
(2016) 07 SC CK 0094

In the Supreme Court Of India

Case No : Civil Appeal No. 5599 of 2010

Devendra Prakash Bansal

APPELLANT

Vs

Sunil Kumar Verma & Another

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 ApexCourtJudgments(SC) 498 : (2016) 4 CivCC 386 :

(2016) 4 ICC 744 : (2016) 2 RCRRent 236 : (2016) 2

RecentApexJudgments(RAJ) 190 : (2016) 2 RentLR 512 : (2016) 7 Scale 314 :

(2016) 14 SCC 283

Hon'ble Judges : Fakkir Mohamed Ibrahim Kalifulla and Uday Umesh Lalit, JJ.

Bench : Division Bench

Advocate : Gaurav Jain, Ms. Abha Jain, N.K. Jain, Jaivir Singh, Advocates, for the Appellant;

Final Decision : Allowed

Judgement

1. This appeal by special leave by the original landlord seeks to challenge the judgment and order dated 16th February, 2010 passed by the High Court of Judicature at Allahabad allowing Civil Miscellaneous Petition No.36117 of 2009 preferred by the respondent herein and setting aside the decree for eviction passed by the Trial Court and confirmed by the Revisional Court.

2. The appellant-landlord filed S.C.C. No.6 of 2007 in Small Causes Court, Bijnor, seeking decree for eviction in respect of suit shop namely, one situated in Mohalla Oazijadgan, Qasba, Pargana, Tehsil Chandpur, District Bijnor inter alia on the ground that the suit shop was sub-let by the tenant-defendant No.1 to defendant No.2. In support of his case, the appellant brought on record photographs which were marked as GA-35/1 to GA-35/2, GS-36/1, GA 36/2 and GA-37, to establish that it was the sub-tenant who was carrying on business in jewellery from the suit shop. These photographs were put to the sub-tenant who appeared in the witness box as D.W. 2. D.W. 2 in his evidence accepted the fact

that he could be seen in these photographs and that he was holding money in his hand. This witness also admitted that it is the owner who normally sits on the gaddi of the shop and that in the photographs he was seen sitting on gaddi. After considering the entirety of the material on record, the Trial court accepted that the suit shop was sub-let by defendant No.1 to defendant No.2. The Trial Court by its judgment and order dated 6th September, 2008, decreed the suit for eviction and directed the defendants to hand over vacant possession of the shop to the appellant within one month from the date of the order.

3. The matter was carried further by the tenant by filing S.C.C. Revision No.15/2008 in the Court of Additional District Judge, Bijnor. The revisional Court after considering rival submissions and material on record came to the following conclusion:-

"I am of the view that the learned court below very well discussed the evidence while passing the impugned judgment and order because the record reveals that the evidence which is available on record directly indicates that the Rakesh Kumar was sitting in the disputed shop and was carrying his business. Rakesh Kumar himself admitted that he carried business in disputed shop. The photographs and some documentary evidence indicate that Rakesh Kumar was sub-tenant on the disputed shop."

With this view, the revisional Court dismissed S.C.C. Revision No.15 of 2008 by its judgment and order dated 2nd March, 2009.

4. The tenant i.e., defendant No.1 being aggrieved preferred writ petition under Article 226 of the Constitution of India in the High Court of Judicature at Allahabad namely, Civil Miscellaneous Petition No.36117/2009. By judgment and order under appeal, this writ petition came to be allowed by the High Court. The High Court was of the view that unless and until a finding was recorded by the Court that the sub-tenant was in exclusive possession, it could not be held that the building in question had been sub-let. The High Court further found that the landlord was not able to show from the record that the sub-tenant had been admitted as partner in the business and that the sub-tenant was not a part of the family as held in the case of Harish Tandon v. Additional District Magistrate reported in (1995) 1 ARC 220. It is this judgment of the High Court which is presently in appeal.

5. Mr. Gaurav Jain, learned counsel appearing in support of the appeal on behalf of the original landlord submitted that as held by the Court in Radhey Shyam and Anr. v. Chhabi Nath & Ors. reported in (2015) 5 SCC 423, writ petition under Article 226 of the Constitution of India was not a proper remedy to challenge the decisions of Civil Court. He further submitted that the findings recorded by the courts below were pure findings of fact which were fully justified on the strength of material on record.

6. Without going into the question whether the petition was maintainable or not, we find the assessment made by the High Court to be completely incorrect. The

fact that the sub-tenant was carrying on business from the suit shop was admitted by him when he stepped into the witness box as D.W. 2. This assertion is equally supported by the photographs which were placed on record by the appellant-landlord. It is common knowledge that normally in jewellery business the person who sits on the gaddi is the owner of the business in question. Be that as it may, once this fact stood admitted by D.W. 2, the findings recorded by the courts below were perfectly right and justified. Even if we were to consider the petition filed in the High Court to be one under Article 227 and not under Article 226 of the Constitution of India, there was no justification to upset the findings of fact concurrently recorded by courts below which findings are well-supported by the evidence on record. In our view, the High Court was completely in error in accepting the writ petition and setting aside the findings of fact. Further, the principle laid down in Harish Tandon's case (supra) has no application in the present case.

7. In the circumstances, we allow this appeal. While setting aside the judgment and order impugned herein, we restore the judgment and order dated 6th September, 2008 passed by the Trial Court as affirmed by the Revisional Court by its judgment and order dated 2nd March, 2009. The appeal is allowed without any order as to costs.