

(2007) 03 AHC CK 0002
In the Allahabad High Court
Case No : Writ Petition No. 102 (R/c) of 2005

Daya Shankar Upadhyaya

APPELLANT

Vs

Naresh Chandra and Others

RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 23
Registration Act, 1908 — Section 2(7), 49

Citation : (2007) 4 ADJ 267 : (2007) 7 AWC 7101

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Advocate : S.P. Pathak, for the Appellant; Yogesh Kesharwani, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—This petition has been heard and disposed of in open court for reasons to be recorded later. My reasons for dismissing the writ petition are as follows.

2. Heard Sri S.P. Pathak, learned Counsel for the Petitioner and Sri Yogesh Kesharwani, learned Counsel appearing for the Respondents 1 to 3.

3. The Petitioner has assailed the judgment and order dated 26.2.2005, passed by the II Ird Additional District Judge, Raebareilly, in S.C.C. Civil Revision No. 607 of 2004, Daya Shankar Upadhyaya v. Naresh Chandra and Ors., preferred by the Petitioner against the judgment and decree dated 13.8.2004 passed by the Judge Small Causes Court, Raebareilly decreeing the suit of landlord-Respondents 1 to 3 for arrears of rent and ejectment of the Petitioner.

In the present case, both the courts below, i.e., learned Judge, Small Causes Court, Raebareilly and the revisional court, i.e., II Ird Additional District Judge, Raebareilly have recorded concurrent findings of facts, forming the same opinion

that the Petitioner-tenant was liable for ejectment from the property, accommodation in dispute, situate in town Jais in District Raebareilly, as he had defaulted in making payment of rent to the landlords for the rented premises since 1.5.1985 to 31.3.1987 (rent for 23 months).

4. It emerges from record that a suit for recovery of arrears of rent, ejectment and damages was filed by the Respondents 1 to 3 in the Court of Judge, Small Causes Court, Raebareilly. It was pleaded in the plaint that the Respondents 1 to 3 were the landlords of premises in question, situate in town Jais, which is a municipality of District Raebareilly. An agreement/rent note was executed between the landlords Naresh Chandra and Ors. and Sri Daya Shankar Upadhyaya, Petitioner on 1.4.1985 for the purposes of renting out the premises on a monthly rent of Rs. 300 per month. The tenancy of Petitioner Sri Daya Shankar Upadhyaya began from 1st day of each month and expired on last day of the month according to English calendar. The tenant had defaulted in making payment of rent and he fell in arrears of rent amounting to Rs. 6,900 (for 23 months) on 31.3.1987. A legal notice dated 17.4.1987 was sent to the tenant-Petitioner through registered post on 18.4.1987 demanding arrears of rent and determining the tenancy. The tenant refused to accept the notice on 23.4.1987, hence a suit was filed by the landlords, which was decreed by the learned Small Causes Court on 13.8.2004. On the basis of pleadings of parties, three issues were framed by the said court, i.e., whether the Plaintiff-landlords were entitled for Rs. 6,900 as arrears of rent from the tenant ; whether the tenant was liable to be evicted from the premises in question ; and to what relief, if any, were the Plaintiff-landlords entitled? The learned court below after appreciating the oral and documentary evidence led by the parties came to the conclusion that the tenant had defaulted in making payment of rent despite a written agreement/rent note executed by him and accordingly decreed the suit of the Plaintiffs. It was also proved before the Court on the basis of documentary evidence that the Plaintiffs Naresh Chandra, Ramesh Chandra and Umesh Chandra, sons of late Chaudhary Gopi Nath, were landlords of the premises which was rented out to the Petitioner on 1.4.1985 after executing an agreement/rent note. The Petitioner preferred a revision against the said judgment and decree of the trial court. After hearing the parties and going through the material on record, the revisional court has dismissed the revision vide its judgment and order dated 26.2.2005, confirming the judgment and order passed by the learned court below. The judgment and orders of both the learned courts below have been challenged in this writ petition.

