
(2012) 09 AHC CK 0298
In the Allahabad High Court
Case No : C.M.W.P. No. 16204 of 2000

Devi Shankar Yagnik and Others

APPELLANT

Vs

IInd Additional District Judge and Others

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

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

Citation : (2013) 2 AWC 1384 : (2013) 1 RCR(Rent) 434

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : V.P. Varshney and V.P. Pandey, for the Appellant; Manish Tandon, Pankaj Agarwal and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri V.P. Varshney, advocate for the petitioner and Sri Manish Tandon, advocate for respondent No. 4 and Sri Pankaj Agarwal, advocate for respondent No. 3. Sri Pankaj Agarwal advocate, has also moved an impleadment application on behalf of Bittan Babu Verma, Son of Roop Kishore but Roop Kishore himself is a party to these proceedings, therefore, he has not pressed this application. It is accordingly rejected.

2. The dispute relates to a shop situated at Mohalla Purani Kotwali, Aligarh. It was owned by Ratan Shankar Yagnik. Sri Jwala Prasad was the tenant in the said shop. After the death of Sri Ratan Shankar Yagnik, the shop in question has been succeeded by his heirs/legal representatives, who are the petitioners No. 1 to 8. Similarly, Sri Jwala Prasad, the original tenant, died in 1984, whereafter his tenancy rights have been succeeded by respondent No. 3. Smt. Chameli Devi, widow of Late Jwala Prasad (the respondent No. 3 has also died and her legal heir is already arrayed as respondent No. 4).

3. The petitioners filed an application dated 7.4.1987 being U.P.U.B. Case No. 45 of 1987 u/s 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and

Eviction) Act, 1972 (hereinafter referred to as "Act, 1972") before Prescribed Authority, Aligarh seeking release of shop in question for settling the applicant No. 1, i.e., Devi Shanker Yagnik, Son of late Ratan Shanker Yagnik. It appears that after registering the application, notices were issued but not served upon the respondents. Thereafter petitioners moved an application, 9C, dated 31.8.1987, requesting the trial court to appoint an Advocate Commissioner for service of notice upon respondent-tenants. The aforesaid application was allowed by Prescribed Authority vide order dated 8.9.1987. The landlord-applicants were directed to take steps for service through Commissioner within seven days, who was required to submit report within a month.

4. The defendant No. 2 namely Roop Kishore himself put in appearance on 8.9.1987 since he was already served in the meantime. The Prescribed Authority directed to serve a copy of notice to him (defendant No. 2) and fixed 9.10.1987 for written statement. For service of notice upon unserved defendant No. 1, namely, Smt. Chameli Devi, the matter came up before Prescribed Authority on 15.9.1987 and the Court found that applicants have not taken steps for service through Commissioner. In the circumstances application against opposite party No. 1, namely, Smt. Chameli Devi was rejected.

5. The opposite party No. 2 contested the matter by filing written statement dated 11.1.1988. The opposite party No. 1 namely Chameli Devi, supported the case of opposite party No. 2, came in evidence by filing an affidavit dated 8.5.1991.

6. The Prescribed Authority vide judgment dated 12.5.1993 rejected the application of landlords for release of the shop in question u/s 21 (1) (a) of the Act, 1972. The said judgment has been confirmed in appeal by IInd Additional District Judge, Aligarh dismissing petitioner's U.P.U.B. Appeal No. 13 of 1993 vide judgment and order dated 2nd March, 2000.

