

---

**(2010) 08 AHC CK 0266**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 47410 of 2010

Anil Kumar Singh

APPELLANT

Vs

Civil judge (S.D.) Prescribed authority, Aligarh and others

RESPONDENT

---

**Date of Decision :** 16-08-2010

**Acts Referred:**

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 21(1)(a)

**Citation :** (2010) 08 AHC CK 0266

**Hon'ble Judges :** Rakesh Tiwari, J

**Final Decision :** Dismissed

---

## **Judgement**

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. This Writ petition has been filed by Anil Kumar Singh challenging the validity and correctness of the impugned judgment and order dated 29.5.2008 passed by Civil Judge (Senior Division)/Prescribed Authority, Aligarh in P.A. NO. 26 of 2005 (Raj Kumar Singh V. Anil Singh and others.); and judgment and order dated 30.4.2010 passed by district Judge, Aligarh in U.P.U.B. Appeal No. 02 of 2008 (Anil Kumar Singh v. Raj kumar Singh). Praying for quashing of the aforesaid judgments, appended as annexures 2 and 3 to the petition.

3. The aforesaid orders have been challenged on the ground that the Courts below have not considered the procession of section 6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment), Act 2005 (30 of 2005), that wife of the tenant/petitioner Anil Kumar Singh is the coparcener in the disputed property/accommodation by operation of law and since she is residing in the property in dispute along with the petitioner who is her husband, the application of the landlord/respondent No. 3 was bad for nonjoinder of necessary party and was not maintainable under section 21 (a) of Act No. 13 of 1972.

4. It is also submitted that the landlord who is her brother had collusively obtained ex parte decree behind back of his sister who is tenant wife of the

petitioner. It is also brought to the notice of this Court that in this regard wife of the petitioner had also applied for impleadment as opposite party in the aforesaid case before the prescribed authority, but her application was illegally rejected,

5. Learned Counsel for the petitioner has urged that the Court below did not take into consideration the fact that tenant is the husband of the sister of the Landlord who is residing in 1/5 portion of her share in her father's house after paying "rent" only because partition was not affected and that now she is being evicted from the house due to strained relation between them.

6. It appears from record that the plaintiff/respondent No. 5 filed an application under section 21 (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act No. 13 of 1972 on the ground of personal need he was going to retire on 30.4.2006 and had to vacate the army residence provided to him.

7. The application was registered as Case No. 26 of 2006, It was contested by the petitioner by filing written statement denying the allegations made therein stating inter alia that he is residing in the house in dispute upto the extent of 1/5 undivided share of his wife,

8. The case of the petitioner before the Trial Court was that notice of need was never given to the tenant; that landlord does not need the building under tenancy as he conveniently stay in the portion which is in occupation of the mother; that tenant has no place to go as such he would suffer greater hardship.

9. The prescribed authority allowed the release application filed by landlord vide judgment and order dated 29.5.2008 holding that there exists relationship of landlord and tenant between the contesting parties; that O.S. No. 1057 of 2006 filed by Prabha Singh for cancellation of decree passed in O.S. No. 260 of 1981 would not, in any case, confer title upon the opposite party; that the applicant being colonel in the Indian Army has retired on 30.4.2006 and he does not have any other house as such his need for the building is bona fide, that hardship to the landlord would be greater in the event of refusal of relief.

10. This plea is to be considered by the Court in the facts and circumstances of the case that admittedly late Major Shankar Pal owner of the building had two sons (1) Lieutenant Colonel Krishna Kumar Singh and (2) Colonel Raj Kumar Singh; that on his death on 11.9.2005 late Shankar Pal Singh left behind his widow Smt. Shakuntala Devi, above referred two sons and two daughters namely Smt. Prabha Singh and Smt. Yashodhara Singh; that Smt. Yashodhara Singh married to Shri Vinod Singh and stays at Chandigarh, while Smt. Prabha Singh who is married to Shri Anil Kumar Singh the writ petitioner; who is under occupation of three rooms, kitchen, store, verandah and two bathrooms.

11. Learned Counsel for the petitioner has submitted that she has filed an application under Right to Information Act on 10.5.2010 which reveals that respondent No. 3 was allotted flat No.1076 at Sector 29, NOIDA on 19.1.1989

and in this regard she has prayed that this subsequent development may also be looked into by the Court regard bona fide need of landlord.

