
(2008) 09 AHC CK 0150

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19848 of 2007

Ghulam Mustufa @ Munshi Nannhey

APPELLANT

Vs

Malik Jamil Ahmad, Advocate and another

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Citation : (2008) 09 AHC CK 0150

Hon'ble Judges : V.K.Shukla, J

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—JSCC suit No. 43 of 2000 was filed against Malik Jamil Ahmad Advocate for recovery of arrears of rent and ejectment. Defendantrespondent No. 1 filed written statement, denying landlordtenant relationship. Shakil Ahmad moved an application for impleadment on 7.2.2005. To the said application objections were filed. Judge Small Cause Court rejected the said application for impleadment on 13.12.2006. Against the said order Shakil Ahmad filed Revision No. 162 of 2007, and the said Revision has been allowed. Against the order allowing revision, present writ petition has been filed.

2. Counter affidavit has been filed contending therein that suit in question has been filed in collusion and further it has been sought to be contended that contesting respondent and Smt. Aisa Bibi were original owner of the premises in question and on the basis of gift deed executed by Smt. Aisa Bibi, he is owner. Details have been given of suit No. 154 of 2005 seeking declaration in respect of said premises. In this background, it has been stated that rightful view has been taken. Rejoinder affidavit has been filed disputing the averments made in the counter affidavit.

3. In the present case, undisputed position is that JSCC suit No. 43 of 2000 had been filed against defendantrespondent No. 1 for recovery of arrears of rent and ejectment. In the said suit, defendantrespondent No. 1 filed written statement, denying landlordtenant relationship. The case in hand has to be decided on the basis of the facts disclosed in the plaint. Merely because Shakil Ahmad claims

that he is owner of the property and he has filed suit for declaration of his rights, then ipso facto, it is not necessary to implead him as party in JSCC suit, which has to be decided on its own merit. Revisional Court has clearly erred in law in directing impleadment of Shakil Ahmad in JSCC suit. JSCC suit has to be decided on its own merit as to whether there existed any landlordtenant relationship inter se parties. In case petitioner fails to substantiate the said fact that he is not landlord, his suit would fail. Revision has been wrongly allowed.

4. Consequently, writ petition succeeds and is allowed. The order, allowing revision and directing impleadment of Shakil Ahmad is quashed and set aside.