

(1997) 11 AHC CK 0045
In the Allahabad High Court
Case No : Civil Revision No. 294 of 1997

Bharat Petroleum Corporation Ltd., Mirzapur	APPELLANT
Vs	
Smt. Parvati Devi and others	RESPONDENT

Date of Decision : 17-11-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 4
Provincial Small Cause Courts Act, 1887 — Section 15
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20, 29A, 29A(2), 29A(4), 29A(5)

Citation : (1998) 1 AWC 434

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Advocate : Shyam Kumar and G.N. Verma, for the Appellant; V.K. Upadhya, for the Respondent

Final Decision : Dismissed

Judgement

D.C. Srivastava, J.—This revision is directed against the findings recorded by the Court of Small Causes on issues No. 6 and 7 against the defendant-revisionist.

Issue No. 6 reads as under:

"Whether this Court has jurisdiction to try the suit?"

Issue No. 7 reads as under ;

"Whether the suit is barred by U. P. Act 13 of 1972"

2. In compliance of order of this Court passed on 19th May. 1997 in Civil Revision No. 147 of 1997 between the parties, the court below instead of deciding issue No, 6 as preliminary issue, proceeded to decide issues No. 6 and 7 as preliminary issues, on the ground that the two issues are interconnected.

3. The brief facts alleged in the plaint, copy Annexure-1 are that open plot of

land was given on lease by the landlady to defendant No. 1. M/s. Bharat Petroleum Corporation Ltd. For 20 years. The open plot was given for establishing a Petrol Pump and selling petrol products. The lease deed was executed on 18th September, 1957. There was provision for renewal of lease. The period prescribed in the lease expired, but the lease was not got renewed. Tenancy was determined by a notice. Request for renewal of lease after the expiry of the period of lease was rejected by the landlady. A suit for eviction by demolition of structures raised by the defendants and also for permanent injunction to defendant No. 1 not to supply petrol products to the dealer with effect from 1st November, 1996 was filed on the regular side in the civil court.

4. The defence was that the suit was cognizable by the Court of Small Causes and not by the civil court. On this plea, the above two issues were framed. The court below decided both the issues in negative against the revisionist, hence this revision.

5. The first point for determination in the revision is whether the civil court has jurisdiction to try such suit. Jurisdiction of a court is to be determined on the basis of allegations made in the plaint and also keeping in view the reliefs sought in the plaint. On mere assertion of the defendant in the written statement, jurisdiction of a court cannot be ousted. From the allegations made in the plaint, it is clear that open plot of land was let out by the landlady to defendant No. 1 for establishing a Petrol Pump and for selling petrol products. Copy of lease-deed has also been filed as Annexure-1 to the counter-affidavit. From Annexure-1 to the counter-affidavit, it is clear that open piece of land fully described in the lease-deed was let out and not any structure raised by the landlady. Structures were raised by the dealer/licensee for selling petrol products. The first relief in paragraph 16 (1) of the plaint is a decree for mandatory injunction directing the defendants to remove all structures, machinery, etc. And deliver vacant possession of open land in the shape it was let out. Other relief is that with effect from 1st November, 1996 entire work of supply and sale of petroleum product be stopped and injunction be granted accordingly against defendant No. 1 not to supply diesel and other petroleum products to the dealer and sale of petrol products be also prohibited. Decree for possession by eviction of the defendants was also sought.

6. It is, therefore, clear from the allegations made in the plaint as well as from the reliefs sought in the plaint that it was a suit for eviction of the lessee and also the dealer occupant from the open land let out to defendant No. 1 by demolition of structures raised thereon. Permanent injunction was also sought that defendant No. 1 be restrained from supplying petroleum products to the dealer and the sale of petroleum products be also restrained. It is not a case where the landlady has let out any building to defendant No. 1. A suit for eviction from the open land will always be cognizable by the civil court and not by the court of small causes. After amendment to Section 15 of Provincial Small Cause Court Act, only such suits for eviction shall be maintained in the court of small

causes where some building was let out by the landlord or landlady to the tenant and the tenancy was determined. In such cases, decree for eviction, recovery of arrears of rent, mesne profits, etc, can be claimed from the court of small causes and the civil court will have no jurisdiction to entertain such suits. Since no building was let out by the landlady to defendant No. 1, the suit prima facie could not be filed in the court of small causes.

