
(2004) 08 AHC CK 0290
In the Allahabad High Court
Case No : C.M.W.P. No. 34696 of 1993

Dr. Smt. Madhuri Saxena

APPELLANT

Vs

Vth Addl. D.J. and Others

RESPONDENT

Date of Decision : 20-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)

Citation : (2005) 2 AWC 1187

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : R.B.D. Mishra and R.K. Jain, for the Appellant; P.K. Jain, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition, under Article 226 of the Constitution of India, questions the order passed by the Vth Additional District Judge exercising powers of revision under the provision of Section 25 of the Provincial Small Causes Courts Act. The facts leading to filing of the present writ petition are as under :

"That the petitioner, defendant in the suit, aggrieved by the order passed by the trial court whereby the trial court decreed the suit filed by the plaintiff-respondent Nos. 3 and 4 approached the revisional court. The plaint allegations are that the plaintiff-respondent Nos. 3 and 4 are the owners and landlords of the accommodation in dispute which has been let out to the defendant-petitioner as one of the conditions of the contract of employment because the defendant was employed in the college run and managed by the plaintiff-respondent Nos. 3 and 4 on a monthly rent of Rs. 45 and also that the Act No. XIII of 1972 is not applicable. The petitioner-defendant raised objection that the plaintiffs have no

right to institute the suit in question and that the provisions of U. P. Act No. XIII of 1972 (in short the "Act") are applicable. The defendant also raised objection that the notice determining the tenancy was not a valid notice. On the basis of pleadings of the parties the trial court framed the issues : (1) whether the plaintiffs have a right to institute the suit and (2) whether the tenancy has been determined by the notice in question. If so its effect?"

2. The trial court decided issue Nos. 1 and 2 in favour of plaintiffs and, therefore, decreed the suit holding that the plaintiffs have validly determined the tenancy and suit has been instituted after terminating the tenancy. Thus, suit for ejectment and recovery of arrears of rent was decreed against the defendant. Aggrieved thereby the defendant preferred a revision before respondent No. 1 and before the revisional court the same arguments were advanced :

- (1) Whether the plaintiffs are not entitled to sue?
- (2) Whether the provisions of Act No. XIII of 1972 are not applicable?
- (3) Whether the tenancy of the defendant is terminated? If so, its effect?
- (4) Whether the plaintiffs are entitled to claim the pendente lite and future mesne profits?

3. The revisional court affirmed the order passed by the trial court and dismissed the revision. Aggrieved thereby the defendant preferred this writ petition. Learned counsel for the petitioner-defendant has relied upon the provisions of Section 20(2)(g) of the Act, which reads as under :

"(g) that the tenant was allowed to occupy the building as part of his contract of employment under the landlord, and his employment has ceased."

4. On the question of applicability of U. P. Act No. XIII of 1972 both trial court as well as revisional court have found that provisions of Act No. XIII of 1972 are not applicable, therefore, the tenancy can be determined by simple notice u/s 106 of Transfer of Properties Act when on the question of notice both the Courts recorded finding that there is valid notice terminating the tenancy.

5. An objection has been raised by learned counsel for the petitioner regarding maintainability of suit on behalf of the plaintiffs before the trial court as well as before the revisional court. It is not disputed to the effect that it is the society, which runs and manages the institution, which can file the suit and not the institution. From the plaint allegation as well as from the findings, it is clear that the society is running and managing the institution in which the defendant is in employment and that the suit has been filed by society as well as by the institution through its Secretary. The validity of notice is also questioned on the ground that the same was not given by the landlord but through its managing trustee. Learned counsel for the respondents has relied upon the decision in *Narvadey Singh v. IIIrd Addl. District Judge, Kanpur* and Ors. 1983 ARC 814 In paragraph 9 of the said decision this Court ruled that though the notice given did

not name the Managing Trustee on whose instruction the same had been sent by the advocate who purported to have given on behalf of the plaintiff Trust. In the absence of the name of the Managing Trustee or any other Trustee, who was entitled to ask the advocate to send notice, the Court could not have presumed that it was done on the instruction of the person rightfully entitled to do so. If some body on behalf of the plaintiff trust would have stated and giving the name of the person who had instructed the advocate to give the notice and that he had the authority to do so, the question would have been different.

6. In the present case, notice has been issued as is clear from the perusal of notice by the Secretary of the college with the further statement that the said college is being run and managed by the society Trust and that he is Secretary of that Trust also. Both the courts below have considered the aforesaid objection raised on behalf of the petitioner and recorded finding regarding validity of the notice in favour of the plaintiffs. It has further been relied upon by the learned counsel appearing for the contesting respondents that Section 2 (1) (b) clearly contemplates that the suit has to be filed by the society running that institution. A perusal of the plaint in the present case will demonstrate that the suit has been filed by Raghunath Girls College, Meerut, through its Secretary Smt. Shakuntala Undri Kaksh, who is Secretary of the Society running and managing the institution. Thus, reliance placed by the trial court as well as the revisional court on the decision in 1982 ARC 624 cannot be said to be irrelevant as suggested by learned counsel for the petitioner.

7. Since all the arguments advanced on behalf of the petitioner do not find favour with this Court, this petition, in my opinion, has no force and is liable to be dismissed.

8. There is yet another reason that admittedly the defendant-petitioner has retired from service long before and she is still occupying the accommodation by virtue of stay order granted by this Court. It is not disputed by the petitioner that the accommodation was occupied by her as one of the conditions of contract of employment of service, thus, for this reason also this Court does not find this case a fit case for exercising discretionary jurisdiction under Article 226 of the Constitution of India.

9. This writ petition has, therefore, no force and is accordingly dismissed. Interim order, if any, stands vacated.