7. Learned counsel for the petitioners contended that landlords' need has been found genuine and bona fide by the Courts below yet the petitioners have been non suited and their application have been rejected mainly on the ground that application No. 45 of 1987 was already rejected for non prosecution against defendant No. 1, Smt. Chameli Devi, by Prescribed Authority's order dated 15.9.1987 and since tenancy in shop in question was joint, once application for release was rejected against one of the joint tenant, no relief can be granted against other joint tenant since it is a single unit tenancy. Sri Varshney submitted that this approach is illegal. He further said that opposite party No. 2, i.e., respondent No. 4, before this Court was also a joint tenant. He was duly represented and contested the matter. It was not necessary that all the joint tenants should be impleaded in an eviction proceedings. The impleadment of even one joint tenant is sufficient. Hence merely on the ground that against defendant No. 1. i.e., Smt. Chameli Devi, application was rejected, petitioner's application ought not to have been rejected in its entirety and both the Courts below, having opined otherwise, have completely erred in law. He further

contended that it was not a release application which was rejected on 15.9.1997 but only application No. 9C which was rejected on that date, and therefore, it cannot be said that against defendant No. 1 his application was rejected. The Courts below here also have misread the proceedings and/or misled by an order which was not so, as has been read by them. Therefore, the impugned orders are liable to be set aside. In support of his contention he (Sri Varshney) has placed reliance on Apex Court's decision in H.C. Pandey Vs. G.C. Paul, ; Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others, and this Court's decisions in Munni Lal Gupta (decd.) through L.Rs. Vs. VIIth Addl. District and Sessions Judge and Others and Sardar Gurdeep Singh Vs. VIth Addl. District Judge and Others

8. Learned counsel for the respondents-tenants, however, has contended that defendant No. 1, in the proceedings before the Prescribed Authority, was never served and there against release application of landlord was rejected on 15.9.1987 which order has attained finality. The contention of the petitioners regarding joint tenancy is accepted. He however urged that dismissal of proceedings against one of the joint tenant (s) for non prosecution will result as if the proceedings against other joint tenant also stand rejected. Since tenancy cannot be split and therefore, Courts below have rightly rejected petitioner's application. He further contended that application 9C was already allowed and hence contention of petitioner that it is 9C application, which was rejected against opposite party No. 1 vide order dated 15.9.1987 is false and contrary to record. He also argued that in respect to bona fide need also, the trial court has recorded a finding against the petitioner which has been affirmed in appeal also and therefore, it is not the case where on technical ground only petitioners have been non-suited but on merits also their application has been rejected as the petitioners failed to make out a case on bona fide need for release of the shop in question.

9. Firstly, I come to the question whether petitioners' release application was rejected against defendant No. 1 or it was application 9C which was for the purpose of appointment of an Advocate Commissioner.

10. Annexure-4 is the application dated 31.8.1987 which was paper No. 9C before Prescribed Authority. In para 4, there are three prayers in the said application viz.:

(A) To serve the opp. party with the notices.

(B) To report about the present condition of the shop in question and report about the other shop in tenancy occupation of the O.P. No. 2.

(C) To report any other point which may be shown to him at the spot.

11. A perusal of para 2 of this application also shows that applicants categorically stated that both the opposite parties No. 1 and 2 are avoiding service of notice issued by the Court. This means that upto 31st August, 1987 neither of the

defendants in U.P.U.B. Case No. 45 of 1987, filed by the petitioners u/s 21 (1) (a) of Act, 1972, received notices/summons issued by the Prescribed Authority, The case was taken up on 8.9.1987 and the order sheet (on page 56 to the paper book) shows the following order passed by Prescribed Authority:

Case called out repeatedly. Present: counsel for both the parties except O.P. No. 1 who is mother of O.P. No. 2.

Heard on 9C. Sufficient ground to allow.

9C is allowed. Petitioner to take steps for commissioner within 7 days. He will submit his report within a month.

-by O.P. No. 2 for supply of copy. Allowed. Copy was given to O.P. No. 1. Fix 9.10.87 for W.S.

