
(2015) 02 AHC CK 0171
In the Allahabad High Court
Case No : S.C.C. Revision (D) No. 48 of 2015

Heera Nand Chhabra and Others

APPELLANT

Vs

Anil Kumar Garg

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20, 20(2)(c)

Citation : (2015) 110 ALR 360

Hon'ble Judges : Abhinava Upadhyaya, J

Bench : Single Bench

Advocate : Y.K. Sinha and Akshat Sinha, for the Appellant; Punit Kumar Gupta, Advocates for the Respondent

Judgement

Abhinava Upadhyaya, J.—Formal order filed today is taken on record. In view of judgment of this Court in the case of Ravindra Kumar Jain v. Multani Mall Modi Degree College Society, dated 3.2.2014 in SCC Revision Defective No. 25 of 2014, the SCC Revision be treated to be filed within time. Since the defect has been removed, the office is directed to allot regular number to the revision.

2. I have heard Sri Y.K. Sinha learned Counsel appearing for the applicant and Sri Punit Kumar Gupta, learned Counsel for the opposite party.

3. By means of this revision, the revisionist has challenged the order of the Trial Court in SCC Suit No. 50 of 2009 dated 19.1.2015. By the said judgment eviction of the petitioner has been ordered from the premises in question, namely, 109 Navyug Market Ground Floor, Ghaziabad. The eviction has been ordered on the ground that in the said premises by removing a wall, the applicant has made structural change so as to diminish its value and utility. It was further held that the said premises was in two portions; one portion consists of 10"X10" area which was let out in the year 1976 at the rent of Rs. 1200/- per month and another portion, area of which was 10"X30" was let out in 1978 at the rate of Rs.

1800/- per month to one and the same tenant. By removing the partition wall between these two shops of the same premises the owners of which are different, the property of one of owner namely Anil Kumar has become unidentifiable.

4. Sri Y.K. Sinha, learned Counsel appearing for the revisionist assails the order on the ground that by merely removing of a wall which is internal wall and temporary partition neither the structure has changed nor it has diminished its value nor it disfigures the building, as such on this ground eviction could not have been ordered.

5. It is not disputed between the parties that the Act No. 13 of 1972, namely U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 is applicable to the premises.

6. The brief undisputed facts of the case are that in the said premises 109, Navyug Market, Ground Floor, Ghaziabad there existed two shops, area of one was 10''X10'' and adjacent shop was having an area of 10''X30''. Both shops were owned by one Trilok Chand. It is submitted that the said shop area of which was 10''X10'' was taken on rent at the rate of Rs. 1200/- per month in the year 1976. Thereafter the adjacent shop, area of which was 10''X30'' was taken on rent at the rate of Rs. 1800/- per month in the year 1978. Since then the rent was being paid. The original landlord Trilok Chand unfortunately died in the year 1988. Thereafter that the property in question devolved to the two sons of Trilok Chand, namely, Pawan Kumar Garg and Anil Kumar Garg. Pawan Kumar Garg got the ownership over the shop having area of 10''X10'' which was let out to the applicant in the year 1976 and Anil Kumar claimed ownership over the shop, area of which was 10''X30'' which was let out to the applicant in the year 1978. It is also not disputed that the applicants have been paying respective rent in respect of both the shops separately to Pawan Kumar and Anil Kumar at the rate of Rs. 1200/- and Rs. 1800/- respectively. For the first time a notice dated 21.8.2009 was sent by Pawan Kumar and with the same wording on the same date another notice was sent by Anil Kumar determining the tenancy on the ground of arrears of rent as well as the removal of wall without the permission of the landlord. After issuance of such notice which has been held by the Court below to be under section 106 of the Transfer of Property Act after the expiry of 30 days, the tenancy of the applicant stood terminated. Sri Pawan Kumar in respect of shop, the area of which was 10''X10'', instituted a suit No. 23 of 2009 and similarly Anil Kumar, the owner of the shop, the area of which was 10''X30'' and rent at the rate of Rs. 1800/- per month instituted suit No. 50 of 2009. Both the suits were not consolidated and were tried separately. Suit No. 23 of 2009 of Pawan Kumar v. the applicants, was decided on 31.3.2012 by which the suit was decreed in favour of the landlord and against the applicant defendant and eviction was directed. The said decree was challenged by way of Revision No. 93 of 2012 which was decided on 22.5.2013. By the judgment and order dated 22.5.2013 the Court below dismissed the revision and upheld the decree of the Judge Small

Causes. The said order dated 22.5.2013 was subjected to challenge in writ petition being Writ petition No. 32996 of 2013, which was finally decided by this Court by the judgment and order dated 17.7.2013. The writ petition was dismissed and the finding of the Trial Court, that the wall between the shops has been removed without the permission of the landlord was affirmed and therefore, relying upon a decision of the Ashok Kumar and Others Vs. Additional District Judge and Others, (1993) 2 AWC 673 , this Court held that the case was covered under section 20 sub-section (2) Clause (c) of the Act of 1972. The said judgment and order as of today has become final between the parties as no material has been shown whether the same has been challenged before a Higher Court of Law.

