
(2005) 05 AHC CK 0142

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13353 of 1983

Hardwari Lal

APPELLANT

Vs

IIIrd Addl District Judge, Ghaziabad & Anr.

RESPONDENT

Date of Decision : 25-05-2005

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 23

Citation : (2005) 05 AHC CK 0142

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.

1. This is plaintiff's writ petition. Plaintiff petitioner Hardwari Lal filed suit for eviction and arrears of rent against Anoop Singh respondent No. 2 since deceased and survived by legal representatives being SCC Suit No. 58 of 1980 before JSCC/Additional Civil Judge, Ghaziabad claiming therein that respondent No. 2 was initial owner of the house in dispute but he sold the same to the petitioner through registered sale deed dated 361970 and w.e.f. the said date petitioner permitted the respondent No. 2 to reside in the house in dispute as tenant and that defendant respondent No. 2 had not paid rent hence he was liable to ejectment. Relief for ejectment and recovery of arrear of rent was sought by the landlord petitioner. Respondent No. 2 defendant pleaded that he did not execute the sale deed dated 361970 voluntarily and it was a result of fraud hence it was void and he continued to be owner and did not become tenant. In the end it was prayed by the respondent No. 2 in the suit that in view of Section 23 of Provincial Small Causes Court's Act (PSCC Act in short) plaint should be returned for filing before regular Court as complicated question of title was involved. The trial Court/JSCC rejected the said application of the defendant respondent No. 2 through order dated 2551982. Against the said order respondent No. 2 filed SCC Revision No. 21 of 1982. IIIrd ADJ, Ghaziabad through judgment and order dated 2171983 allowed the revision and directed

the trial Court to pass appropriate order for returning the plaint to the plaintiff for presentation before the proper Court.

2. This writ petition is directed against the aforesaid order of the Revisional Court dated 21/7/1983.

3. Through the supplementary affidavit filed by plaintiff/petitioner it has been stated that for cancellation of the sale deed dated 36/1/70 respondent No. 2 Anoop Singh filed O.S. No. 141 of 1983 before Civil Judge, Ghaziabad which was dismissed on 16/11/1984. Against the said judgment and decree Anoop Singh filed Civil Appeal No. 33 of 1995 which was also dismissed by VIth ADJ, Ghaziabad on 27/2/2004. Copies of the said judgments have been annexed alongwith the supplementary affidavit.

4. As regular Civil Court has dismissed the suit filed for cancellation of the sale deed dated 36/1/70 executed by Anoop Singh in favour of petitioner Hardwari Lal hence there remains no doubt about the title of the petitioner. In view of the judgment of the regular Civil Court there is absolutely no need to send the plaint of the SCC suit filed by petitioner for ejectment of respondent No. 2 treating him to be the tenant, to the regular Civil Court.

5. Accordingly, writ petition is allowed. Judgment and order passed by the Revisional Court is set aside. Trial Court/JSCC is directed to decide SCC Suit No. 58 of 1980 as expeditiously as possible. However, as no one has appeared on behalf of substituted legal representatives of tenantrespondent No. 2 hence before proceeding further with the suit trial Court shall ensure service of summons/notice upon the legal representatives of respondent No. 2.