12. A bare reading of order dated 8.9.1987 shows that opposite party No. 2 was represented through his counsel on that date but the opposite party No. 1 was not represented having not been served. The application 9C was heard by Prescribed Authority and allowed. Since opposite party No. 2 was represented through his counsel on 8.9.1987 meaning thereby between 31.8.1987 to 8.9.1987 opposite party No. 2, i.e., Roop Kishore received the notice sent by Prescribed Authority. Hence effect of allowing application 9C on 8.9.1987 would be that the Advocate Commissioner had to serve the notices upon opposite party No. 1. The matter then came up on 15.9.1987. Since the petitioner was given one week's time to take steps for service of notice upon the unserved respondent/ defendant in the mode and manner allowed by Prescribed Authority at the request of the applicant landlords, that was through Advocate Commissioner but the petitioners-landlords failed to take steps, that being so, on 15.9.1987 petitioners-landlords' application was rejected. Now on 15.9.1987 the application, which was pending for consideration was release application and not application 9C as it was already allowed on 8.9.1987. On 15.9.1987 the case was taken up to see whether petitioner had taken steps which was directed by the Prescribed Authority as a result of allowing his application 9C. The Court below found that steps not taken, as directed, rejected the pending application for want of prosecution.

13. In my view, it cannot be said that order dated 15.9.1987 was in respect to the application 9C and not the release application. The order passed on 15.9.1987 reads as under:

This case was presented today. The applicant did not take steps for Commission. Ordered that application against opposite party No. 1 is rejected.

(English Translation by the Court)

14. It is very clear that the application was rejected against opposite party No. 1. The only pending application at that time was the release application. Thus, it is the rejection of that application and not 9C, as contended by Sri Varshney. The

contention otherwise, therefore, is rejected.

15. Now, I come to next question about the effect of rejection of application against one of the joint tenant particularly when the case has been contested by another joint tenant, since, both the joint tenants were impleaded in the original proceedings.

16. Law on this subject is no more *res integra* having been settled in catena of decisions. When an accommodation is under tenancy of an individual, on his death, the tenancy rights devolve on all the legal heirs of principal tenant and they would hold the tenancy as "joint tenants". The meaning of "joint tenancy" means all the legal heirs would constitute a single unit of tenancy. This is what has been held by the Apex Court in *Kanji Manji Vs. The Trustees of The Port of Bombay*, Again in *H.C. Pandey v. G.C. Paid* (*supra*) the Court in para 4 of the judgment said:

It is now well settled that on the death of the original tenant, subject to any provision to the contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable therefore. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants. In the present case it appears that the respondent acted on behalf of the tenants, that he paid rent on behalf of all and he accepted notice also on behalf of all.

(Emphasis added)

17. There appears to be an otherwise view taken in another decision in *Mohd. Azeem Vs. District Judge, Aligarh and Others*, holding that death of tenant would result in conferring tenancy rights as "tenants in common" to the legal heirs. The matter was considered by a Larger Bench of Three Judges of Apex Court in *Harish Tandon* (*supra*) and the Court affirmed the view taken in *H.C. Pandey* (*supra*) and said in para 24:

It appears to us, in the case of *H.C. Pandey v. G.C. Paul* (*supra*), it was rightly said by this Court that after the death of the original tenant, subject to any provision to the contrary, the tenancy rights devolve on the heirs of the deceased tenants jointly. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs and there is no division of the premises or of the rent payable therefor and the heirs succeed to the tenancy as joint tenants.

18. In para 27 of the judgment In *Harish Tandon* (*supra*) the Court clearly overruled its earlier decision in *Mohd. Azeem's case* (*supra*) and affirmed its view in *H.C. Pandey* (*supra*). In taking above view, the Court referred and followed a Constitution Bench judgment in *Gian Devi Anand Vs. Jeevan Kumar and Others*,

To the same effect is the decision of this Court in Sardar Gurdeep Singh (supra). Recently this Court (myself) has followed the above authorities in Dr. Abdul Rahman v. IIIrd Addl. District Judge and others, in Writ Petition (Rent Control) No. 2355 of 1983 decided on 7.12.2011.

