

(2013) 02 AHC CK 0167

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43907 of 1997

Chunni Devi (Smt.) (Dead) By Lrs.

APPELLANT

Vs

III Additional Civil Judge (Sr.Division), Kanpur Nagar and
Others

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

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

Citation : (2013) 02 AHC CK 0167

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—The order dated 29.11.2012 having been recalled vide order of date passed on Recall Application, writ petition is restored to its original number. As requested by learned counsels for parties, I proceed to decide this matter finally at this stage.

2. Heard Sri Atul Dayal, Advocate, for petitioner and Sri Pankaj Agarwal, Advocate, holding brief of Sri M.K. Gupta, Advocate, for respondents.

3. Petitioner is landlady of the disputed accommodation. She filed an application under Section 21 (1) (b) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") before Prescribed Authority/3rd Addl. Civil Judge, Kanpur Nagar, registered as Case No. 155/1980, impleading respondent no. 3, seeking ejectment of respondenttenants on the ground that building in dispute is in dilapidated condition and needs reconstruction after demolition.

4. Respondenttenants, initially, contested the matter filing their objection, copy whereof has been placed on record as Annexure2 to the writ petition, but, thereafter it appears that parties entered into a compromise and requested Prescribed Authority to decide the matter, in terms of the compromise, a copy whereof has been filed as Annexure3 to writ petition. Before the order Could be

passed by Prescribed Authority, applications were filed by Sri Keshav Prasad, Shiv Nath and Kanya Kubja Trading Company through its Partner Sri Dharmendra Kumar (copies whereof have been filed as Annexures 4, 5 and 6 to writ petition) stating that they are subtenants in the accommodation in question, having entered in the building in dispute with the consent of the owner and, therefore, necessary parties, to be impleaded in the aforesaid proceedings, and, without giving opportunity of hearing to them, no order ought to be passed. These applications were allowed by Prescribed Authority vide orders dated 20.10.1997 and 24.11.1997 (Annexures 13 and 14 to writ petition).

5. Sri Atul Dayal, learned counsel for petitioner, submitted that it was an admitted case of respondentsubtenants that they stood in the shoes of tenantin chief/principal tenant and were sublet the accommodation in question with the permission of erstwhile owner. That being so, they have no independent right, but their rights flow only from principal tenant. In these circumstances, the subtenants have no right either to be party in the ejectment proceedings or to contest the matter. He placed reliance on *Rupchand Gupta Vs. Raghuvanshi (Private) Ltd.* AIR 1964 SC 1889, *Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs. Khaja Midhat Noor and others* AIR 1988 SC 1470, *Mohan Lal Garg Vs. Suresh Chand Jain and others* 1994 (1) ARC 211 and *Kersi Commissariat and others Vs. Ministry of Food and Civil Supplies, government of Maharashtra, Mumbai and another* (2012) 5 SCC 187 (para 35).

6. Sri Pankaj Agarwal, Advocate, holding brief of Sri M.K. Gupta, learned counsel for respondents, however, contended that where the proceedings for ejectment are collusive between the landlord and principal tenant, subtenants are entitled to be heard, and, placed reliance on *S.K. Banerji Vs. Surendra Narain Mishra* 1990 All.L.J. 228 and *Surayya Begum (Mst.) Vs. Mohd. Usman and others* (1991) 3 SCC 114.

7. The short question is whether the respondentapplicants, who were subtenants in the accommodation in question, were necessary and proper party so as to be allowed impleadment in the pending application under Section 21 (1) (b) of Act, 1972, or, they were already represented through the principal tenant, hence, could not have claimed, as a matter of right, their impleadment and right to contest the aforesaid application.

8. In my view, this issue is already settled by the binding precedents of Apex Court and this Court.

9. In *M/s Importers and Manufacturers Ltd. Vs. Pheroze Framroze Taraporewala* AIR 1953 SC 73, the Court said:

"... Under the Ordinary Law a decree for possession passed against a tenant in a suit for ejectment is binding on a person claiming title under or through that tenant and is executable against such person whether or not he was or was not a party to the suit. The nonjoinder of such a person does not render the decree any the less binding on him. It is in this sense, therefore, that he is not a

necessary party to an ejectment suit against the tenant ..."

