

(2009) 10 AHC CK 0125

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No.58485 of 2006

Harish Chand Sharma and others

APPELLANT

Vs

Addl. District Judge and others

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2009) 10 AHC CK 0125

Hon'ble Judges : Shishir Kumar, J

Final Decision : Dismissed

Judgement

Shishir Kumar, J.

Heard Sri Arvind Srivastava, learned counsel for the petitioners and the learned counsel for the respondents.

The present writ petition has been filed for quashing the orders dated 25.9.2006, Annexure8 and 3.3.2004, Annexure7 to the writ petition by which the objection filed by the petitioners in the execution court has been rejected as well as the revision has also been dismissed.

It appears that the respondent, who is a landlord of the premises in dispute, filed a suit for arrears of rent and ejectment against Smt. Vimla Sharma who was the tenant of the premises in dispute. The suit was decreed exparte in the year 1992. The petitioners who claim to have inherited tenancy from late Sri Mahesh Chand Sharma have submitted an application before the Court that Smt. Vimla Sharma was the wife of late Sri Mahesh Chand Sharma and during his life time, she ran away with one Mr. Bachchan in the year 1986 and did not return thereafter. The respondent without impleading the father of the petitioners or the petitioners got an exparte order on 15.1.1992. As there was an apprehension to the petitioners to be ejected from the premises in dispute, they filed a suit for injunction restraining the defendantrespondent not to eject the petitioners from the premises in dispute except in accordance with law.

When the decree in question was going to be executed, an objection under Section 47 of the Code of Civil Procedure was filed by the petitioners that Smt. Vimla Sharma was never tenant of House No. 240. The said objection was rejected by the order dated 3.3.2004. In the objection filed by the petitioners on 7.2.004 it has categorically been stated that Smt. Vimla Sharma is not the tenant and she has already eloped with another person before filing of the suit in the year 1986. The suit instituted was a collusive suit against Smt. Vimla Sharma, therefore, the petitioners being the sons of Sri Mahesh Chand Sharma who was the original tenant, have not been impleaded as a party to the proceeding,. Therefore, they cannot be ejected as they were not party to the proceeding. The revision filed by the petitioners has also been dismissed.

I have considered the submissions made on behalf of the petitioners and have perused the record. A finding has been recorded that the petitioners are neither the heirs of Smt. Vimla Sharma nor they are party to the proceeding and they filed an application before the Court for impleadment in the suit but the same was dismissed. A finding has been recorded that Sri Mahesh Chand Sharma was never a tenant but an application was filed to be impleaded that was dismissed. Further finding was recorded that Smt. Vimla Sharma has appeared before the Court and has filed the affidavit. It is incorrect to state that the petitioners were not aware regarding the proceeding pending before the Judge Small Causes Court. All the three brothers have made an application to be impleaded but that was dismissed. The revisional court has also recorded a finding of fact that Smt. Vimla Sharma was the tenant and she was impleaded as a party and the petitioners have not been able to establish that they are the heirs of Sri Machesh Chand Sharma or Vimla Sharma, therefore, in my opinion, the courts below have rightly rejected the objection filed by the petitioners.

As regards the contention of Mr. Arvind Srivastva, learned counsel for the petitioners to this effect that they are the sons of Sri Mahesh Chand Sharma who was the original tenant, this fact can be established by him by way of filing a suit before the competent civil court to get it established that they are the heirs of Smt. Vimla Sharma and Mahesh Chand Sharma. Unless and until it is established, no relief in this proceeding can be granted to the petitioner.

The writ petition is devoid of merit and is hereby dismissed..

No order is passed as to costs.