19. However, the aforesaid exposition of law by itself does not solve the problem in the present case, inasmuch as, both the defendants namely late Smt. Chameli Devi, wife of original tenant, and Sri Roop Kishore, son of original tenant, became joint tenants of the shop in question. If the application filed by landlords for release of accommodation under joint tenancy, by impleading both the joint tenants, is rejected against one of the Joint tenant for want of prosecution, can it be said that another Joint tenant, who contested the matter, will make the order of rejection inconsequential or that once an application is rejected against one of the joint tenant, whatsoever reason may be, it would result in rejection against other joint tenants also in the same manner that the notice to one joint tenant is deemed to be sufficient to other joint tenant and it is not necessary to implead all the joint tenants in a proceedings.

20. It is not the case where this Court has to consider whether all the joint tenants were necessary to be impleaded or not. Here the landlords. In their own volition, impleaded both the joint tenants. Hence rejection of release application against one of the joint tenant. In my view, would have the same effect where release application Is allowed against one of the joint tenant and would be binding/applicable to all other joint tenants. The order dismissing release application against one of the joint tenant cannot be made inconsequential. It shall have its own effect and consequences.

21. In Smt. Angoori Devi Vs. Smt. Chandra Kanta and Others, the Court took the view that in case one of the several joint tenants is not impleaded, it would not be a fatal defect sufficient for rejection of application for non impleadment of all tenants. However, therein the question up for consideration before this Court in the present case was not at all involved. Similarly, in Kishore Seth Vs. Satish Chandra Nigam and Others, this Court held that release application, if filed, against one of the joint tenants, and the shop, if released, other joint tenants would have no independent right to claim tenancy in the shop. This decision also does not consider the question In a reverse case, as is the case in hand.

22. I require learned counsel for the petitioner to address and assist the Court on the question, what would be the effect of rejection of release application against a joint tenant for want of prosecution when another joint tenant is already party in the matter and even after rejection of application for non prosecution against one of the joint tenant, another joint tenant continue to contest the matter. Unfortunately, learned counsel for the petitioner could/did not assist the Court on this aspect at all. He instead avoided reply by reiterating his submission that since impleadment of one of the joint tenant is sufficient to maintain release application, mere fact that the application was rejected against one of the joint tenant, it would make no difference at all.

23. In my view, the effect of rejection of petitioner's release application against defendant No. 1 would mean as if the petitioner was denied any relief regarding release of accommodation in question in his favour against a joint tenant. This would extend to all the joint tenants. Once such a relief is denied against one of the joint tenant, it would mean that relief has been denied against all the joint tenants for the reason that it is only one and the same tenancy unit, not divisible, between different tenants, and, therefore, against the defendant No. 2 also, no relief could have been granted. Both the Courts below on this aspect have rightly held that after rejection of petitioner's application for release against one of the joint tenant, the same relief cannot be granted against another joint tenant. In other words the day on which release application was dismissed against one of the joint tenant for want of prosecution, further proceedings against another joint tenant become futile and ineffective since order of dismissal would have operated against landlord qua all the joint tenants and no effective relief could have been granted thereafter.

24. The matter does not rest here. The Court finds that Prescribed Authority has also considered the question of bona fide and genuine need of the petitioner-landlords. One of the grounds to non suit petitioner-landlords was that Mahesh Shankar son of applicant No. 1, for whose benefit the shop in question was required to be released, is already engaged in a business of repair of radio and T.V. on the first floor of his house. It has been held that there is no genuine need. The Court below has held that mere fact that he is trying to survive by engaging himself in a transitional manner by doing some work on the first floor in his residential house would not nullify his requirement but then the Court proceeded further to consider that petitioners-applicants have several other shops and buildings in Aligarh but have concealed that information in the release application which would justify an inference that their intention is not bona fide and claim of personal need is neither genuine nor bona fide. On this aspect the trial court recorded following findings:

Therefore, it is definitely proved that the applicant, at the time of filing the present application, has not given any details of his other shops situated at Aligarh city nor has he mentioned which of the tenants are residing at these shops. Hence, on this ground it can be stated that the way in which the applicant has shown his bona fide need for the shop in dispute by concealing the basic facts, is not of such nature that such need may be accepted ignoring the facts concealed by him.

