationship of landlord and tenant between the parties has specially stated that the defendant revisionist as DW1 has accepted that he is not disputing the ownership of the plaintiff respondents.

5. Once the ownership of the plaintiff respondents was accepted/admitted, the

defendant revisionist cannot turn around to dispute the same.

6. The court below on the basis of the evidence on record came to the conclusion that the relationship of landlord and tenant existed between the parties.

7. In addition to the above it has to be noted that there was no evidence to show that the property was transferred prior to the filing of the suit.

8. In view of the aforesaid, the submission has no force and fails.

9. The next argument of Sri Sirohi is that the defendant revisionist had deposited the entire arrears of rent together with interest thereon with the full cost of the suit on the first date of hearing of the suit and as such was entitle to the benefit of Section 114 of the Transfer of Property Act, 1882 (hereinafter referred to as the T.P. Act).

10. The provisions of the Section 114 of the T.P. Act are applicable only in case of forfeiture of the lease in accordance with Section 111(g) of the T.P. Act and not where the tenancy has been determined simpliciter under Section 106 of the T.P. Act.

11. The defendant revisionist has neither pleaded any forfeiture nor any application pleading for the benefit of Section 114 of the T.P. Act was filed on his behalf.

12. It is admitted to the parties that there was no agreement between the parties regarding the tenancy. In such a situation, there could be no breach of the terms and conditions of the contract so as to attract the provisions of Section 111(g) of the T.P. Act entitling the defendant revisionist to seek benefit under Section 114 of the T.P. Act.

13. In view of above, none of the submissions raised by Sri Sirohi have any force and are rejected.

14. No other point has been raised and argued before me.

15. Sri Sirohi, in the last has made a prayer that as the defendant revisionist is running a Ice Cream factory in the premises in dispute, he may be allowed some reasonable time to vacate the same.

16. Sri G.K. Singh from the other side has pointed out that the matter has lingered in the High Court itself for about 11 months and therefore, there is no justification for granting any further time.

17. In such a situation so as to adjust the equities, it is in the interest of justice to allow at least three months time to the defendant revisionist to vacate the premises in dispute provided he gives an undertaking on affidavit in the court below within a period of two weeks from today that he will vacate and handover peaceful possession of the same to the plaintiff respondents within the aforesaid time and shall clear all the outstanding dues.

18. Accordingly, the revision lacks merit and is dismissed.