12. At this stage brief history of various litigation in respect of properties may be given for appreciation of the facts regarding dispute between the parties is that Shakar Pal Singh filed Suit No. 277 of 1978 against Sheoraj Singh his brother for partition of various properties, House in dispute which is Situated on I.T.I road and has been purchased by him from P.P. Gratuity, etc. received from Army and also from the help received from his two sons aforesaid who were commissioned officers in the Army. O.S. No, 260 of 1981 was filed by Cap I. Raj Kumar Singh against Cap. Krishna Kumar Singh (brother), Shankar Pill Singh (father) and Smt, Shakuntala Devi (mother) which was decided in terms of compromise according hi which the brothers were declared as owner of 1/2 share each in the house but their parents were permitted to occupy 1/4 part of the house during their life time; that O.S, No. 1057 of 2006 has been filed by Smt. Prabha Singh for setting aside the decree passed in O.S. No. 260 of 1981 on the ground that property having been purchased by Shankar Pal Singh out of his own fund; and as such she also has a share in it to the extent of 1/5 share in the house in dispute; that S.C.C Suit No. 5 of 2005 was filed by Shankar Pal Singh on 7.3.2005 for eviction of Anil Kumar Singh his son in law and who was filed suit for injunction against Shankar Pal Singh which is said to be still pending. It is submitted in the suit that Smt, Prabha filed an application under Order 1, Rule 10 read with section 151, C.P.C, seeking impleadment as opposite party which was rejected by the prescribed authority on 23.2.2008.

13. Sri M.K. Gupta, learned Counsel appearing for the respondent has submitted that Shankar Pal Singh got his property partitioned with his brother in O.S. No. 277 of 1978 and with his sons in O.S. No. 260 of 1981 so that there dues not remain any dispute in the family. He further submitted that since his sons were commissioned officers in the army, he accommodated his daughter and soninlaw Anil Kumar Singh in the house in dispute at paltry rate of Rs. 500/ peer month, but he is taking benefit of the foil that his two sons were now rending with him started quarrelling and demanding share in the house, which had already been settled by compromise between him, his wife and sons who had spent money in purchase of the house, in Suit No 260 of 1981. The constant quarrel led Shankar Pal Singh to the suit for eviction against Anil Kumar Singh, who also filed a suit against his fatherinlaw and got another suit filed by his wife Smt. Prabha Devi.

14. It is urged by Counsel for the respondent that the petitioner admitted in the suit that he is tenant in the house in dispute since 1981 @ Rs. 500/ per month. In the written statement filed by him, he claims to be residing in The house in dispute in dual capacity i.e. in the capacity of tenant and also in the capacity of colandlord being husband of daughter of Shankar Pal Singh. He also claimed coownership against the present landlord and challcned the proceedings under section 21 (1A) of the Act in these capacities.

15. Sri M.K. Gupta, appearing for the respondent has stated that the flat allotted

to the landlord is in NOTDA and not in Aligarh where the landlord is residing since his retirement. Hence even for this reasons also, the averments made in the supplementary affidavit are of no help.

16. I have considered the respective arguments of the Counsel for the parties and perused the record as well as law placed by him.

17. The Court below relying upon the judgment reported in A3R 1976 SC 2335 and Full Bench of Allahabad High Court reported in 1987 (1)ARC 281 has held that application for eviction brought by one of the coowner without impleading other coowner was maintainable. It was further held that decree passed in O.S. No. 260 of 1981 is effective and binding till it is set aside by a Court of law and mere pendency of suit for cancellation would not clothe Prabha Devi with any legal right in the house in dispute.

18. So far as need is concerned, admittedly landlord was serving in the Indian Army as Colonel when he applied for release. It is also admitted that at Meerut he was staying in a Government accommodation allotted to him which he had to vacate on cessation of employment.

19. So far as question of comparative hardship is concerned, the Court below held that it is not required to consider the comparative hardship while dealing with the application under section 21 (1A) of the Act.

20. It appears that Prabha Devi opposed the release application on the ground that she has a share in the property in dispute rather it was contested by her husband that he was a tenant.

21. As noticed in the judgment, Smt. Prabha Devi or her husband were not having any share in the property in dispute which was purchased by Shanker Pal Singh and his two sons. It was also partitioned in the life time of Shanker Pal Singh in Suit No. 260 of 1981 by which each of the son was given 1/2 share in the property and their father Shanker Pal Singh and mother had right to be in 1/4th portion of the house during their life timer The house in dispute is not the ancestral property of Shanker Pal Singh. Since he had purchased a part of it out of his own funds he had absolute right to beg with his share either by WILL or by compromise in suit or by any other legal means of transfer of his share to any person he liked He did not give any part of his state in his property to his daughter Prabha Devi and as such she could not claim any share in it much less 1/5 share in the house hence her husband Anil Kumar Singh could neither claim in ht colandlord by virtue of being married to her nor in any other capacity expecting of occupying a portion of the house in The capacity of tenant as admitted by him and proved from orders.

22. Thus, from the facts and reasons stated above, it is apparent that the petitioner who is not residing on 1/5th portion of the property in dispute in the capacity of being husband of Prabha Devi as claimed by her but as a tenant. The averments made in the supplementary affidavit regarding allotment of flat in

N.O.I.D.A. in 1989 is also of no help to the petitioner as the landlord is residing at Aligarh and the flat is said to have been allotted to him at NOIDA.

23. For all the reasons stated above, the petitioner has failed to make out any case for interference in the orders impugned.

24. The writ petition is, accordingly, dismissed,