

(2007) 01 AHC CK 0232
In the Allahabad High Court
Case No : C.M.W.P. No. 37125 of 1996

Anand Prakash Agrawal

APPELLANT

Vs

VIIIth Addl. District and Sessions Judge and Others

RESPONDENT

Date of Decision : 22-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 2 ADJ 674 : (2007) 5 AWC 5119

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Haider Hussain and Indrajit Singh Yadav, for the Appellant; Shiv Sagar Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—These are two counsels appearing in this writ petition on behalf of the Petitioner. Frequent adjournments were sought some times at the instance of learned Counsel for the Petitioner and some times at the instance of learned Counsel for the Respondents since inception on one ground or the other.

2. On 19.11.1996 two weeks" time was granted to the learned Counsel for the Respondents for filing counter-affidavit and two weeks" time thereafter was granted to the learned Counsel for the Petitioner for filing rejoinder-affidavit.

3. It appears that after the death of Sri Lalji Sahai Srivastava, advocate, appearing for the Petitioner, Sri Haider Husain filed his vakalatnama on behalf of the Petitioner.

4. Counter - affidavit and rejoinder-affidavit have been exchanged between the parties.

5. The petition was dismissed in default on 29.4.2002. However, on the application for restoration dated 20.5.2002 the petition was restored to its original number vide order dated 23.5.2002. Thereafter the case was again got

adjourned on 18.7.2002 on the prayer of learned Counsel for the Petitioner and again on 15.11.2002 on the ground of illness slip of Sri I. J.S. Yadav, learned Counsel for the Petitioner. Thereafter on 22.12.2006 the case was passed over on the illness slip of Sri Haider Husain, learned Counsel for the Petitioner, and the case was ordered to be listed on 8.1.2007 on which day Sri Haider Husain again prayed for adjournment of the case on the ground that he was ill and was confined to bed and as such was not able to prepare the case. Thus, the case was again adjourned at the instance of learned Counsel for the Petitioner. Today the case is listed peremptorily, but Sri I. J.S. Yadav, learned Counsel for the Petitioner, has sent illness slip.

6. From the above it is clear that there are two counsels appearing on behalf of the Petitioner and the case is sought adjourned on the illness slip of one or the other since 1996. The other counsel for the Petitioner, i.e., Sri Haider Husain is also not present today. The case was to be argued by Sri Haider Husain and not by Sri I.J.S. Yadav on whose behalf a request for adjournment was made on 8.1.2007 and the case was directed to be listed peremptorily on 22.1.2007. It is accordingly listed today peremptorily.

7. The facts of the case are that the Petitioner is the tenant of the Respondent in Shop Nos. 88/2 and 88/3 (Municipal No. 88), Chhipi Tank, Begum Bridge, Meerut on a monthly rent of Rs. 340 since 1973. It is alleged by the Respondent-landlord that the Petitioner was duly paying rent to him till 31.3.1993 but thereafter from 1.4.1993 the Petitioner stopped paying rent to him. The Respondent-landlord filed S.C.C. Suit No. 111 of 1994 for arrears of rent and ejectment against the Petitioner-tenant before the Judge Small Cause Court, Meerut. The Petitioner-tenant filed his written statement with additional pleas denying the plaint allegations stating that he was tenant in the disputed shops since 1973. It is further stated by the Petitioner in his written statement that he was a practising doctor and remained in Britain and America for about 9 years in connection with specialization and other medical courses relating to heart diseases and returned to India in the year 1970 and took up the job of a Lecturer in L.R.M. Medical College, Meerut. Thereafter since 1973 he alleges to have started his practice from the shops in dispute. It is further stated by him that he started depositing the rent in court as it came to his knowledge that the Respondent is not the sole landlord of the shops in dispute but his two brothers Sri Vinod Kumar and Raj Kumar are also co-landlords of the shops in dispute as the same is entered in the names of the aforesaid three persons in the records of Nagar Nigam, Meerut, as such he deposited the rent in the Court of City Munsif, Meerut from 1.4.1993 u/s 30(2) of U. P. Act No. XIII of 1972. It is further stated by him that the rent receipts of several other shops in the complex wherein the shops in dispute are situate were being issued by M/s. Ashoka Hotel.

8. The Judge Small Cause Court decreed the suit vide judgment and order dated 28.5.1996. Aggrieved by the judgment and order dated 28.5.1996 the Petitioner filed a revision before the VIII Additional District Judge, Meerut who vide his

judgment and order dated 14.11.1996, dismissed the revision, hence this writ petition.

9. The Petitioner has challenged the validity and correctness of the aforesaid judgments and orders dated 28.5.1996 and 14.11.1996 before this Court in this writ petition.

10. The contention of the learned Counsel for the Petitioner is that the Petitioner is entitled to the benefit of Sections 20(4) and 30(2) of U. P. Act No. XIII of 1972 as he never denied the title and ownership of Respondent No. 3 over the shops in dispute and that he never renounced his character as that of a tenant. He further contends that the Petitioner had deposited the entire amount of arrears of rent u/s 30 of U. P. Act No. XIII of 1972 on the date of service of the notice.

