
(2016) 04 AHC CK 0270
In the Allahabad High Court
Case No : Writ A No. 6722 of 2016

Bharat Bhatia

APPELLANT

Vs

Uma Shankar

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2017) 1 ARC 23

Hon'ble Judges : Mrs. Sunita Agarwal, J.

Bench : Single Bench

Advocate : Anil Kumar Mehrotra, Advocate, for the Petitioner; Chandra Keshwar Singh, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Mrs. Sunita Agarwal, J.—Amendment application and rejoinder affidavit filed today be taken on record.

2. There is no objection to the amendment application.

3. The amendment application is allowed.

4. This petition is directed against the judgment and orders dated 23.9.2014 and 8.10.2015 passed by the Prescribed Authority and the Appellate Authority on the release application filed under Section 21(1)(a) of U.P. Act No.13 of 1972.

5. Brief facts relevant to decide the controversy are that the disputed property namely House No.110/205, Ram Krishna Nagar, Kanpur Nagar was allotted vide allotment order dated 27.9.1993 passed by the competent authority. The consent of the owner namely Sri Vishnu Batham was obtained before making allotment in the name of the petitioner. The contention of the petitioner is that the rent was being tendered to Sri Vishnu Batham who was the actual landlord and it was being received by Sri Ratan Batham on his behalf who had issued Rent receipts which were filed by the petitioner.

6. The release application was filed by Sri Uma Shanker Batham on 23.4.2012 with the assertion that he is the co-owner of the House No.110/205-B, Ram Krishna Nagar, Kanpur Nagar. Other co-landlord and owner of the said property namely Sri Ram Shanker Batham has been arrayed as opposite party No.2 therein.

7. It was stated therein that a family settlement had been arrived between the owners of House No.110/205, Ram Krishna Nagar, Kanpur Nagar namely Sri Ratan Lal Batham, Brij Kishore Batham and Jugal Kishore Batham all sons of Late Rameshwar Prasad and Ram Shanker Batham and the applicant namely Uma Shanker Botham.

8. On account of this family settlement dated 15.11.2008, a portion of the house in question came in his share and his name along with the name of another co-owner namely Ram Shanker Batham was duly mutated in the records of Nagar Nigam. It was also stated in the release application that this fact was brought to the knowledge of opposite party No.1 namely the tenant and photocopies of all the relevant documents were provided to him. The boundaries of the shop in question has been given at the foot of the release application.

9. The need set up by the applicant is for his two sons namely Sri Amit Kumar Batham and Nitin Kumar Batham. It was stated that both were engaged in temporary private job and were getting a meagre salary and often they remained jobless. The shop in question was needed urgently for their business so that they may settle in their life. This release application was contested by filing a written statement dated 3.10.2013. In reply to paragraph 1 of the written statement, it was admitted by opposite party No.1 namely the petitioner that he was tenant of the shop at the ground floor of House No.110/205, Ram Krishna Nagar, Kanpur Nagar and it was allotted to him on 27.9.1993.

10. So far as the claim of the applicant, namely Sri Uma Shanker Batham is concerned, it was contested in paragraph 1 of the written statement by stating that there was no landlord-tenant relationship between the opposite party No.1 and the applicant Sri Uma Shanker Batham and his brother Ram Shanker Batham.

11. In paragraph-2 of the written statement it is averred that the rent of the shop in question was being tendered to Sri Ratan Batham with the permission of Vishnu Batham. Rent receipts with the name of Sri Rameshwar Prasad and brothers were being issued by Sri Ratan Batham till 19.12.2010 for the rent paid till December 2010. However, no rent receipt was given by him thereafter though the rent was paid to Sri Ratan Batham in cash till October 2012.

12. On 18.2.2013, rent was tendered through Money-order for approximately four months i.e. till February 2013 to the applicant landlord.

13. So far as the family settlement dated 15.11.2008 is concerned, the tenant did not receive any information legally regarding the same.

14. On the question of bona fide, it was categorically stated that both the sons were engaged in private jobs and were getting handsome salary. They do not need the shop in question.

15. The Prescribed Authority framed three issues namely issue No.1 was "whether there was any landlord-tenant relationship between the parties?" Issue No.2 was on bona fide need and Issue No.3 was on comparative hardship of the parties.

16. Both the Courts below have recorded findings in favour of the landlord on these three issues.

17. Challenging the findings recorded by the Courts below, first submission of learned counsel for the petitioner is that the family settlement dated 15.11.2008 was never brought to the knowledge of the petitioner. He did not pay rent to the applicant-landlord namely Uma Shankar Batham who claimed ownership on the basis of family settlement dated 15.11.2008. The original landlord of the property in question was Vishnu Batham who had given consent for its allotment in the name of the petitioner. There was no evidence that rent was ever tendered to Sri Uma Shankar Batham who has filed the release application. The Courts below have erred in law in relying upon the cheque dated 8.5.2012 issued in the name of Uma Shankar Batham to record a finding that the rent from June 2011 to May 2012 was tendered by the petitioner to him. The rent receipt is admittedly issued after the release application was filed and, therefore, it could not have been given consideration by the Courts below to record the finding regarding landlord-tenant relationship.

