
(2011) 01 AHC CK 0229

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3737 of 2011

Ashok Kumar Abrol and Others

APPELLANT

Vs

Sahil Mahajan

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2011) 2 ADJ 677 : (2012) 4 AWC 3546 : (2011) 2 RCR(Rent) 493

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

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

2. This writ petition has been filed challenging the validity and correctness of the judgment and order dated 25.5.2004 passed by the Prescribed Authority/JSCC, Meerut in P.A. Case No. 32 of 2002, Sahil Mahajan v. Ashok Kumar Abrol and another and the judgment and order dated 15.12.2010 passed by the Additional District Judge, Court No. 3, Meerut in Misc. Appeal No. 91 of 2004, Ashok Kumar Abrol and Anr. v. Sahil Mahajan.

3. The dispute relates to shop No. 40-C situated at Saraswati Mandir, Suraj Kund Road, Meerut City, Meerut (hereinafter referred to as the shop in dispute). Petitioner No. 2 is the tenant of the shop in dispute at the rate of Rs. 35/-per month and the father of the applicant Respondent namely Sri Kuldeep Mahajan is the landlord. SCC suit No. 96 of 1990, Kuldeep Mahajan v. Ashok Kumar Abrol was filed by Sri Kuldeep Mahajan father of sole Respondent Sri Sahil Mahajan in the Court of District Judge, Meerut for ejectment on the ground that Kuldeep Mahajan is the landlord and owner of the shop in dispute and Petitioner No. 1 is the tenant @ Rs. 1500/-per month. The eviction was sought on the ground that Petitioner No. 1 is in arrears of rent since July, 1988 which he did not pay inspite of demand, hence the aforesaid SCC Suit was filed for arrears of rent and

eviction after termination of tenancy of the Petitioner.

4. The suit was contested by Petitioner by filing written statement on the ground that he is not the tenant in the shop in dispute and was never in its possession. It was also stated in the written statement that there was no relationship of landlord and tenant between the parties and M/s Prudent Sports is the tenant of the shop in dispute of which Petitioner No. 2 is the sole proprietor. The SCC suit was decreed exparte vide judgment and order dated 12.12.95 holding that Plaintiff Kuldeep Mahajan is the landlord and Defendant Ashok Kumar Abrol, the Petitioner No. 1 is the tenant.

5. It appears that an application under Order 9 Rule 13 of the CPC for setting aside the exparte decree which was registered as Case No. 01 of 1996. It was also rejected against which Civil Revision No. 20 of 1996, Shri Ashok Kumar Abrol v. Shri Kuldeep Mahajan was filed by the tenant in which initially an interim order was granted by the Court staying the execution of the exparte decree dated 12.12.1995 on a condition of making deposit of Rs. 20,000/-by the tenant. The aforesaid Civil Revision is still pending before the Court. It also appears that Petitioner No. 2 wife of Petitioner No. 1 also filed Original Suit No. 42 of 1996, Smt. Beena Abrol v. Kuldeep Mahajan and another in the Court of Civil Judge (Junior Division), Meerut for declaration of exparte decree dated 12.12.1995 passed in the aforesaid SCC Suit is not binding upon her and for permanent injunction with regard to the shop in dispute. This suit is now said to have been decided vide judgment and order dated 7.2.2006. The appeal filed against the order and judgment aforesaid has also been dismissed by the appellate Court vide judgment and order dated 3rd January, 2007.

6. From the record it appears that an application u/s 21(1)(a) of U.P. Act No. 13 of 1972 was filed by Sahil Mahajan son of Sri Kuldeep Mahajan claiming himself to be the landlord and owner of the shop in dispute before the Prescribed Authority/ Judge Small Causes Court, Meerut for release of the shop in dispute on the ground of his personal need. This application was registered as P.A. Case No. 32 of 2002, Sahil Mahajan v. Ashok Kumar Abrol and another. The ground in the release application taken by Sahil Mahajan was that he is the owner and landlord of the shop in dispute and father of Petitioner No. 1 was the original tenant and after his death the tenancy devolved in favour of Petitioner No. 1 and as Petitioner No. 2 has taken a stand that she is the tenant she was also arrayed as party. The bonafide need canvassed by the landlord Sahil Mahajan was that he is unemployed and wants to start business oif sports goods in the shop in dispute. It was also alleged that the tenants Petitioners have another shop in their possession at Suraj Kund Road, Meerut, hence the comparative hardship of the landlord was greater than the tenant. It was also stated that there had been an agreement between the father of the applicant Respondent and Petitioner No. 1 as far as back in the year 1988 that he will vacate the shop in dispute on or before 1st January, 1991.

7. The application filed by Sahil Mahajan was also contested by the Petitioners by

filing written statement inter alia on the ground that it is not proved as to how Sahil Mahajan has become owner of the shop in dispute while his father is alive and how his application before the Prescribed Authority for release of the shop was maintainable as the same matter has been agitated by Kuldeep Mahajan in SCC Suit No. 96 of 1990, which is still pending. The application was also contested on the ground that Petitioner No. 2, Smt. Veena Abrol, who was the tenant in the shop in dispute where she was carrying on her business in the name and style of M/s Prudent Sports as sole proprietor and as such Petitioner No. 1 was wrongly impleaded. It was also further stated in the written statement that the landlord had ancestral business in the name and style of M/s Hind Sports in which Kuldeep Mahajan had equal share.