7. Further the relief of injunction mandatory as well as prohibitory could not be sought from the court of small causes and if the reliefs sought are such which can be granted only by the civil court, the entire suit will become cognizable by the civil court and not by the court of small causes. Even in a case where some relief can be granted by the court of small causes and some relief can be granted by the civil court, the suit will be cognizable by the civil court and not by the court of small causes. If the relief of injunction cannot be granted by the court of small causes, the suit was rightly instituted on the regular side in the civil court.

8. Learned counsel for the revisionist, however, placing reliance upon Section 29A of U. P. Act 13 of 1972, contended that since structures were raised by the tenant with the consent of the landlady, suit for eviction on grounds other than those mentioned u/s 20 of U. P. Act 13 of 1972 could not be filed and since no such ground exists, as is contemplated u/s 20 of the Act, the suit is barred by U. P. Act 13 of 1972 and is also not cognizable by the civil court. The court below has not decided the controversy whether benefit of Section 29A of U. P. Act 13 of 1972 is available to the revisionist or not. Since on this point, neither any evidence has been recorded nor any finding has been given, it will not be proper for the revisional court to record a finding that benefit of Section 29A of the Act is available to the revisionist.

9. Section 29A (2) provides that this section applies only to land let out, either before or after the commencement of this section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof.

10. Sub-section (3) further provides that subject to the provisions hereinafter contained in this section, the provisions of Section 20 shall apply in relation to any land referred to in sub-section (2) as they apply in relation to any building.

11. However, for holding that benefit of Section 29A is available to the revisionist, it has to be determined whether the revisionist is tenant or assignee from the tenant or defendant No. 1 alone is the tenant. This controversy has also not been settled by the lower court so far.

12. In addition to this, sub-section (4) of Section 29A provides that the tenant of any land to which this section applies shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties, and in the absence of agreement, the rent determined in accordance with subsection (5).

13. Sub-section (5) provides that the District Magistrate shall on the application

of the landlord or the tenant determine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in sub-section (6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later.

14. There is again no finding that the tenant has made any application to the District Magistrate or the landlady has moved application for determination of annual rent and the rent has been so enhanced.

15. Consequently, abrupt finding cannot be given at this stage that Section 29A is applicable. This question is left open for determination by the trial court.

16. If the trial court finds that Section 29A of the Act is applicable and no ground mentioned u/s 20 of the Act exists, relief against eviction can be granted to the tenant and in that event, the decree for demolition will become infructuous so also decree for permanent injunction against the sale and supply of petroleum products. The suit for the reasons stated above, cannot be said to be barred by U. P. Act 13 of 1972.

17. Article 4 of II Schedule of the Provincial Small Causes Court Act provides that the suit for possession of immovable property or the recovery of interest in such property is excepted from the cognizance of & court of small causes. This article was amended in U. P. and the following article was substituted:

"4 A suit for the possession of immovable property or for the recovery of an interest in such property, but not including a suit by a less or for the eviction of a lessee from a building after the determination of his lease and for the recovery from him of compensation for the use and occupation of that building after such determination of lease.

Explanation.--For the purposes of this article, the expression "building" means a residential or non-residential roofed structure, and includes any land (including any garden), garages and out-houses, appurtenant to such building, and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof."

18. In view of the above provision, it is only suit for eviction of lessees from a building after termination of lease and recovery of possession and compensation, etc. which can be filed in the court of small causes. Building means a residential or non-residential roofed structure, and includes any land (Including any garden), garages and out-houses, appurtenant to such building, and also includes any fittings and fixtures affixed to the building for the more beneficial enjoyment thereof.

19. It is not a case where any building with open land appurtenant to such " building was let out to the lessee. Consequently, the suit is cognizable by the civil court. The court below committed no illegality in giving finding that the civil court has jurisdiction to decide such suit and the suit is not barred by U. P. Act 13 of

1972.

20. The case law in Lala Data Ram Gupta v. Hart Krishan and others 1981 ARC. 401 does not help the revisionist at this stage because it is for the trial court to decide whether Section 29A of U. P. Act 13 of 1972 is available to the tenant or not and whether the revisionist is tenant or assignee of the tenant or not. Likewise the case of Jagjeet Singh v. Anil Kumar Gupta 1997 ARC 580, also does not help the revisionist.

21. For the reasons given above, there is no merit in this revision, which is accordingly dismissed. No order as to costs.