18. In any case, there was no landlord-tenant relationship between the petitioner and Sri Uma Shankar Batham. The ownership of the applicant to the suit property has specifically been denied in the written statement.

19. Even if family settlement is accepted, it would be a case of transfer of interest in the property in question. This transfer was admittedly came into being only in the year 2011 and, therefore, the release application was barred under the first proviso to sub- Section (1) of Section 21 as it was filed within three years of transfer of interest.

20. Lastly, it is urged by the learned counsel for the petitioner that the need set up by the landlord was not bona fide rather it is only a desire to get the shop in question vacated. Two sons of the applicant-landlord for whose need the shop is stated to be required have not filed their affidavits before the Court below to indicate their intention to commence business in the shop in question. It is admitted to the landlord that his sons were engaged in private jobs. The nature of their occupation has not been disclosed. The petitioner filed evidence before the Appellate Court to demonstrate that the sons of the landlord were settled in their life and they had no intention to commence the business. The Prescribed Authority as the Appellate Authority had erred in arriving at the finding on bona fide need of the landlord by placing burden upon the petitioner to prove that the

sons of the landlord were well-settled. This reasoning given by the Appellate Court makes the finding perverse.

21. The Prescribed Authority on the other hand did not at all considered the fact that son of applicant-landlord had not come forward to file their affidavits to prove that the shop in question is needed bona fide for them.

22. In any case, the burden was upon the applicant-landlord to prove that the need set up by him in the release application was bona fide and not merely a desire to evict the petitioner.

23. In any case, the respondent, Uma Shankar Batham is a subsequent landlord and he cannot maintain the release application within three years of acquiring interest in the property in question.

24. On the other hand, learned counsel for the respondents submits that the denial of landlord-tenant relationship was not bona fide. The applicant-landlord came out with the clear case that he is co-owner of the disputed property which came in his share on account of family settlement dated 15.11.2008. The other co-owner of the disputed property is Ram Shankar Batham who was also impleaded as opposite party No.2.

25. Even if it is accepted that the shop in question was allotted in the name of the petitioner on the consent of Sri Vishnu Batham, the earlier landlord, it would not make any difference as the co-ownership of the petitioner or the family settlement dated 15.11.2008 could not be disputed by the petitioner. The applicant-landlord had acquired interest in the property by way of the family settlement dated 15.11.2008 and the release application was filed after three years i.e. in the year 2011 and, therefore, there is no merit in the submission that it is barred by first proviso to sub- Section (1) of Section 21.

26. Having heard learned counsel for the petitioner and perused the record.

27. So far as the first question regarding landlord-tenant relationship is concerned, on perusal of the pleadings on record it is evident that a specific stand was taken by the applicant in the release application that he was co-owner of the suit property and got ownership rights on account of family settlement dated 15.11.2008. This settlement has been arrived between the sons of late Rameshwar Prasad, Ram Shankar Batham and the applicant Uma Shankar Batham both sons of late Jagdish Prasad.

28. Admittedly, the rent was being paid to Sri Ratan Lal Batham who is party to the family settlement. The ownership of Ratan Lal Batham to the suit property is also not denied. It is noteworthy that though Sri Vishnu Batham had given consent for allotment of this shop in the year 1993 in the name of the petitioner, however, he has never come forward to oppose the release application. The assertion of the learned counsel for the petitioner that Sri Vishnu Batham was not party to the family settlement and, therefore, the applicant-landlord could not claim transfer of ownership therefore, is without any force.

29. In paragraph 1 & 2 of the written statement, though the petitioner denied landlord-tenant relationship between him and Sri Uma Shankar Batham and applicant-landlord, however, he has not disputed that the applicant-landlord was co-owner of the suit property. It is nowhere stated that the applicant-landlord is an outsider or could not have acquired interest in the property on the basis of family settlement dated 15.11.2008. Moreover, the name of the applicant-landlord has duly been mutated in the municipal records in place of earlier owner.

30. The challenge to his title or ownership of the applicant-landlord to the suit property, therefore, is misconceived.

31. In any case, the petitioner cannot deny that the applicant-landlord was one of the co-owners of the suit property and got his share on account of family settlement arrived on 15.11.2008. For the sake of repetition, it is noteworthy that none of the co-owners or owner of the suit property as alleged by the petitioner has come forward to oppose the release application.