5. Sri S.P. Pathak, learned Counsel for the Petitioner has submitted that the Petitioner was not a tenant, he was in fact landlord of the premises in question, which was his ancestral house. The premises in dispute was not owned by Sri Naresh Chandra, etc. who were claiming themselves to be the Zamindars of Qasba Jais, Raebareilly. In support of his submissions, he has placed reliance on two documents, one-List of House Tax Assesseees maintained by the Municipal Board Jais, Raebareilly in respect of House No. 234 and the other, a receipt

relating to payment of House Tax by the Petitioner Daya Shankar Upadhyaya. In support of his case, the Petitioner examined himself as D. W. 2 and one more witness Siyaram as D. W. 2. According to him, both the courts below have erred in holding that the house in dispute was not owned by the Petitioner. He has further submitted that in fact there was no relationship of landlord and tenant between the parties. No issue was framed regarding the title or ownership of the premises in question. In the written statement and other pleadings, the Petitioner had denied the title of landlord. Since intricate question of title was involved in this case, the court below ought to have returned the plaint or decided this question first before proceeding further. In support of his submissions, learned Counsel for the Petitioner has placed reliance on the judgments in Pratap Singh Vs. IXth Additional District Judge, Fatehpur and others, and Mahendra Pal Singh and Ors. v. District Judge, Jhansi and Anr. 2004 (1) ARC 697: 2004 (5) AWC 4090, wherein it has been held that the disputed question of title should have been dealt with by the appropriate civil court. Sri Pathak has further submitted that since the Petitioner himself was the landlord of the premises, no question had arisen to make payment of any rent to the alleged landlord.

6. As far as the agreement/rent note, paper No. 6 Ga is concerned, the submission of the learned Counsel for the Petitioner is that it was never proved according to law. According to him, the alleged agreement /rent note is an unregistered document, hence it is not binding on the parties. However, Sri S.P. Pathak, learned Counsel for the Petitioner has admitted that the said agreement/rent note dated 1.4.1985 bears his signatures. His submission is that this document being an unregistered document was inadmissible in evidence. The provisions of Act No. 13 of 1972 are applicable in the present case. The alleged letting was without a formal allotment and as such the landlord cannot claim any relief against the Petitioner. The judgment and order passed by the learned courts below are based on conjectures and surmises. The Petitioner is an illiterate and uneducated person ; he cannot read or write. However, he is able only to write his name. Sri Pathak has reiterated all the arguments, which were advanced before the courts below, and the pleadings put forth before the Judge, Small Cause Court, memo of revision etc.

7. Sri Yogesh Kesharwani, learned Counsel for the Respondent-landlords has resisted the writ petition. According to him, the Petitioner had entered into an agreement with the landlords on 1.4.1985. This agreement/rent note was duly signed by the Petitioner in presence of two witnesses and the same was proved before the Court. Now the Petitioner cannot be permitted to take a somersault and challenge the same in the writ petition. This agreement/rent note was written on a stamp paper purchased by the Petitioner himself on 22.3.1985. Since the Petitioner had not paid any rent for the rented accommodation, a legal notice dated 17.4.1985 was sent to him through registered post. The tenant had refused to receive it. As per learned Counsel for the Respondent-landlords, the Petitioner had failed to establish his ownership, title in respect of the house in

question. No cogent evidence was placed before the Court. Petitioner Daya Shankar Upadhyaya had himself admitted in his oral evidence during trial that he had no document of ownership. The assessment of the house by local body does not create any right, ownership or title in favour of a tenant. The findings of the courts below are proper and the same are based on documentary evidence. It was established before the courts below by producing 14 documents i.e., copies of khewat, intekhab, khasra, khatauni, etc. that the Respondents were landlords, owners of the house in question. All the issues were properly framed. The Petitioner has admittedly remained associated with the trial at all stages and at no stage any such objection was ever raised. The parties to the suit had full knowledge about the nature of issues based on their pleadings. If the Petitioner wanted for framing of any additional issue, he could have asked the learned courts below. No such request was ever made by the Petitioner before the Small Causes Court. The Petitioner is estopped to raise a dispute regarding the framing of issues. It is well-settled law that absence of an issue is not fatal where parties went to trial fully knowing the rival issues and led their evidence. Sri Kesharwani has further submitted that mere allegation in written-statement that title is involved is not sufficient for returning the plaint. The courts below have committed no error of law. The Judge, Small Causes Court has jurisdiction to decide question of title incidentally involved in the case. Section 23 of the Provincial Small Causes Courts Act does not make it obligatory on the Judge in each case to return the plaint for presentation before the appropriate court. In support of his submissions, learned Counsel for the Respondent-landlords has placed reliance on various judgments of this Court in *Shahid Ahmed and Ors. v. Additional District Judge III, Saharanpur and Ors.* 2002 (2) ARC 303 ; *Pradeep Kumar Gupta Vs. Surya Kant Dubey, and Smt. Munni Devi and others Vs. The Xth Additional District and Sessions Judge, Agra and others*, , wherein it has been held that a mere allegation in the written-statement that the title vests in a Defendant in a suit filed for ejectment and arrears of rent, is by itself not sufficient to establish that the question of title is involved in a suit. Only after evidence has been produced and the Court is of the opinion that a question of title is involved in the suit, which the Court of Judge, Small Causes cannot finally determine, it is open to the Court to return the plaint.