11. Per contra, the contention of the learned Counsel for the Respondent is that in view of the concurrent findings of fact recorded by both the courts below and the admitted fact that the Petitioner has alternative shop/accommodation, he is not entitled to any relief. He submits that there is no error or illegality in the impugned judgments and orders dated 14.11.1996 and 28.5.1996. The S.C.C. Suit No. 111 of 1994 was filed u/s 20(2)(a) and (f) of U. P. Act No. XIII of 1972. It is further contended that besides making default in payment of rent the Petitioner also denied the title of Respondent No. 3 as the landlord of the shops in dispute. The Respondent No. 3 being the owner and landlord of the shops in dispute, i.e., 88/2 and 88/3, Chhipi Tank, Begum Bridge, Meerut filed the S.C.C. Suit No. 111 of 1994.

12. It is also stated that the Petitioner defaulted in payment of rent and he throughout before filing of the P.A. Case No. 156 of 1992 was paying rent to the Respondent No. 3 alone. He accepted him to be the sole owner and landlord of the shops in dispute, as such it was not open for him to have turned around and to dispute the title of the Respondent No. 3. The aforesaid act of the Petitioner clearly attracted the provisions of Section 20(2) of U. P. Act No. XIII of 1972.

13. It is further contended that from the record it is established that the relationship of tenant and landlord between the Petitioner and Respondent No. 3 is admitted. In view of the aforesaid admitted position the Petitioner was stopped by the principles of promissory estoppel from refusing to pay rent to the Respondent No. 3 and in denying his title over the suit property. There was no occasion for him to have deposited the rent u/s 30 of U. P. Act No. XIII of 1972 for which permission was also not granted by the Court.

14. It is further contended that the Petitioner had full knowledge of the family settlement arrived at in the family of Respondent No. 3 which was duly confirmed by the Court in Suit No. 478 of 1993. All these facts were within the knowledge of the Petitioner. Thus, there was no occasion for him to have doubted the ownership and title of the Respondent No. 3. The Petitioner has not disclosed the source of his information on the basis of which he came to know that the Petitioner is not the owner of the suit property.

15. Heard learned Counsel for the Respondents in the revised list. From the record it appears that the Petitioner is tenant of Sri Ashok Kumar Garg, Respondent No. 3, in shop Nos. 88/2 and 88/3 (Municipal No. 88), Chhipi Tank, Begum Bridge, Meerut on a monthly rent of Rs. 340 since 1973. The shops admeasure 14 ft. x 10 ft. and 12 ft. x 10 ft.

16. Both the courts below have recorded concurrent finding of fact in favour of the Respondent-landlord. The concurrent finding of fact is that since the title of the Respondent-landlord has been denied by the Petitioner he is not entitled to the benefit of Section 20(4) of U. P. Act No. XIII of 1972.

17. From a perusal of paragraphs 40 and 41 of rejoinder-affidavit it appears that the Petitioner has a residential accommodation at Shivaji Road, Meerut.

18. Even otherwise it is admitted to the Petitioner that Respondent No. 3 is one of the co-owners/co-landlords if not the sole owner/sole landlord, as such for this reason also the Petitioner cannot dispute the title of Respondent No. 3. The entries in the records of Nagar Nigam are not conclusive proof of title and therefore the Petitioner cannot get any benefit from the same. If he had any doubt regarding title of Respondent No. 3 he could have enquired about this from Respondent No. 3. In these circumstances the Petitioner could not deny the sole ownership and title of Respondent No. 3 over the shops in dispute either in his written statement filed by him in P.A. Case No. 156 of 1992 or in the application filed by him in Misc. Case No. 230 of 1993 u/s 30 of U. P. Act No. XIII of 1972. It cannot be believed that the Petitioner came to know about the sole ownership of Respondent No. 3 after filing of S.C.C. Suit No. 111 of 1994 by him. It does not lie in his mouth to say that only the issue with regard to denial of title and ownership of Respondent No. 3 was involved in the aforesaid suit. The suit was filed on two grounds ; firstly, on the ground of default in payment of rent and secondly, on the ground of denial of title and ownership of Respondent No. 3 and both the issues have been decided against the Petitioner by the courts below. The revisional court had no power or jurisdiction to re-appraise the evidence on record. The averments of the Petitioner in his written statement filed in P.A. Case No. 156 of 1992 and in the application filed in Misc. Case No. 230 of 1989 clearly amounts to denial of title and ownership of Respondent No. 3 over the shops in dispute so as to attract the provisions of Section 20(2)(f) of U. P. Act No. XIII of 1972. Even disputing the fact that Respondent No. 3 is not the sole owner of the shops in dispute is sufficient to attract the provisions of Section 20(2)(f) of U. P. Act No. XIII of 1972 when he had been admitting him as the owner and landlord of the shops in dispute ab initio. Setting up of title in other persons also amounts to denial of title. The Petitioner nowhere made out any case for claiming the benefit of Section 20(4) of U. P. Act No. XIII of 1972, as such the Petitioner is not entitled to the protection of Section 20(4) of U. P. Act No. XIII of 1972. The deposits made by him u/s 30 of U. P. Act No. XIII of 1972 are not valid deposits and would not enure to his benefit. There was no legal justification on the part of the Petitioner to have made deposits u/s 30 even after notice dated 14.2.1994

which was duly served upon him on 18.2.1994. The courts below after considering the entire evidence on record rightly decreed the suit and there is no miscarriage of justice warranting interference by this Court under Article 226 of the Constitution.

19. I am of the opinion that the findings of fact recorded by both the courts below are not liable to be interfered and there is no illegality or infirmity in the impugned orders.

20. The writ petition is accordingly dismissed. No order as to costs.