
(2011) 08 AHC CK 0147

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42810 of 2011

Azizur Rahman @ Puttan Pahalwan

APPELLANT

Vs

Mohammad Saleem and others

RESPONDENT

Date of Decision : 01-08-2011

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)(a), 20(2)(f)

Citation : (2011) 08 AHC CK 0147

Hon'ble Judges : S.K.Gupta, J

Final Decision : Dismissed

Judgement

Shashi Kant Gupta, J.—This writ petition is directed against the order dated 30.4.2011 passed by the Additional District Judge, Court No. 2, District Aligarh in Small Causes Court Revision No. 45 of 2010 upholding the order dated 28.10.2010 passed by Additional Civil Judge, District Aligarh in Small Causes Court Suit No. 85 of 2006 whereby the suit filed by the petitioner for arrears of rent and ejectment was decreed.

2. Brief facts of the case are as follows;

3. The SCC Suit No. 85 of 2006 was filed by the respondentlandlords on the ground of arrears of rent and ejectment, and denial of title against the petitioner. The petitioner filed his written statement denying the allegations of the plaintiffslord and pleaded that the plaintiffslord are neither the owner or the landlords of the suit property nor any relationship of the landlordtenant existed between the plaintiffs and the answering defendants. Hence, no question to pay any rent arises. It was further pleaded that the plaintiffs wrongly alleged in the Suit No. 346 of 1992 to be the owner of the house in suit on the ground of some sale deed executed in favour his grand father. It was further pleaded that the erstwhile owner Amna Khatoon alienated the disputed property in favour of the petitioner by way of oral gift.

4. The trial court framed four issues namely; firstly, whether the intricate

question of title is involved in the matter; secondly, whether the petitioner has denied the title of the plaintiffs; thirdly, whether the petitioner had committed default in payment of rent and fourthly, whether the petitioner is liable to be evicted.

5. The trial court after considering the pleadings of the parties as well as the documentary evidences decreed the suit by order dated 28.10.2010 holding that the intricate question of title is not involved in the matter and the court is fully competent to decide the question of title incidentally. It was also held that the plaintiffs denied the title of the plaintiffs without any justification and the defendant committed default in payment of rent, as such, are liable to be evicted. Feeling aggrieved and dissatisfied with the order, the petitioner preferred a Small Causes Court Revision No. 45 of 2010 which was dismissed by the order dated 30.4.2011 whereby the order passed by the trial court was confirmed. Hence, the present writ petition.

6. It was submitted by the learned counsel for the petitioner that the courts below did not have jurisdiction to entertain the present suit as intricate question of title was involved and the present suit should have been returned in consonance with the provisions of Section 23 of the Provincial Small Cause Court Act (in short "Act"). It was further submitted that the court below ignored the acknowledgement of oral gift dated 5.7.1978 executed by Amna Khatoon in favour of the petitioner and already a Suit No. 346 of 1992 is pending between parties and question of title is under consideration.

7. Sri Diwakar Rai Sharma, learned counsel for the landlord has contended that both the courts below after perusal of the evidence on record have held that intricate question of title was not involved in the matter and the trial court was fully competent to decide the question of title incidentally. It is further submitted that Suit No. 346 of 1992 as referred to by the petitioner was in fact filed by the plaintiffrespondents for seeking injunction in the matter for restraining the petitioners from making any construction in the disputed premises, as such, pendency of the said suit has got no bearing with the dispute involved in the present matter.

8. Heard learned counsel for the parties and perused the material available on record.

9. The trial court after perusal of pleadings and the documentary evidence as well as oral evidence has held that no intricate questions of the title is involved in the matter and the court is competent to decide incidentally the questions of title involved in the matter. The courts below have given a finding of fact that the petitioner had failed to prove that any oral gift with respect to the disputed premises was executed by the erstwhile owner in his favour and the trial court, while coming to this conclusion, has referred to the pleadings, documentary evidences as well as the oral evidences adduced by the parties. It has also come on the record that name of the plaintiffs continues in the municipal record and

the taxes are paid by them.

10. A perusal of the record goes to show that the petitioner could not produce any cogent evidence before the court below to establish his claim over the property in dispute. The court below has also referred to an impleadment application filed by the so-called legal heirs of Anna Khatoon claiming themselves to be the owners of the property in dispute who later on withdrew their claim and admitted the ownership of the plaintiffs.

11. The court below on the basis of evidence on record have rightly come to the conclusion that the defendants were also liable for eviction on the ground of denial of title of the plaintiffs. It has also rightly held that the injunction suit pending in the court below has got no bearing with the questions involved in the present matter. I find that the finding of the court below is based on appraisal of evidence produced in the case and does not suffer from any error of law. Both the courts below have given cogent, convincing and satisfactory reasons while passing the order in favour of the respondent-landlords. The findings are neither perverse nor based on extraneous or irrelevant material. The courts below on meticulous evaluation of the evidence and material available on record decreed the suit in favour of the landlord. This court under Article 226 of the Constitution of India can not substitute its own opinion to the opinion of the courts below, unless it is found that the conclusion drawn by the lower court is erroneous being contrary to the mandatory provisions of law or based on inadmissible evidence or arrived at findings without evidence.

12. In view of the above, I do not find any illegality or infirmity in the impugned orders.

13. In the result, the writ petition is dismissed.

14. After the judgment was dictated, learned counsel for the petitioner urged that at least six months' time may be granted to him for vacating the premises in question. The learned counsel for the landlord did not raise any objection to it.

15. As urged by the learned counsel for the petitioner, six months' time is granted to the petitioner to vacate the premises in dispute provided the petitioner gives his undertaking in the form of an affidavit before the prescribed authority within one month from today specifically stating therein that he will handover the peaceful possession of the said accommodation to the landlord opposite parties without inducting any third person within a period of one year from today. It is further provided that the petitioner shall pay the entire arrears of rent including the current rent as applicable upto the date of delivery of the vacant possession of the disputed premises within one month from today.

16. In the event of default in any of the aforesaid conditions, the landlord opposite parties will be at liberty to proceed to evict the petitioner if necessary by coercive process with the aid of police force.