8. Sri Y. K. Kesharwani, learned Counsel for the Respondent-landlords has further submitted that even in the absence of a formal allotment order, relationship of landlord and tenant subsists. In support of his submission, he has placed reliance on *Abdul Ghani v. Abdul Malik*, 2006 (2) ARC 228. Here was a case where a written agreement was executed by the tenant, who had accepted himself to be the tenant of the rented accommodation.

9. As far as registration of the agreement/rent note is concerned, Sri Kesharwani has placed reliance on a decision of this Court in *Ram Sewak Jaiswal Vs. Abdul Majeed and Others*, in support of his submission that a rent note executed by a tenant alone for eleven months" period at a prescribed rent would be defined as a lease u/s 2(7) of the Registration Act. Section 49 of the Registration Act did not

operate to exclude document as evidence of lease on ground of non-registration. Thus, the agreement/rent note executed on 1.4.1985 was rightly read in evidence against the tenant by both the learned courts below.

10. I have heard learned Counsel for the parties and perused the record.

11. Here is a case where a written agreement/rent note was executed between the Petitioner and the Respondents 1 to 3 on 1.4.1985. This document has been annexed as Annexure-4 to the writ petition. It reads as follows :

12. A bare reading of this document indicates that an old house defined by the boundaries, location etc. was rented out to the Petitioner Daya Shankar Upadhyaya on a monthly rent of Rs. 300. It was further provided in this agreement/rent note that the landlord may get the premises vacated after giving one month's notice to the tenant. It has emerged from record that both the courts below have relied on this document as the same was written on a stamp paper purchased by the Petitioner himself on 22.3.1985 and was duly signed by him in presence of two witnesses. Both the courts below i.e., Judge, Small Causes Court and the revisional court have recorded concurrent findings of facts that the Petitioner was inducted as tenant on 1.4.1985. This document was proved during trial by the witnesses and the same was read in evidence. The landlords had placed 14 documents i.e., copies of khewat, intekhab, khasra, khatauni, registry receipt and house tax receipts issued by Municipal Board Jais, Raebareilly, etc. before the Judge, Small Causes Court and examined three witnesses in support of their pleadings, submissions etc. Both the courts below have appreciated the oral and documentary evidence led by the parties to come to a definite conclusion that the Respondents 1 to 3 were landlords of the house in dispute and the Petitioner was their tenant.

13. As far as the Petitioner's claim for ownership is concerned, he had himself deposed before the Court that he did not possess any title-deed or a document of ownership. Out of the two documents filed by him, one is a list maintained by the Municipal Board in respect of the persons who are required to pay house tax. Another document produced is a house tax receipt. Both the courts below have held that these two papers No. 36Ga and 37Ga were not related to the premises in question. The boundaries of the house and other details of the property were not shown in these documents. On the other hand, the landlords had proved their case before the Court by producing 14 material documents, which demonstrated their title over the house in question. Details of the property, boundaries of the house and other particulars shown in these papers were found to be specific and clear, which strengthened the case of the landlords regarding ownership. Even before this Court, Sri S.P. Pathak, learned Counsel for the Petitioner has failed to indicate or produce any document, which may show that the Petitioner was landlord. It was for him to have produced some relevant material before the courts below or before this Court to substantiate his submissions in this regard. The Petitioner has miserably failed to establish his case. He has merely reiterated the same submissions, which were made before

the courts below.

