
(2005) 05 AHC CK 0157

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13167 of 1985

Basudeo Prasad and Ors.

APPELLANT

Vs

Prescribed Authority & Ors.

RESPONDENT

Date of Decision : 12-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2005) 05 AHC CK 0157

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—Landlord original petitioner B. Prasad (since deceased and survived by legal representative) filed release application under Section 21 of U.P. Act No. 13/72 which was registered on the file of Prescribed Authority, Allahabad as Case No. 115/1977. The opposite parties in the said release application were Malti Devi and Laxmi Devi. In the release application it was stated that Malti Devi was tenant and Laxmi Devi who was motherinlaw of Malti Devi also alleged herself to be tenant hence both of them were impleaded as respondents. A joint written statement was filed in para 1 of which it was stated that Laxmi Devi was tenant and Malti Devi was not tenant. Thereafter, Malti Devi was deleted from array of parties in the release application. Release application was allowed exparte on 19121983 thereafter possession was also taken by the landlord on 761984. Laxmi Devi filed restoration application, which was rejected on 361985. Before the filing of the said restoration application Malti Devi had filed a writ petition in this Court being Civil Misc. Writ Petition No. 7964/84. The main allegation in the writ petition was that goods and properties of Malti Devi were lying in the premises. The writ petition was dismissed on 2371984 with the observation that for getting the properties which were lying in the premises in dispute petitioner Malti Devi might file regular suit. Prior to filing of writ petition Malti Devi had filed application before Prescribed Authority for restoration of

possession on 861984. The said application has been allowed by the impugned order by the Prescribed Authority, Allahabad dated 361985 passed in Misc. Case No. 13/84, Basudev v. Malti Devi. Malti Devi is respondent No. 2 in the instant writ petition and Laxmi Devi was respondent No. 3 in this petition. Respondent No. 3 has died and survived by legal representative.

2. No one appear on behalf of the respondents even though the case is taken up in the revise list.

3. Heard learned Counsel for the petitioner.

4. I am of the opinion that restoration application filed by Malti Devi was not maintainable for the following three reasons:

(i) According to the joint written statement in which Malti Devi was also signatory which had been filed in the main case Malti Devi was not tenant.

(ii) In earlier judgment passed by this Court also it was observed that Malti Devi was not the tenant only liberty granted in the judgment of the earlier writ petition decided on 2371984 was for initiation of proceedings before the regular Court for taking back the delivery of the goods which according to Malti Devi belonged to her.

(iii) When restoration application filed by Laxmi Devi had been rejected there was no sense to entertain restoration application filed by Malti Devi.

5. Accordingly impugned order is set aside and writ petition is allowed.