10. In *Rupchand Gupta* (supra), the disputed land was in the possession of a sublessee. The landlord brought a suit against the lessee for ejectment after serving a notice to quit. Sublessee was not impleaded. The lessee did not contest the suit and an ex parte decree was passed by Trial Court in favour of landlord, as a result whereof, the lessee and sublessee, both ceased to have any right to stay on the leased out property and had to be ejected. The sublessee, in the circumstances, to avoid ejectment, brought a suit claiming that the earlier decree was obtained by fraud and collusion of landlord and lessee, and, decree is not binding upon the sublessee, since he was not party. The sublessee impleaded the landlord and lessee both. Trial Court upheld the plea of sublessee and held that he was not bound by the earlier decree and not liable for ejectment. In appeal, however, this decree of Trial Court was set aside. Upholding the dismissal of suit of sublessee, the Apex Court held that mere fact that defendant agrees with the plaintiff that if a suit is brought he would not defend it, would not necessarily prove collusion. It is only if this agreement is done improperly in the sense that a dishonest purpose is intended to be achieved, that can be said to have colluded. Defendant by not contesting the suit or entering into a compromise to vacate the premises, leased out by a landlord, cannot be said to have proceeded to achieve a dishonest purpose. Proceeding further, the Court said that the law does not require that sublessee need be made a party. In all cases where landlord institutes a suit against a lessee for possession of the land on the basis of a valid notice to quit served, on lessee and does not implead sublessee as a party to the suit, the object of landlord is to eject the sublessee from the land in execution of decree and such a decree would bound the sublessee also though he may not be a party in the suit. The Court further said:

"This may act harshly on the sublessee; but this is a position well understood by him when he took the sublease. The law allows this and so the omission cannot be said to be an improper act"

11. The above view and decision has been followed and reiterated in para 12 of judgment in *Burmah Shell Oil Distributing Ltd.* (supra).

12. This issue came to be considered before a Division Bench also in *Mohan Lal Garg* (supra) and the Court said that every subtenant if inducted by the tenant either with the consent of landlord or under the law would always be lawful occupant, but merely being a lawful occupant would not constitute as if a decree passed against the tenant shall not be binding on the subtenant. If the subtenant can claim his tenancy rights independent of the tenant or the principal tenant having a direct relation with the landlord himself, there may be a different position, but not where subtenancy rights have originated from the tenant himself.

13. In *Sheikh Yusuf Vs. Jyotish Chandra Banerjee* AIR 1932 Cal. 241, it was held that a decree of ejectment passed against a lessee at the instance of a lessor is

not only binding upon lessee but also upon his subtenants, provided they have no right independent of the right of their lessor in the demised premises.

14. In *Ram Bihari Lal Srivastava Vs. Smt. Purna Devi and others* 1986 (U.P.) RCC 187, it was held:

"It is well settled that where the tenancy of the tenant-in-chief is terminated, the tenancy of the subtenant also comes to an end."

15. Very recently, the Apex Court in *Kersi Commisariat (supra)* has observed that a subtenant cannot enjoy a better protection or privilege by ostracizing the concept of premises than the tenant.

16. The decisions cited, however, on behalf of respondents, I find do not apply to the issue in question and are in different context.

