

(2010) 09 AHC CK 0286

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 53742 of 2010

Gandhi Vidya Kendra Junior High School through its Manager and another APPELLANT

Vs

Kishan Chand Sharma (Dead) and others RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 21(8)

Citation : (2010) 09 AHC CK 0286

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record.

2. Brief facts of the case are that respondent late Kishan Chand Sharma moved an application under Section 21(8) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 against the petitioners before the Prescribed Authority, Muzaffarnagar for enhancement of the rent of the accommodation in question. It was registered as Case No. 22 of 2001 and was contested by the petitioners by filing their objections.

3. After going through the record and hearing the parties, the Prescribed Authority/City Magistrate, Muzaffarnagar allowed the said application vide his order dated 23.9.2005. Aggrieved, the petitioners filed Rent Control Appeal No. 12 of 2005 before the Court of District Judge, Muzaffarnagar.

4. During the pendency of the appeal, the sole applicant Kishan Chand Sharma expired on 28.6.2009. One of the sons of late Kishan Chand Sharma informed the Court about his death and the legal heirs of the deceased landlord. Petitioners moved an application under Order 22 Rule 4 read with Section 151 of Code of Civil Procedure for substituting the legal heirs of late Kishan Chand Sharma, which was allowed vide order dated 4.3.2010 by the court below and respondent nos.1/1 to 1/8 were substituted as his legal heirs and

representatives. Petitioners also moved an application (129C) stating therein that during his lifetime, Kishan Chand Sharma, had disowned his son Subhash Chand Sharma, his wife Kamna Sharma along with his two sons from his property.

5. It appears that from the eight heirs of Kishan Chand Sharma except Subhash Chand Sharma respondent no.1/2, neither the widow of Kishan Chand Sharmanor his other sons and daughters arrayed as heirs respondent nos. 1/1,1/3 to 1/8 appeared or contested proceedings in Rent Control Appeal.

6. The aforesaid application was contested only by Sri Subhash Chand Sharma, respondent no.1/2 only by filing his objection.

7. According to the petitioners, the order impugned is challenged on the ground that the order of the court below is illegal and has been passed mechanically without application of mind. Learned counsel for the petitioners has submitted that the respondents have no locus standi to challenge the title of Subhash Chand Sharma. In this regard he has placed reliance upon Rules 4A read with rule 5 of Order XXII of C.P.C. which provides a procedure where there is no legal representative.

8. Learned counsel for the respondents submits that the Rent Control Appeal No. 12 of 2005, Gandhi Vidya Kendra versus Kishan Chand Sharma is pending before the appellate Court since 2005, hence a direction may be issued to the appellate court to decide the aforesaid appeal within a time bound frame fixed by this Court.

9. The admitted facts in this case are that the petitioner is a tenant. The other legal heirs of late Kishan Chand Sharma have not contested the case before the court of Prescribed Authority and they have also not contested the suit even after having been served with the notice. Only Subhash Chand Sharma is contesting the case. It is also admitted fact that the legal heirs of deceased respondent Kishan Chand Sharma have been brought on record by the petitioners including Subhash Chand Sharma son of late Kishan Chand Sharma but neither Smt. Maharani Sharma wife of late Kishan Chand Sharma, respondent no.1/1, Sri Sudhir Chand Sharma son of late Kishan Chand Sharma, respondent no.1/3, Smt. Meera Sharma wife of late Satish Chand Sharma, respondent no. 1/4, Smt. Radha Sharma daughter of late Satish Chand Sharma respondent no.1/5, Smt. Pooja Sharma daughter of late Satish Chand Sharma respondent no.1/6, Smt. Indu daughter of late Kishan Chand Sharma and Smt. Sudha Sharma daughter of late Kishan Chand Sharma have appeared in the case for contesting it before the Prescribed Authority.

10. The moot question before the Court is if the case for enhancement of rent under Section 21(8) of Act No. 13 of 1972 is not contested by the legal heirs and representatives of the deceased except by one of sons of the deceased landlord who had been ousted from the property in suit by a notice published in newspapers, can be restrained from pursuing the application.

11. It may be that respondent no.1/2 Subhash Chand Sharma might have been divested from property by his father late Kishan Chand Sharma but other heirs to the property have not objected to his pursuing the application for enhancement filed by their late father. Subhash Chand Sharma has been brought on record by the petitioners themselves as heirs of late Kishan Chand Sharma, therefore, issuance of notice divesting the property from Subhash Chand Sharma is of no consequence until and unless it is proved that the legal heirs of Kishan Chand Sharma on whom the property has devolved have any objection to their son/ brother from pursuing the application in his own right as substituted heir no.1/2 of late Kishan Chand Sharma.

12. Petitioner no.2, who claims to be Gandhi Vidya Kendra, Junior High School in District Muzaffarnagar as Principal of the school, petitioner no.1 cannot raise any objection to the status of Subhash Chand Sharma as legal heir of landlord when admittedly he himself brought him on record as such the other heirs of the landlords are neither pursuing the case nor have objected to Subhash Chand Sharma. In such an eventuality he would not be paying rent to any other person which cannot be permitted as admittedly he is a tenant and has to pay rent to their landlords. It is not a case where Subhash Chand Sharma is claiming himself to be the landlord of the property in suit. Therefore, no question of title is involved in this case. The petitioner, in the circumstances cannot remain as tenant without payment of rent.

13. Here in this case, Subhash Chand Sharma may not be the legal heir of deceased but can pursue the application filed by late Kishan Chand Sharma for enhancement of rent in his own right being arrayed as respondent no.1/2 in the suit. The aforesaid provisions of C.P.C. would also not apply as there is no question before the Court as to whether the person is alive or not as it is to be read in consonance with Rule 4A. In this view of the matter, Rule 25 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972 would also not apply as all the heirs and legal representatives of the deceased are already on record as it is not a case where there is no legal representative.

14. For the reasons stated above, the writ petition is dismissed. No order as to costs.

15. In so far as early decision of the case is concerned, in view of the ratio laid down in the case of Manju Devi (Smt.) versus Additional District Judge VIII, Allahabad and others,(2007(3) ARC128 the appellate court is directed to decide Rent Control Appeal No. 12 of 2005 aforesaid within a period of two months from the date of production of a certified copy of this order.