

(2006) 01 AHC CK 0078

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7685 of 1988

Hari Singh

APPELLANT

Vs

The 6th Additional District Judge, The Judge, Small Causes
Court and Sri Sudhir Kumar Bansal

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Citation : (2006) 3 AWC 2353

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

Bench : Single Bench

Advocate : Ravi Kant, H.P. Mishra and Amit Krishan, for the Appellant; S.M. Dayal, K.M. Dayal, V.C. Mishra, Vivek Mishra, Ravi Kiran Jain and V.S. Dwivedi, for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—This is tenant's writ petition arising out of suit for eviction instituted by landlord-respondent No. 3 in the form of SCC suit No. 99 of 1982 Sudhir Kumar Bansal v. Hari Singh. In the plaint of the suit eviction was sought on the ground of default and material alteration. Ground of default no more survives as both the courts below have decided the said point in favour of the tenant. The suit was decreed on the ground of material alteration as provided u/s 20(2)(c) of U.P. Act No. 13 of 1976 which is quoted below.

20 (2)(c) That the tenant has without the permission in writing of the landlord made or permitted to be made any such construction or structural alteration in the building as is likely to diminish its value or utility or to disfigure it.

2. The only allegation in the plaint was that court yard (angan) of the house in dispute had been divided into two portions by raising wall of 12 feet in length and 4 to 5 feet in height and a door had been fixed in the middle of the said wall. JSCC/Civil Judge 1st, Muzaffar Nagar through judgment and decree dated 17.9.1985 decreed the suit for eviction on the ground of material alteration.

Against the said judgment and decree dated 17.9.1985 tenant filed Revision No. 76 of 1985. VIth A.D.J., Muzaffar Nagar through judgment and order dated 22.4.1988 dismissed the revision hence this writ petition by the tenant.

3. Revisional court discussed an authority of this Court of 1982 (name of the journal is not clear in the judgment), where it was held that raising a partition wall in the middle of a shop did not amount to material alteration. Revisional court distinguished the said authority on the ground that in the instant case wall had been raised in angan and not shop. The distinction is not understandable.

4. Supreme Court in Waryam Singh Vs. Baldev Singh, has held that enclosing a veranda by a wall by itself does not amount to material alteration. The said case was under East Punjab Rent Control Act.

5. Supreme Court in G. Raghunathan v. K.V. Vergeese AIR 2005 SC 4086 has held that closing the door and window by bricks lowering level of wall, cutting the rafters, erecting concrete pillars and fixing the rolling shutter does not amount to material alteration. That was a case from Keralla.

6. Supreme Court in Hari Rao Vs. N. Govindachari and Others, has held that putting up racks on the wall of a shop by drilling wholes does not amount to material alteration. In the above two authorities of the Supreme Court of 2005 several other earlier authorities of the Supreme Court pertaining to the question of material alteration have been considered.

7. Learned counsel for the landlord-respondent has placed reliance upon British Motor Car Co. Vs. Madan Lal Saggi (Dead) and Another, In the said authority two pakka sheds had been constructed by the tenant. The supreme Court held that such construction amounted to material alteration.

8. Learned counsel for landlord has further placed reliance upon Vipin Kumar Vs. Roshan Lal Anand and Others, wherein it has been held that:

The impairment of the value or utility of the building is from the point of the landlord and not of the tenant.

In Om Prakash v. A. Singh 1987 SC 617 it has been held that material alteration to be a ground for eviction is such alteration which is permanent in nature and not such alteration which may be removed easily without causing any damage to the main/original building.

9. In my opinion constructing a wall in the angan which has the effect of dividing the same into two portions cannot be said to be such structural alteration which is covered by Section 20(2)(c) of the Act. The point is squarely covered by the Supreme Court authorities of the Om Prakash and Wariyam Singh (Supra).

10. Accordingly, I find that the construction made by the tenant is not covered by the aforesaid Clause (c) of Section 20(2) of the Act.

11. Writ petition is therefore allowed. Both the judgments and decree of the trial

and order of revisional court in respect of eviction are set aside.

12. I have held in *Khursheeda v. A.D.J.* 2004 (2) A.R.C. 64 that while granting relief to the tenant against eviction in respect of building covered by Rent Control Act writ court is empowered to enhance the rent to a reasonable extent. House in dispute is situate in Shamli District Muzaffarnagar which is quite near to National capital Delhi. There are 3 or 4 rooms alongwith other amenities in the house in dispute. Rent of Rs. 50A per month is highly inadequate for such a house. Accordingly, it is directed that with effect from February-2006 onward tenant-petitioner shall pay rent to the landlord respondent at the rate of Rs. 1,000/- per month.