7. Sri Y.K. Sinha, learned Counsel appearing for the revisionist in the present revision submits that since both the suits were tried differently and separately and the Trial Court in the present suit having rejected an application of the landlord to bring on record the judgment of the High Court in earlier suit No. 23 of 2009, holding that these are different proceedings in different suits and cannot be taken on record. But it has ultimately decreed the suit in favour of the landlord relying upon the same judgment of the High Court and the Revisional Court. Sri Y.K. Sinha, further submits that since the judgment of the High Court could not have been relied upon by the Trial Court, the matter needs to be argued irrespective of the judgment of the High Court in writ petition No. 32996 of 2013 and the judgment of the Trial Court has to be analysed and dealt upon afresh and the validity of which is open for challenge irrespective of the judgment of the High Court.

8. Sri Sinha submits that the intervening wall between the two shops removal of which cannot be held to have made any material change to attract the provisions of section 20(2)(c) of the Act No. 13 of 1972. To press upon this point he relied upon a decision of Hon"ble Supreme Court in the case of Om Prakash v. Amar Singh 1987 (13) ALR 163 (SC), wherein it was held while relying upon another judgment in the case of Baldev Dass v. Ram Khilawan (1979) 5 All LR 44 , that removal of the partition wall in a shop which divided it into two portions, for the beneficial use of the same, did not amount to material alteration. He has further relied upon a decision of Hon"ble Supreme Court in the case of Brijendra Nath Bhargava and Another Vs. Harsh Wardhan and Others, AIR 1988 SC 293 : (1987) 4 JT 538 : (1987) 2 SCALE 1394 : (1988) 1 SCC 454 : (1988) 2 SCR 124 : (1988) 1 UJ 397 , where the Court was considering the question as to why the alterations are substantial in nature and it changed the form, front or structure of the construction and then went on to hold that no alteration made within the building which does not affect outside portion of the building would constitute material change under section 20(2)(c) of the Act. Sri Y.K. Sinha has further drawn my attention to the judgment of this Court in the case of Niaz Ahmad v. IIIrd. Addl. District Judge 1982 ARC 231, wherein it has been held that if any change has been made which has stood for considerable period of time and no objection having been raised, the landlord waives his right for enforcement of

section 20(2)(c) of Act No. 13 of 1972.

9. It is not disputed by Sri Sinha that the shop in question was initially in two portions, one portion of which was let out by the original owner in the year 1976 and another portion was let out in the year 1978. The area of both the portions of the shop are distinct as the first shop which was let out in the year 1976 was having an area of 10"X10" and another portion of the shop which was let out in 1978 the area was 10"X30". It is also not disputed that the rent for the two shops were different. The earlier shop was rented at the rate of Rs. 1200/- per month and second shop was rented at the rate of Rs. 1800/- per month. The tenant has been depositing the rent to its two owners separately. For the shop having area of 10"X10" to Pawan Kumar at the rate of Rs. 1200/- per month and for the shop having area of 10"X30" to Anil Kumar at the rate of Rs. 1800/- per month. So admittedly from the very beginning there were two shops which were let out on two different dates and on different rates of rent. It is also not disputed that after the death of the original owner the applicant has been depositing the rent to two landlords, namely Pawan Kumar and Anil Kumar. The notices of eviction was issued by two persons, namely, Pawan Kumar and Anil Kumar and two suits were instituted for eviction being suit No. 23 of 2009 by Pawan Kumar and 50 of 2009 by Anil Kumar. The suit No. 23 has been decided earlier and the same question was involved as to whether the removal of the partition wall would attract the provisions of section 20(2)(c) of the Act No. 13 of 1972. The Trial Court, the Revisional Court as well as the High Court in the said proceedings have held that such removal would attract the provisions of section 20(2)(c). The judgment of the High Court has been annexed alongwith this revision as Annexure No. 4 which is in writ petition No. 32996 of 2013 and the concluding part of the judgment is quoted herein below:

"In the cross-examination, P.W. 1 has categorically stated that the shop was covered by three walls and on one side there was a shutter. It is also admitted that the shop had been taken on rent in the year 1976. The plea of the petitioners that there was a plywood partition between the two shops and in 1978 the same had been removed and the adjacent shop had also been taken on rent has no leg to stand inasmuch as it has not been substantiated. Moreover, adjacent shop did not belong to the respondent-landlord and it belongs to some other person and is being occupied by Sri Anil Kumar. The petitioners are not able to establish that the wall had been removed with the consent of the landlord and, therefore, both the Courts below have rightly concluded that the wall of the shop had been removed by the petitioner-tenants without the consent of the landlord and the case falls within the purview of section 20(2)(c) of the Act, 1972.

In the case of Ashok Kumar and others v. Additional District Judge, Bareilly and others (supra), this Court has held that the removal of partition wall of two shops without the permission of the landlord amounts to material alteration and the tenant is liable to be ejected from the shop.

In view of the above, the writ petition is devoid of merit and is accordingly

dismissed."

The dispute raised in the present revision is exactly the same as has been decided by the High Court in the aforesaid judgment. The distinction between the two shops was the said partition wall. The partition having been removed without permission of the landlord, it does appear that the structural change has been made so much so that the identity of the two shops belonging to two land lords has been lost and shop has turned into one shop. Since the High Court has already adjudicated on these questions, I am unable to take a contrary view to what has been taken in writ petition No. 32996 of 2013. In this view of the matter, the revision has no merit and it is accordingly dismissed.