
(1999) 05 AHC CK 0139

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9740 of 1982

Chitralekha srivastava and others

APPELLANT

Vs

8th Addl.District Judge, Allahabad and others

RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (1999) 05 AHC CK 0139

Hon'ble Judges : Yatindra Singh, J

Final Decision : Allowed

Judgement

Yatindra Singh, J.—This is the landlord's writ petition against the order dated 22.05.1982 passed by the VIII ADJ, Allahabad allowing the revision filed by respondent No. 2 dismissing the suit filed by the petitionerlandlord.

FACTS

2. The petitionerlandlord filed a suit after terminating the tenancy of the tenant. The premise in dispute is residential premises. According to landlordpetitioner the respondent No. 2 is his tenant. The rate of rent was Rs. 60/ per month and Rs. 10/ per month for water charges. Petitioner filed a suit after terminating the tenancy on the ground that the tenantrespondent No. 2 has sublet the premises in dispute to respondent No. 3 Sri Babulal son of Ram Bhawan alias Barka and he is in arrears of rent. The judge, Small Causes Courts, Allahabad by its order dated 05.09.1998 held that the tenant is not in arrears of rent but he has held that the respondent No. 2 has sublet the premises in dispute to respondent No. 3, as such he decreed the suit for eviction. Aggrieved by his order the tenantrespondent No. 2 filed a revision. The petitionerlandlord also filed a revision. Both the revisions were taken up together. The revision of the landlord was dismissed whereas the revision of the tenantrespondent No. 2 was allowed. It was held that there was no subletting. Hence the present petition.

POINTS FOR DETERMINATION

3. The counsel for the petitioner says that Judge Small Causes Court had given a finding that respondent No. 2 has sublet a part of premises to respondent No. 3. It is finding of fact. It could not be interfered under section 25 of the Provincial Small Causes Act. This is so held by a decision of Division Bench of this Court reported in Luxmi Kishore v. Har Prasad Shukla, 1981 ARC 545. Counsel for the respondents say that judgment of judge Small Cause Court was not in accordance with law. The revisional court rightly interfered with it. The counsel for the respondents further argued that the notice terminating the tenancy was invalid, as it was not mentioned in the notice that respondent No. 2 has sublet the premises to the respondent No. 3. On the submission of the counsels following points arise for determination.

(i) The finding of subletting recorded by the Judge Small Causes Court Act was a finding of fact. Could it be set aside/interfered in revision under section 25 of the Provincial Small Causes Court Act.

(ii) Was the notice terminating the tenancy invalid due to the reason that there was no mention that respondent No. 2 has sublet the premises to respondent No. 3.

SUBTENANCY

5. The landlord had come up with the case that Kranti Kumar Khare, respondent No. 2, has sublet part of premises to respondent No. 3. The case of Respondent No. 2 was that he has not sublet the premises in dispute to Babu Lal respondent No. 3, he is merely a domestic servant and is residing in the part of the premises. The possession of the respondent No. 3 was admitted. The trial court considered the oral evidence including the statement of Babulal Respondent No. 3(DW2), the statement of Km. Indira Devi, PW1 and the statement of Sri Raghu Nandan Prasad (PW2) an independent witness. Babulal respondent No. 3 himself admitted that he was working in the "Moonlight Press" where he was getting salary and his office timing is from 9.30 a.m. to 6.30 p.m. He could not say what pay was given to him by respondent No. 3 for working as domestic servant. At one stage he said that he was given 10 to 20 rupees and then he states only food was given. The Judge Small Causes Court in view of the admitted position that Babulal was in possession and on the basis of the evidence on record held that respondent No. 3 Babu Ram is not the domestic servant of respondent No. 2, but is living as a subtenant along with Sri Kranti Kumar. Counsel for the parties had cited few decisions on the presumption and burden of proof in such a case, but these decisions are not relevant as both the parties have led the evidence. The burden of proof loses its importance. The trial court after considering the evidence on record had given the finding. The trial court rightly said that it is not necessary for the landlord to prove what amount of rent is being given by subtenant to tenant. The finding recorded by the Judge Small Causes Court is a finding of fact. It was in accordance with law. There is no illegality in the same. It could not be interfered in revision under section 25 of the Provincial Small Causes Court Act.

2nd Point WAS NOTICE INVALID?

6. According to the counsel for the tenant, the notice, terminating the tenancy, was invalid, as it was not mentioned in the notice that respondent No. 2 has sublet the premises to respondent No. 3. The courts below have not dealt with this point. No issue was framed. The counsel for the respondents could also not point out if such an objection was taken in the written statement or raised in the ground of revision. There is nothing to show that this was ever argued before any Court. The notice terminating the tenancy of the respondent No. 2 has also not been filed by the respondents to substantiate the point. It is neither proper to permit the respondent to raise this question nor there is any merit in it.

CONCLUSION

7. The writ petition is allowed with costs. The judgments and order dated 22.05.1982 passed by respondent No. 1 is hereby quashed. However, the respondents may not be evicted for a period of six months from today from the premises in dispute provided they file an undertaking in the form of an affidavit within one month before the concerned Judge Small Causes Court that they will peacefully handover the possession of the premises in dispute within six months and pay the damages at the rate of rent and for the period of their occupation.