(English Translation by the Court)

25. Having said so the trial court has proceeded to reject petitioner-landlords' application for three reasons as is evident from the following extracts:

Therefore in view of aforesaid findings and circumstances, in my view, where any application has been rejected against real heirs of original tenant.

2. If the applicant has concealed details of tenanted buildings and his other

tenants, no shop can be vacated admitting the bona fide need of the applicant.

3. Therefore, it will be presumed that comparative hardship is more in favour of Smt. Chameli Devi.

(English Translation by the Court)

26. The appellate court has considered trial court's judgment on the aforesaid three aspects and has confirmed the view taken by trial court on the question of bona fide of personal need and comparative hardship, as is evident from the following:

The Court has given contradictory findings on this fact. Though there is no cross appeal before me yet if it is assumed even for the sake of argument that Mahesh Shankar was in this need, even then it is not a bona fide need. It is malicious and beside this, considering comparative hardship of both the parties, no hardship will be caused to Mahesh Shankar on his application being rejected. On the other hand, eviction from the shop of a tenant doing business for many years and not being a party, is in my opinion, not legally feasible and if he is evicted, he will definitely be nowhere and won't have any means of sustenance. Considering the comparative hardship, if this application is rejected, irreparable loss and hardship will be caused much more to the applicant; whereas the applicant, who is already running his business in a very established manner and having sufficient number of shops, will not have any difficulty in carrying on his business and eking out his livelihood.

(English Translation by the Court)

27. Regarding findings of Courts below on the question of bona fide of personal need and comparative hardship, learned counsel for the petitioner has virtually neither addressed this Court nor has shown the aforesaid findings, perverse or contrary to record. On the contrary, he has confined his arguments to the question, if, subsequently the tenant has contested the matter that will outway the rejection of matter earlier for want of service and for this purpose he relied on this Court's decision in Munni Lal Gupta (supra).

28. For the purpose of present writ petition, suffice it to hold, that, the Courts below have recorded a concurrent finding that petitioner-landlords have concealed information regarding several other non residential properties in the city and considering this aspect, the Courts below have recorded a concurrent finding that petitioner-landlords could not show that their personal need, even though it would have been there, their intention to seek release of accommodation was bona fide and genuine. Further on the question of comparative hardship, a further concurrent finding has been recorded in favour of tenants which has not been challenged as perverse or contrary to record.

29. In absence of any manifest error on these two aspects I find no justification or reason at all, to interfere with the impugned orders.

30. Having said so, this Court finds that in the present case earlier another co-landlord namely Prabhat Shankar, i.e., father of the petitioners No. 3, 4, 6, 7 and 8 proceeded for release of accommodation in question by way of filing release application, i.e., U.P.U.B. Case No. 97 of 1982 before the Prescribed Authority/Civil Judge, Aligarh, u/s 21 (1) (a) of Act, 1972, on the ground of personal need. The same was rejected. Shortly thereafter the application in question was filed. The tenants in question are doing their business for the last more than four and a half decades when the release application was filed and now it is almost 60 years and more. The respondent-tenants also demonstrated that a lot of property is owned by petitioner-landlords in different parts of city and to prevent Prescribed Authority from examining the bona fide and genuity of claim of personal need the petitioner-landlords details of such other property was deliberately withheld and both the Courts below found it correct. These facts justify an inference to be drawn by this Court that petitioners-landlords have dragged the respondents tenants in an avoidable litigation for reasons other than bona fide. The writ petition, therefore, deserve to be dismissed and is hereby dismissed with cost, which I quantify to Rs. 1,00,000 (Rupees one lac).