32. This apart, admittedly one cheque bearing No.475483 dated 8.5.2012 was issued by the petitioner in the name of the applicant-landlord.

33. The submission of learned counsel for the petitioner is that the said cheque was issued for another purpose is not substantiated from the record and, therefore, not acceptable.

34. This cheque has been received vide receipt dated 8.5.2012 which is also on record. The number of cheque and the period for which the rent was tendered is entered on the back side of the receipt with the endorsement of the petitioner, this receipt is not disputed by the petitioner. The petitioner also could not prove that he has tendered rent to Sri Ratan Lal Batham after 19.12.2010. Admittedly, rent receipts earlier have been issued by Sri Ratan Lal Batham with the description of the landlord being M/s Rameshwar Prasad Batham and Bros.

35. It, therefore, appears that the property in question was a joint family property which came in the share of the applicant-landlord on account of the family settlement arrived on 15.11.2008. After getting his share, he filed the release application after three years of acquiring interest in the property. The release application is, therefore, perfectly maintainable. The relationship of landlord and tenant cannot be denied by the petitioner for the reason that the petitioner had issued a cheque in the name of the applicant-landlord which was encashed by him. For all these reasons, there is no justification to interfere in the findings on Issue No.1 recorded by the Prescribed Authority and affirmed by the Appellate Court.

36. Now, the question remains as to whether the shop is needed bona fide by the landlord. On this issue, the affidavit filed by the applicant-landlord and the judgments of the Court below have been perused carefully.

37. The Prescribed Authority has discussed bona fide need of the landlord in three paragraphs. In one paragraph, it has narrated the averments in the release

application. In the second paragraph, there is narration of the averments in the written statement and in the third paragraph, it is concluded that the tenant had failed to produce any documentary evidence to prove that the applicant's sons were engaged in private jobs. The averment of the applicant-landlord that his sons remained unemployed was accepted. It was also discussed that every person has a right to augment his income and in view of the fact that the landlord's sons are engaged in temporary employment, the need was found genuine.

38. The Appellate Court on the other hand recorded that the appellant has failed to prove by leading documentary evidence that sons of the applicant-landlord were engaged in private jobs and were getting handsome salary. It was further considered that the applicant-landlord filed the photocopy of the pass-book to submit that he has sufficient means to start a business for his sons. For the above two reasons, the need of the landlord was found bona fide and genuine. There is no dispute about the position that an adult person can file release to augment his income.

39. The need set up by the landlord herein is to start business for his two sons on the plea that they were engaged somewhere but their income was not sufficient. The nature of their engagement/employment has not been disclosed. Moreover, it is noteworthy that the landlord's sons did not come forward to file their affidavit to submit that they needed the shop in question to start a business.

40. It may not be required for a landlord to disclose as to which business he proposes for establishing his sons but to prove the need bona fide and genuine, burden is upon the landlord.

41. At this stage, learned counsel for the applicant-landlord invited attention of the Court to the affidavit of Sri Amit Batham son of the applicant-landlord filed on 28.2.2015 before the Appellate Court. In the said affidavit also his son did not state that he needed the shop in question for his business. He only stated that he was engaged intermittently in private jobs and had no sufficient source of income.

42. The Courts below have erred in placing burden upon the petitioner-tenant to prove that the sons of the landlord were engaged in private employment. The landlord was at least required to file the affidavit of his sons to prove that after release of the shop in question, they would start their business therein.

43. In the release application, the landlord himself states that his sons were engaged in private employment. There is no whisper regarding nature of their employment or their income. Admittedly, the landlord's sons are married and have their family. In absence of cogent evidence to prove that the shop in question is needed for the business of the two sons of the landlord, the release application could not have been allowed. As the landlord has failed to discharge initial burden of showing his need bona fide the onus could not have been shifted upon the tenant.

44. For the above reasons, the findings recorded by the Courts below on the bona fide need of the landlord are found to be perverse. As the need is not found genuine, there is no question of comparison of hardship of the parties.

45. The findings on Issue Nos. 2 & 3 on bona fide need of the landlord and comparative hardship of the parties are, therefore, set aside.

46. So far as the landlord-tenant relationship is concerned, the findings on Issue No.1 are affirmed.

47. The judgment and orders dated 23.9.2014 passed by Additional Civil Judge (Senior Division), Court No.2, Kanpur Nagar in Rent Case No.27 of 2012 (Sri Bharat Bhutia v. Sri Ram Shankar Batham) & 8.10.2015 passed by Additional District Judge, Court No.1, Kanpur Nagar, in Rent Appeal No.129 of 2014 (Uma Shankar Batham v. Ram Shankar Batham) of the Courts below are, therefore, set aside to the above extent.

48. The release application is dismissed, accordingly.

49. The writ petition is allowed.