8. It also appears that the Petitioners had moved an application for inspection of the shop in dispute which has been rejected by the Prescribed Authority.

9. The release application filed by the landlord Sahil Mahajan was allowed by the Prescribed Authority vide judgment and order dated 25.5.2004.

10. Aggrieved the Petitioners preferred Rent Control Appeal No. 91 of 2004, Ashok Kumar Abrol and Anr. v. Sahil Mahajan. The appeal was also dismissed by the lower appellate Court vide order and judgment dated 15.12.2010.

11. It is in the aforesaid backdrop that the present writ petition has been filed on the ground that both the courts below have committed an error of law in not considering that the Respondent has not proved that how he became the landlord and owner of the shop in dispute and how the release application filed by Sahil Mahajan is maintainable in respect of the same shop which was subject matter of dispute in SCC Suit No. 96 of 1990 filed at the behest of his father Kuldeep Mahajan, which is said to be still pending.

12. The order impugned is also assailed on the ground that the Courts below have failed to consider the subsequent events which arose during the pendency of the release application before the Prescribed Authority that the landlord has got one shop in his possession in the same building in a vacant state.

13. Per contra, learned Counsel for the Respondent has submitted that the Petitioner was a minor when SCC Suit No. 96 of 1990, Kuldeep Mahajan v. Ashok Kumar Abrol was filed on his behalf. He states that Petitioner No. 2 had filed Original Suit No. 42 of 1996, Smt. Beena Abrol v. Kuldeep Mahajan and another claiming herself to be the landlady, he had no option but to move release application by impleading both the Petitioners as parties to the release application after attaining the majority. On the question of maintainability of the release application he submits that SCC Suit No. 96 of 1990 was filed by his father for arrears of rent and eviction which was decreed in respect of arrears of rent but the relief for eviction was rejected by the Court below. In the circumstances, he being unemployed set up a bonafide need for the shop in dispute when he attained majority by moving a release application u/s 21(1)(a) of U.P. Act No. 13 of 1972 which was registered as P.A. Case No. 32 of 2002,

Sahil Mahajan v. Ashok Kumar Abrol and another.

14. After hearing learned Counsel for the parties and on perusal of the record it appears that in so far as the question of maintainability of the release application Sahil Mahajan v. Ashok Kumar Abrol and another, u/s 21(1)(a) of U.P. Act No. 13 of 1972 is concerned, his name has been recorded in the municipal record and relying upon the entries made in the municipal record the Court below has found him to be the landlord and he is entitled to move release application in his own right. Admittedly, earlier SCC Suit No. 96 of 1990 was filed by the father of the Respondent for arrears of rent and eviction of Petitioner No. 1 only which has been contested by him on the ground that he is not the tenant in the said shop. It is also noted that Petitioner No. 2 claiming herself to be the tenant filed Original Suit No. 42 of 1996, Smt. Veena Abrol v. Kuldeep Mahajan in her own right for cancellation of decree of arrears of rent passed in SCC Suit No. 96 of 1990.

15. Thus, P.A. Case No. 32 of 2002, Sahil Mahajan v. Ashok Kumar Abrol and another filed by Sahil Mahajan after attaining the majority in his own right as landlord and owner of the shop in dispute cannot be said to be as not maintainable against the Petitioner particularly in view of the fact that Petitioner No. 1 has denied himself to be the tenant in proceedings in SCC Suit No. 96 of 1990, which is said to be still pending as such proceeding arising out of SCC Suit No. 96 of 1990 as well as proceedings arising out of Original Suit No. 42 of 1996 would be of no consequence except the question of maintainability of P.A. Case No. 32 of 2002, Sahil Mahajan v. Ashok Kumar Abrol and another and ownership no other point has been argued by the learned Counsel for the parties.

16. The Prescribed Authority as a matter of fact has found that the bonafide need and comparative hardship of the Respondent landlord is genuine and greater than the tenant. In so far as issuance of commission in respect of another shop M/s Sport Land is concerned, which is said to have been vacated during the pendency of release application, which has been brought on record by way of amendment in paragraph 15 of the written statement of the Petitioners, suffice it say that the application for commission was rejected. The Court below came to the conclusion that the tenants were not able to prove that the said shop M/s Sports Land, which is said to have been vacated during the pendency of the release application was in the ownership of the Respondent landlord, hence in this view of the matter there was no occasion for issuing commission and the application for issuance of commission has rightly been rejected. The appellate Court has rightly confirmed the judgment of the trial Court. There is no illegality or infirmity in the orders impugned in the writ petition.

17. For all the reasons stated above, the writ petition is dismissed. No order as to costs.

18. Sri A.K. Gupta, learned Counsel for the Petitioner prays for time for vacating the shop in dispute. In the circumstances, as prayed by him one month's time is allowed to the Petitioner to vacate and handover peaceful possession of the shop

in dispute to the landlord.