
(1998) 03 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 7525 of 1998

Durga Prasad and others

APPELLANT

Vs

VIIth Addl. District Judge, Kanpur Nagar and others

RESPONDENT

Date of Decision : 06-03-1998

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4), 30(1)

Citation : (1998) 2 AWC 1161

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : S.M. Dayal, for the Appellant; S.C. and K.K. Tripathi, for the Respondent

Final Decision : Allowed

Judgement

1. C. Gupta, J.—This is tenant's writ petition for quashing the judgment and order dated 21.1.98 passed by respondent No. 1 (Annexure-8 to the writ petition) decreeing the plaintiff-respondents suit for ejectment of the petitioner.

2. When this writ petition came up for hearing for admission. Sri K. K. Tripathi counsel for the landlord-respondents put in appearance and in the circumstances of the case with the consent of parties' counsel, this writ petition is disposed of finally.

3. Undisputedly earlier to the present suit, the plaintiffs predecessor-in-interest had filed Suit No. 737 of 1990 against the tenant-petitioner on the ground of default in payment of rent. In that suit, rent for the period from 1.5.73 to 18.4.80 was claimed. The defence was that on refusal by plaintiff rent from 1.5.73 to 31.3.80 had been deposited u/s 30(1) of the Act as such only three months rent was due on the date of service of notice. After the receipt of notice of demand, rent was tendered to the landlord by money order but the same was also not accepted hence the defendant continued to deposit the same in Court.

The said suit was dismissed with the finding that the rent u/s 30(1) was validly deposited and on the date of service of notice, rent for more than four months was not due.

4. It appears that thereafter a fresh notice of demand was sent by the plaintiffs and the same is alleged to have been served upon the tenant by refusal. The plaintiffs then filed the present suit. The tenant contested the suit inter alia pleading that prior to the filing of the present suit, rent upto 31.1.89 stood deposited u/s 30(1) of the Act as plaintiffs never expressed their willingness to accept rent nor was any request made or objection raised with regard to the deposit of rent u/s 30(1) of the Act. Service of notice was also denied. Rent for more than four months was not due on the date of service of notice. Benefit of the provisions of Section 20(4), was also claimed.

5. The trial court on appraisal of evidence came to the conclusion that notice of demand was not served upon the defendant and he came to know of the proceedings first time on 14.2.89. It was also held that the deposit made u/s 30(1) was a valid deposit and since the remaining amount along with the costs and interest had been deposited in Court before the first date of hearing, the defendant was entitled to be relieved of eviction under the provisions of Section 20(4) of the Act. With these findings plaintiffs' suit was dismissed.

6. The order of the trial court dated 28.5.90 was challenged by the plaintiffs before the respondent No. 1 in S.C.C. Revision No. 105/91. The lower revisional court set aside the judgment and decree passed by the trial court and has decreed the suit by the impugned judgment. Aggrieved, the petitioners have come in this writ petition.

7. Learned counsel for the petitioners argued before this Court that the lower revisional court has committed a manifest error of law in setting aside the judgment of the Court below which was passed on appraisal of evidence, by substituting its own findings of fact.

8. In the case of Laxmi Kishore and another v. HAR Prasad Shukla 1981 ARC 545 this Court laid down certain guidelines for exercise of revisional powers u/s 25 of the Provincial Small Cause Courts Act. It was laid down that if the revisional court finds that there is no evidence to sustain a finding on a particular issue of fact, it can ignore that finding. Same will be the case where the finding is based only on inadmissible evidence. In such cases, the Court will be justified in deciding the question of fact itself because the evidence is all one way and no assessment is needed. However, if the revisional court finds that a particular finding of fact is vitiated by an error of law, it has power to pass such order as the Justice of the case requires, but it has no Jurisdiction to reassess or reappreciate the evidence in order to determine an issue of fact for itself. If it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send back the case after laying down proper guidelines. It cannot enter into the evidence, assess it and determine an issue of fact.

9. In the case of Allah Bux v. Ist Additional District Judge, Nainital and another. 1995 (1) ARC 385 it was observed on page 387 in Para 10, "There is good authority on the point that in a revision u/s 25 of the Provincial Small Cause Courts Act. revisional court has jurisdiction only to see whether the order of the J.S.C.C. suffers from any illegality, it has no jurisdiction to go into the evidence itself to determine the question of fact already determined by the J.S.C.C. In case it finds reappraisal necessary under law, in the facts and circumstances of the case, all that it is empowered is to remand the said questions to the Court of Small Causes for decision after keeping in view the principle of law enunciated."

10. Hon"ble B. K. Singh, J., in the case of Om Prakash Gupta v. Vth Additional District and Sessions Judge, Aligarh and others 1996 (2) ARC 532 has taken the view that while exercising powers u/s 25 of the Provincial Small Cause Courts Act, the revisional court has restricted powers. It has no jurisdiction to reassess or reappraise the evidence. Nor it has jurisdiction to determine an issue of fact for itself, and the only course open for the revisional court in such cases is to remand the case to the trial court, laying down proper guidelines.

11. In a recent decision in the case of Man Mohan Dixit v. Additional District Judge/Special Judge (E.G. Act), Jalaun at Orai and others. 1996 (2) ARC 561 Hon"ble R. H. Zaldi, J., has held that when the revisional court set aside the findings, it was necessary for the ends of Justice that revisional court ought to have, after setting aside the findings recorded by the trial court, sent back the case for decision afresh. There was no occasion for the revisional court to reappraise the evidence and to substitute its own findings for the findings recorded by the trial court. In this case also, suit was filed on the ground of default in payment of rent. The trial court dismissed the suit after holding that since tenant had validly deposited rent in Court he was not defaulter, the revisional court set aside that finding. On these facts, it was held that the revisional court had no jurisdiction to record its own finding and the proper course was to remand the case for a fresh decision by the trial court.

12. In the present case, the trial court has categorically found that the deposit made by the tenant u/s 30(1) of the Act was a valid deposit and the amount due having been deposited by the defendant u/s 20 (4), the tenant was relieved of his liability from eviction. The revisional court reappraised the evidence and has reversed the aforesaid finding and substituted the same by its own finding of fact which is not permissible in law. It is true that if the tenant made deposit in Court without there being any justification for the same, he is not relieved, vide Kameshwar Singh Srivastava Vs. IV Addl. District Judge, Lucknow and Others, . But in the present case, the trial court had recorded a categorical finding that since there had been no demand of rent by the legal heirs of the deceased-landlord, the continuance of the defendant to deposit rent u/s 30(1) was Justified and no default was, therefore, committed. The trial Court held that the deposit made by the tenant on the facts of the case was a valid deposit. If the revisional court found infirmity in the said finding recorded by the lower revisional court, it

ought to have remanded the case to the trial court after laying down proper guidelines but it had no jurisdiction to substitute the trial courts finding of fact with its own finding of fact.

13. For the above reasons, the impugned Judgment of the respondent No. 1, cannot be sustained and is set aside. The case is remanded to the respondent No. 1 to restore S.C.C. Revision to its original number and decide the same afresh in accordance with law and In the light of the observations made in the body of the Judgment. Since the matter has already become old, the revisional court Is directed to decide the revision within a period of three months from the date a certified copy of this order is produced before him. Parties" counsel are directed to appear before the lower revisional court on 22nd of April, 1998.

14. For the reasons stated above, this writ petition succeeds and is allowed.

In the circumstances, no order as to costs is made.