
(2017) 01 AHC CK 0083
In the Allahabad High Court
Case No : S.C.C. Revision No. 364 of 2014

Anil Kumar Verma

APPELLANT

Vs

Smt. Manju Gupta

RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2017) 3 ADJ 341 : (2017) 122 ALR 260

Hon'ble Judges : Manoj Misra, J.

Bench : Single Bench

Advocate : Awadhesh Narain Shukla, Om Prakash and Sanjay Goswami, Advocates, for the Revisionist; Atul Dayal, Ajit Kumar, Anil Kishore Sharma, Ashutosh Srivastava, Mohd. Arif and Siddharth, Advocates, for the Opposite Party

Final Decision : Allowed

Judgement

Manoj Misra, J.— Heard Sri Sanjay Goswami, assisted by Sri Om Prakash for the defendant-revisionist and Sri Siddharth for the plaintiff - respondent.

The instant revision has been filed under Section 25 of the Provincial Small Causes Courts Act, 1887 against the judgment and decree dated 14.08.2014 passed by the Additional District Judge, Court No. 9, Allahabad in J.S.C.C. Suit No. 13 of 2009 by which the plaintiff-respondent's suit for arrears of rent and eviction has been decreed as against the defendant - revisionist.

2. A perusal of the record reveals that as many as eight points were framed for determination. The point on which the decision of the suit turns is as to what was the agreed rate of rent of the premises in dispute. According to the plaintiff, the agreed rate of rent was Rs. 2,500/- per month whereas according to the defendant it was Rs. 500/- per month. The court below came to the conclusion that the rate of rent was Rs. 2,500/- per month and, therefore, the provisions of U.P. Act No. 13 of 1972 were not applicable to the premises and since there was termination of tenancy by a valid notice, the defendant was liable to be evicted.

3. The judgment and decree passed by the court below has been assailed by attacking the finding returned on the rate of rent. The finding on the said issue has been assailed on the ground that there was no documentary evidence either in the form of a rent agreement or rent note or rent receipt in respect of the agreed rate of rent between the parties, therefore, the court below was required to assess the oral evidence and come to a definite conclusion as to whether oral evidence led by the plaintiff was more reliable and acceptable than that of the defendant. But the court below did not at all analyse the oral evidence of the parties and failed to record satisfaction as to why the oral evidence led by the plaintiff was acceptable and preferable to that of the defendant. It has been urged that the tenant had produced quinquennial municipal assessment record to disclose that for the period 2003-09 the building, of which the accommodation in dispute was a part, was assigned annual value of Rs. 11520/- which negated the landlord's claim that the rent was Rs. 2,500/- per month inasmuch as with that rate of rent, the annual value would have been Rs. 30,000/- or above. Further, to prove the assessment record, Tax Inspector of Nagar Nigam was examined as DW - 3 who deposed that annual value of a building is fixed on the basis of self-assessment form filed by the owner, which suggested that the rate of rent claimed by the landlord was not correct and was rather overstated. It has been urged that the trial court although noticed the above document as also the statement but failed to analyse the same in the context in which it was led by the party thereby vitiating the finding. Lastly, it was urged that there were two other witnesses, namely, DW - 4 and DW - 5, who were examined by the defendant to disclose that the agreed rate of rent of the shop in question was Rs. 500/- per month but the trial court did not at all advert to their testimony while returning the finding on the rate of rent, therefore, the finding of the trial court on the issue of rate of rent is vitiated also for non - consideration of relevant evidence.

4. On behalf of the plaintiff-respondent, it has been argued that as to what is the rate of rent of the accommodation is a pure question of fact and once the court below has returned a finding on the rate of rent, the revisional court ought not to interfere with the said finding in exercise of its revisional powers and, therefore, the revision is liable to be dismissed.

I have considered the submissions of the learned counsel for the parties and have carefully perused the record.

5. No doubt as to what was the agreed rate of rent for the premises in question is a question of fact but a finding on a question of fact must be returned by appreciating the evidence that has been led by the parties and not by simply narrating what evidence has been led. A finding returned after consideration of all relevant evidence on question of fact is not ordinarily to be interfered with by a revisional court unless the same is perverse or is based on taking inadmissible evidence into consideration or is based on misreading of evidence. But for there to be a consideration of relevant evidence, the evidence led must be appreciated by application of a judicial mind. When both sides in a suit or proceeding lead

their evidence, the court is required to appreciate the evidence and, thereafter, to draw its conclusion on the issue. Essential feature of appreciation is the rationale behind accepting one evidence over the other. That rationale must be reflected in the judgement/order. Therefore, the duty of a court of fact does not get over by disclosing as to what evidence has been led by the parties before it but is discharged when it returns a finding after appreciation/analysis of the evidence. A finding which has been returned without application of judicial mind or without analysing the evidence as to why one evidence has more weight than the other or without considering the entire relevant evidence led before the court, renders the finding vitiated. Such a finding is amenable to revisional powers and can be interfered with by the revisional court inasmuch as failure to appreciate/consider the evidence would amount to failure to exercise jurisdiction vested in a court by law.

6. In the instant case, there was no documentary evidence either in the shape of a rent note or a rent agreement or a rent receipt as regards agreed rate of rent. Both sides had led oral evidence in support of their respective cases. Apart from oral evidence, the defendant had placed the quinquennial municipal assessment record of 2003-09 to suggest that the annual value of the premises was Rs. 11520/- . The basis of such annual assessment was brought on record through the statement of DW - 3, who was Tax Inspector, Nagar Nigam. As to why the evidence of the plaintiff was more acceptable as compared to the evidence of the defendant is not at all reflected from the order impugned. Moreover, the testimony of DW - 4 and DW - 5, who have deposed in respect of the agreed rate of rent being Rs. 500/- per month, has not been considered at all. Under the circumstances, this Court is of the view that the finding returned by the court below on issue no. 1 i.e. agreed rate of rent of the premises in suit, is vitiated and, therefore, the same requires reconsideration.

7. As to what weight is to be attached to the testimony of the plaintiff and defendant witnesses as well as to the municipal assessment record is in the domain of the trial court and, therefore, this Court finds it appropriate not to express any opinion on the merits of the evidence. However, since this Court is of the view that the finding on the rate of rent for the premises in question requires reconsideration, the impugned judgment and decree, which turns on the crucial issue as to what was the agreed rate of rent between the parties, deserves to be set aside.

8. For the reasons recorded herein above, the revision is allowed. The judgement and decree passed by the court below is hereby set aside. The matter is remanded back to the court below to decide the case, afresh, in accordance with law, preferably, within a period of two months from the date of filing of certified copy of this order. There shall be no order as to costs.