

(2005) 09 AHC CK 0273
In the Allahabad High Court
Case No : C.M.W.P. No. 30664 of 2003

Church City Junior High School Shiksha Samiti and Another	APPELLANT
Vs	
Mahendra Kumar Jain and Others	RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4), 30

Citation : (2006) 1 AWC 53

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : A.K. Srivastava, for the Appellant; M.A. Qadeer, K.M. Garg and Ajit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—The respondents No. 1 and 2 filed a suit being Suit No. 112 of 1991 against the petitioner on the ground that they are the tenant of the accommodation in dispute which is owned by the respondent-landlord. The suit was filed with the allegation that the landlord purchased the property in dispute on 12.3.1990. Thereafter on 27.4.1991, a notice was sent by the landlord informing the aforesaid fact to the tenant. A notice demanding the arrears of rent w.e.f. 12.3.1990 and terminating the tenancy was issued by the landlord on 24.9.1991, which was served on the petitioner-tenant on 1.5.1999. Thereafter the aforesaid suit was filed by the respondent-landlord for the arrears of rent and ejectment before the trial court. The petitioner-defendants filed their written statement and denied the title of the landlord and also denied that they are liable to pay the rent to the plaintiff-landlord. After filing of the aforesaid written statement, the defendant filed an application seeking amendment in the written statement to the effect that the sentence whereby they have denied the title of the landlord, may be deleted. This application was contested by the plaintiff-landlord. The trial court by the order dated 16.4.1998, rejected the application

filed by the defendant-petitioner and by the order dated 16.4.1998, the suit was decreed by the trial court. The trial court found that the tenant has denied the title of the landlord and that the tenant has defaulted for payment of rent. Thus, made himself liable for ejectment. The petitioner-tenant claimed benefit of Section 20 (4) of U. P. Act No. 13 of 1972 was also denied and it is also denied by the tenant that the deposit made by the tenant u/s 30 of the Act should be treated to be deposited for the purpose of giving benefit to the tenant u/s 20 (4), thus, the suit was decreed for ejectment and arrears of rent. Petitioner being aggrieved by the order firstly by which the amendment application was rejected and secondly by which the suit was decreed filed two revisions, one Civil Revision No. 236 of 1999 against the order rejecting amendment application and the second Civil Revision No. 237 of 1999 against decreeing the suit. Both the revisions were clubbed together by the order dated 31.5.2003 and the revisional court affirmed the finding of the trial court and dismissed the revisions filed by the tenant-petitioner. Before this Court the same arguments were advanced as were advanced before the revisional court. In the teeth of the findings recorded by the trial court and affirmed by the revisional court which learned Counsel for the petitioner tries to assail unsuccessfully this Court refuse to exercise the jurisdiction under Article 226 of the Constitution of India, as this Court cannot sit in appeal over the findings recorded by the trial court and affirmed by the revisional court. On the question of benefit of Section 20 (4) of U. P. Act No. 13 of 1972 so far as the deposits made are concerned, learned Counsel for the respondent relied upon the decision of the Apex Court in *Ghoorey Lal v. Sheo Murti Gupta* and Anr. 1995 (2) ARC 4, wherein in the similar circumstances the Apex Court has ruled :

That in the event of denial of the title of the landlord by the tenant would amount that the deposit is conditional deposit which cannot confer any benefit to the tenant of the protection of Section 20 (4) of the Act. The Apex Court has ruled as under :

In this case having regard to the stand taken by the appellant in his written statement, we think it is not an unconditional deposit u/s 20 (4) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (Act XIII of 1972). In fact, after narrating that the landlord did not have title in paragraph 15 it is averred :

That though the respondent, in the above circumstances, does not admit to being the tenant of the plaintiff, still, without prejudice to his rights regarding the rate of rent, has deposited on September 21, 1987, the entire alleged rent from August 1, 1975 to July 31, 1978 at the rate of Rs. 10 per month along with cost of the suit and interest thereon, in total Rs. 553.25 by tender dated September 21, 1978, in the Court of Judge, Small Cause Court, Allahabad in Suit No. 335 of 1978, *Sheo Murti Gupta v. Ghooreylal* therefore, the respondent is entitled to the protection given by Section 20 (4) of the U. P. Act No. 13 of 1972 against eviction. The fact that even here no unmistakable term denies the title of the

landlord would amount to a conditional deposit. The court below is correct. The civil appeal stands dismissed. The question of grant of time is left to the executing court.

2. In my opinion, the facts of the case of *Ghoorey Lal* (supra) are applicable with full force to the facts of the present case so far as the denial of the title is concerned. Learned counsel for the petitioner relied upon the decision of this Court in *Hari Ram Sahu Vs. Dr. Ramesh Chandra Agarwal*, wherein this Court has upheld the decision of the trial court that the tenant in case of *Hari Ram Sahu* is entitled for the benefit of Section 20 (4) of the Act has been upheld by the revisional court. It is apparent that the case relied upon by the learned Counsel for the petitioner is not applicable and the case of *Ghoorey Lal* has application with full force. In the teeth of the finding that the tenant has denied the title of the landlord which has not been demonstrated to be either perverse or erroneous in law, I do not find that the petitioner can succeed on this account also. This argument is rejected.

3. In view of what has been stated above, this writ petition has no force and is dismissed. Interim order, if any, stands vacated.