
(2011) 09 AHC CK 0260
In the Allahabad High Court
Case No : Writ A. No. 57600 of 2011

Hakeem Ahmad and Another

APPELLANT

Vs

Haji Bundu Hasan (Dead) and Others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Transfer of Property Act, 1882 — Section 111(a), 114

Citation : (2011) 09 AHC CK 0260

Hon'ble Judges : Prakash Krishna, J

Final Decision : Dismissed

Judgement

Prakash Krishna,J.

Heard Sri B. P. Singh, learned senior counsel along with Sri Vivek Kumar Singh for the petitioner and Sri Ravi Kiran Jain, learned senior counsel along with Sri R. K. Awasthi, learned counsel for the respondents.

The present writ petition is directed against the concurrent orders passed by the two Courts below decreeing the SCC Suit No. 57 of 2002 for recovery of arrears of rent, damages and ejectment etc. in respect of the property described at the foot of the plaint.

The suit was instituted by Haji Bundi Hasan (who has died during the pendency of the suit) on the allegation that the property in dispute was let out to the petitioners tenants under a registered lease deed for a period of ten years. The period of ten years has expired in the year 2000. It was instituted after terminating the tenancy by giving a notice under section 106 of the Transfer of Property Act.

In reply, the petitioners came out of the case that the provisions of the U. P. Act No. 13 of 1972 are applicable, disputed question of title is involved and therefore, the plaint is liable to be returned under section 23 of the Provincial Small Causes Court Act, notice was not served and in any case, the deposit having been made under section 114 of the Transfer of Property Act, the

petitioners be relieved from the eviction decree.

The parties led evidence in support of their respective cases.

The two courts below have found that the notice was validly served by refusal. It has also been found that the building in question is a "new construction" and as such, the provisions of the U. P. Act No. 13 of 1972 are not applicable. On the question of relationship of landlord and tenant, in view of the admitted fact of the parties that the property in dispute was let out by Bundu, it was held that no question of title is involved between the parties. After the death of Bundu his heirs were representing the estate of Bundu. Challenging the aforesaid findings, the present writ petition has been filed.

The learned senior counsel for the petitioners submits that after the death of Bundu, the real owners should have been impleaded as party in the suit. It is not in dispute that the building in question was let out by Bundu to the petitioners. It is also not disputed that the petitioners were paying the rent to Bundu. After the death of Bundu, his heirs were substituted. Merely because some dispute somewhere else is pending, it cannot be said that there is a dispute between the parties relating to the title over the disputed property. Therefore, the finding recorded by the two Courts below that there was a relationship of landlord and tenant between the parties and after the death of Bundu the fact that there is some dispute regarding the ownership of the property in dispute between his heirs has no concern with the present proceeding, is perfectly justified.

It was then contended that notice was not validly served. The two courts below have found that the notice was sent at the correct address by registered post. The postman has made an endorsement of refusal.

The learned counsel for the petitioners submits that the notice was refused on 28th of May, 2002, therefore, there was no occasion for the postman to again tender the said notice on 29th of May 2002. Elaborating the argument, it was submitted that as a matter of fact, notice was never tendered by the postman to the petitioners.

The said point has been examined by the courts below and they have drawn a presumption with regard to the service of the notice on the petitioners tenants. I do not find any illegality in the impugned order on this count. No contrary evidence was produced.

It was then submitted that the petitioners have deposited the rent under section 114 of the Transfer of Property Act, therefore, they should be relieved from the eviction decree. A perusal of section 114 of the Transfer of Property Act would show that the said provision is not applicable in the case of fixed term lease. It is not in dispute that the lease was given to the petitioners for a period ten years. It is a registered document which is admitted between the parties.

In view of section 111(a) of the Transfer of Property Act, a lease of immoveable property determines by efflux of time. It has been laid down in so many cases

that no notice is required to terminate the tenancy. Apart from above, as noticed in the impugned order it was agreed between the parties that no notice is required to be given after expiry of lease period. This being so, benefit under section 114 of the Transfer of Property Act will not be available and the courts below have rightly held that the benefit of section 114 of the Transfer of Property Act is not available to the petitioners.

Lastly, the finding recorded on the question with regard to the applicability of the provisions of U. P. Act No. 13 of 1972 was challenged.

The trial court has noticed that the municipal assessment for the period 1986-1991 is on the record. The entry in the said assessment shows that the building in dispute was constructed in the month of June, 1990. As against this, the tenants petitioners have not filed any document in rebuttal. The petitioners could not show that it is incorrect or there is any other date of construction. In view of the uncontroverted evidence produced by the landlord, the courts below have rightly held that the building in question is a "new construction" as such the provisions of the U. P. Act No. 13 of 1972 are not applicable.

In view of the above, I do not find any merit in the writ petition. The writ petition is, therefore, dismissed.

At the end, a request was made that some reasonable time should be granted to vacate the disputed accommodation. Sri Ravi Kiran Jain, learned senior counsel appearing for the respondents very fairly accepts that some reasonable time may be granted but subject to certain conditions.

Taking into consideration the entire facts and circumstances of the case, time up to 31st of March, 2012 is granted provided the petitioners fulfill the following conditions:

The petitioners shall deposit the entire arrears of rent, damages at the decreed rate after adjusting the amount, if any, already deposited for the period up to March, 2012 within a period of one month before the trial Court.

The petitioners shall also file an undertaking on affidavit within the aforesaid period before the trial Court that they will vacate the disputed accommodation on or before 31st of March, 2012 and shall hand over its peaceful vacant possession to the plaintiff landlords without creating any third party interest.

The amount thus deposited can be withdrawn by the plaintiff landlords without furnishing any security.

It is made clear that in case of default in compliance of either of the conditions stipulated above, the time granted by this Court shall stand vacated.

The petition is rejected summarily.