14. As far as the service of notice is concerned, both the courts below have come to the conclusion on the basis of postmaster's report that the Petitioner had refused to acknowledge the receipt of registered notice, Ext. Ka-2 and this Court finds no error in it.

15. So far as question of framing of issue regarding title is concerned, there is force in the submission of Sri Yogesh Kesharwani, learned Counsel for the Respondent-landlords that a mere allegation in the written statement that the title vests in a Defendant in a suit filed for ejectment and arrears of rent, is by itself not sufficient to establish that the question of title is involved in a suit. In the present case, only a written statement had been filed in which the title of the Respondent-landlords was disputed. A mere mention in the written statement and during course of arguments does not entitle the Defendant-Petitioner to submit that this case involving title dispute should have been dealt with by an appropriate court. The learned court below had rightly exercised its discretion u/s 23 of the Provincial Small Causes Courts Act. The parties to the suit had full knowledge about the nature of issues based on the pleadings. There is absence of any request on behalf of the Petitioner for framing any additional issue by the learned courts below. The law is settled that absence of an issue is not fatal where parties went to trial fully knowing the rival issues and had led their evidence. On the basis of oral and documentary evidence, both the courts below have rightly come to the conclusion that the Petitioner was merely a tenant and not landlord. No view other than the one taken by the learned courts below is possible in the matter in view of the facts and circumstances of the present case.

16. Before this Court, the same arguments have been reiterated by the Petitioner, which were raised before the courts below. Sri S.P. Pathak, learned Counsel for the Petitioner has failed to demonstrate any error, muchless an error of law in the findings of the trial court, as affirmed by the revisional court, so as to warrant interference by this Court under Article 226 of the Constitution of India. It is well-settled that where concurrent findings of facts have been recorded by the Courts, no judicial inference is required. In view of the law laid down by the Apex Court and this Court, in *Surya Dev Rai v. Ram Chander Rai and Ors.* (2003) 6 SCC 675 ; *Leeladhar Vs. Additional District Judge and Another*, *Abdul Naim Quraishi Vs. Masi-Uddin Khan*, *Ram Autar Agrawal Vs. A.D.J., (Special) and Others*, *Kishan (Shree) Vs. Additional District and Sessions Judge and Others*, *Alimuiddin v. XIIth Addl. District and Sessions Judge, Meerut* and *Ors.* 2005 (UP) RCC 388; 2005 (3) AWC 2457 and *Bata India Ltd. Vs. 3rd Addl. District Judge, Muzaffarnagar and others*, this Court cannot be requested to sit in appeal ; accordingly it declines to indulge itself in reappraisal of the findings recorded by the courts below.

17. As regards letting out the premises without the order of allotment, the Hon"ble Supreme Court of *Nanakram Vs. Kundalrai*, has held that in the absence of any mandatory provision obligating eviction in the case of contravention to the

provisions of the Act, the lease would not be void and the parties would be bound as between themselves to observe the conditions of lease. It was further held that neither of them could assail the lease in a proceeding between themselves. Same view was expressed by the Apex Court in the case of Murlidhar Aggarwal and Another Vs. State of Uttar Pradesh and Others,

18. In view of discussion held above, the writ petition is devoid of merit and the same is dismissed.

19. The Petitioner shall pay an amount of Rs. 25,000 as costs and expenses towards the litigation for dragging the landlord in unnecessary litigation for the last about 20 years. The tenant is using and occupying the property in dispute for the last about 22 years. The aforesaid amount of Rs. 25,000 shall be paid by the Petitioner-tenant to the landlord within six weeks from today. The order has been passed in presence of Sri S.P. Pathak, learned Counsel for the Petitioner, who shall ensure its compliance within six weeks from today. This order is being passed in the light of the judgment of Hon"ble the Supreme Court of India in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI),

20. The Petitioner-tenant shall hand over the vacant and peaceful possession of the premises in his occupation to the landlord within two weeks from today and shall also file an affidavit to the effect that the vacant possession of the premises in dispute has been handed over peacefully to the landlord within the stipulated period. The said affidavit shall be filed in the Registry of this Court for the purpose of record. If the affidavit is not filed and the possession is not handed over to the landlord, appropriate actions shall be taken against erring tenant in accordance with law.