17. In *Surayya Begum (supra)*, the claim set up by Surayya Begum, the appellant before the Apex Court, was that she was not impleaded as party in the ejectment proceedings started by respondent-landlords though her right of tenancy was an independent right. She was the daughter of Khalil Raza, original tenant in the premises in question and, therefore, the decree of ejectment sought by the landlord only against the sons of Sri Khalil Raza, without impleading Surayya Begum, who was his daughter, was not binding on her and her tenancy rights cannot be put to an end on the basis of aforesaid decree. Relying on Apex Court decision in *Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup* (1990) 4 SCC 700, it was contended on behalf of Surayya Begum that she was as much a tenant as her mother, brothers and sisters and therefore, it was not sufficient to obtain a decree against others leaving out the appellant. The Court recognized principle that the interest of a person, not impleaded by name in a judicial proceedings, can be represented by others, who are party to the suit. In this regard, the Court referred to the incident where a Karta of joint Hindu family has been recognized as a representative of other members of a Hindu family. The similar is the case of the trustee and the Court referred to the provision in Order 1 Rule 8 C.P.C. Having said so, the Court proceeded to observe that this principle is subject to an essential condition that the interest of person concerned has really been represented by others. In other words, his interest has been looked after in a bona fide manner. If there may be any clash of interests between the person concerned, and, his assumed representative, or, if the later, due to collusion or for any other reason, mala fide, neglects to defend the case, he cannot be considered to be his representative. The Court observed that this aspect needs to be decided after collecting evidence and accordingly remanded the matter.

18. It would be appropriate to notice at this stage that the aforesaid decision has been rendered by a two-Judge Bench. Subsequently, a three-Judge Bench of Apex Court in *Harish Tandon Vs. Addl. District Magistrate, Allahabad and others* 1991 (1) ARC 220 has overruled the earlier two-judge judgment in *Mohd. Azeem Vs. District Judge, Aligarh* 1985 (2) ARC 85 (SC) and approved the dictum laid down

in H.C. Pandey Vs. G.C. Paul 1989 (2) ARC 26 observing, where there are several coowners or cotenants, it is not necessary that all of them should be impleaded.

19. So far as the judgment of learned Single Judge in S.K. Banerji (supra) is concerned, I do not find that the Court had any occasion to consider the question which is up for consideration in this matter. Therefore, the said judgment has no application to the case in hand and reliance placed thereon is totally misconceived.

20. In the present case, the application submitted by respondents no. 4, 5, 6, 7 and 8 shows that they admitted their subtenancy through the tenantinchief, Smt. Tulsa Devi, and, that too, with the consent of previous owners. Annexure 4 is the application filed by Sri Keshav Prasad, occupying a double room shop situate on ground floor of Premises No. 50/48, Naughara, Kanpur. He pleaded that the accommodation in dispute is being occupied by him since 1970. The shop was let out to one Raja Ram by Smt. Tulsa Devi, tenantinchief. The said Raja Ram carried out business in partnership with Keshav Prasad, Mithilesh Behari, and thereafter in the name and style of M/s Munna Lal Keshav Prasad. Subsequently, Raja Ram with the consent of the owner and Smt. Tulsa Devi, tenantinchief, let out the said shop to Sri Keshav Prasad.

21. Similar is the pleading taken by Sri Shiv Nath, in his application (Annexure 5 to the writ petition) and in para 2 thereof, he has admitted that the accommodation was let out to him by Smt. Tulsa Devi, tenantinchief, with the consent of previous owner.

22. Respondent no. 5, M/s Kanyakubj Trading Company, also has made identical pleading in para 2 of its application (Annexure 6 to the writ petition).

23. None of the aforesaid subtenants claim any independent right of their own. The Court below, however, in the last paragraph of the impugned order dated 24.11.1997, by referring to Section 14 of Act, 1972, as amended in 1976, has observed that subtenancy has been regularized thereunder. It has clearly misled itself by going beyond the pleading of the applicants, inasmuch they (respondents 4 to 8) have not claimed any such regularization in the applications seeking impleadment, but, the Court below, very strangely, has proceeded to make out a new case for them so as to work out and find out an independent right of subtenancy, outside the tenantinchief, though such a right was not at all claimed by subtenants themselves.

24. The approach and the manner, in which Court below has proceeded in this case, and, passed the impugned order, without looking to the specific pleading of respondents 4 to 8 and without looking to the law on the subject, in my view, is apparently erroneous and the impugned order, therefore, cannot sustain.

25. In the result, writ petition is allowed. Order dated 20.10.1997 and 24.11.1997 (Annexures 13 and 14 to writ petition) are hereby quashed.

26. Petitionerlandlord is entitled to proceed to execute the decree in Rent Case

No. 155 of 1980, in accordance with law, if it has attained finality.

27. No costs.