
(2010) 02 AHC CK 0202
In the Allahabad High Court
Case No : Writ A. No. 7436 of 2010

Baljori Devi

APPELLANT

Vs

Devi Singh (Dead) and Others

RESPONDENT

Date of Decision : 23-02-2010

Acts Referred:

Citation : (2010) 02 AHC CK 0202

Hon'ble Judges : Devendra Pratap Singh, J

Final Decision : Dismissed

Judgement

Devendra Pratap Singh, J.—Heard learned counsel for the petitioner and perused the record.

2. The respondent landlords and their predecessors instituted Suit No. 7 of 1982 before the Judge Small Causes Court for rent, ejectment and mesne profits against the husband of the petitioner who was a tenant of the two adjoining disputed shops out of which admittedly one shop was covered by tin shed. After contest the suit was decreed vide order and judgment dated 1.8. 1991 which was subjected to challenge by the petitioner in Civil Revision No. 588 of 1991 before this Court and an interim order was also granted. Nevertheless, the revision was dismissed for non prosecution on 8.1.1998 and the interim order was vacated. Subsequently, a restoration application was filed and the revision was restored to its original number vide order dated 6.3.2000 but no interim order was passed. On these facts, the respondent landlord filed an execution application no. 1 of 2004 for execution of the ejectment decree. The petitioner preferred objections under Section 47 C.P.C. which has been dismissed by the impugned order dated 27.1.2010 which is subjected to challenge before this Court in the present writ petition.

3. It is urged on behalf of the petitioner that the execution application for the decree dated dated 1.8.1991 was filed beyond the period of limitation of 12 years and therefore, the objection was wrongly rejected.

4. It is not denied on behalf of the petitioner that there was an interim order of stay operating in his favour from 1991 till January, 1998 and therefore, there was no question of filing execution application. In February, 1998 a restoration application was allowed and the revision was restored to its original number and subsequently the revision itself was dismissed on 21.8.2009. On these facts, it cannot be said that the execution application was beyond time.

5. It is lastly urged that the decree cannot be executed so far as the tin shed is concerned. This objection was also raised before the executing court which has found that the tenancy was for the shop including the tin shed and the decree was a composite decree and it cannot be said that it was not a building within the meaning of the Act. In the opinion of the Court, the reasoning given by the executing Court cannot be faulted.

6. No other point has been urged.

7. For the reasons above, this is not a fit case for interference under Article 226 of the Constitution of India. Rejected.