
(1973) 03 AHC CK 0046
In the Allahabad High Court
Case No : Sp. A. No. 394 of 1970

Ida alias Ida Bux

APPELLANT

Vs

Board of Revenues, U.P. and others

RESPONDENT

Date of Decision : 13-03-1973

Acts Referred:

Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) (Amendment) and
Miscellaneous Provisions Act, 1950 — Section 10
Uttar Pradesh Tenancy Act, 1939 — Section 171, 40

Citation : (1973) 03 AHC CK 0046

Hon'ble Judges : Satish Chandra, J; N.D. Ojha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.D. Ojha, J.—Hari Shanker, a Respondent in the special appeals as also in the writ petitions, filed a suit u/s 171 of the U.P. Tenancy Act, hereinafter referred to as the Act, on 1-2-1961 against Habib Ahmad and Ida on the allegation that Habib Ahmad, who was his tenant of the land in dispute, had sublet the same to Ida in the year 1351-F (corresponding to 1943 A.D.) and that since the sub-lease was for more than five years, it was illegal being in contravention of Section 40 of the Act. The suit was contested, but was decreed on 18-11-1961. Habib Ahmad was given the option to apply for ejectment of Ida within one month and resume occupation of the land in dispute in terms of the proviso to Section 171 of the Act. On an appeal filed by Ida the aforesaid decree was set aside by the Addl. Commr. on 18-4-1962 and the suit was dismissed. Hari Shanker filed second appeal which was allowed by the Board of Revenue on 13-8-1963/17-4-1964, whereby the decree of the Addl. Commr. was set aside and that of the trial court was restored. Ida challenged the aforesaid order of the Board of Revenue by way of CMW No. 2386/64. That petition was dismissed on 26-3-1970. Special Appeals Nos. 394 and 418 of 1970 have been filed against this judgment by Ida and Habib Ahmad respectively.

2. After his suit had been decreed by the Board of Revenue Hari Shanker filed an application for execution of the decree in which an objection was filed by Ida which was dismissed by the Revenue authorities. Habib Ahmad also on 16-5-1964 filed an application as contemplated by the proviso to Section 171 of the Act. According to him that application has so far not been decided on merits. Writ petitions Nos. 613 of 1970 and 910 of 1971 have been filed by Habib Ahmad and Ida respectively against the orders passed by the Revenue authorities on the execution side.

3. The Special appeals and the writ petitions have been heard together and are being decided by this common judgment. Learned Counsel for Hari Shanker raised a preliminary objection that the special appeal filed by Habib Ahmad was not maintainable, inasmuch as he had not filed a writ petition against the order of the Board of Revenue decreeing the suit and further that even his writ petition was not maintainable, because he had not filed any objection in execution proceedings too; nor had he challenged the order of the trial court in these proceedings by filing either an appeal or a revision before the Board of Revenue.

4. After having heard the learned Counsel for the parties, we are of the opinion that the Board of Revenue in passing the decree in the suit u/s 171 committed a manifest error of law and its order deserves to be quashed. Since the said order was challenged at any rate by Ida by filing a writ petition and he has also filed a special appeal, the controversy has to be decided on merits. After the decree itself passed in the suit u/s 171 of the Act is quashed by this Court, the proceedings taken in execution of that decree will automatically fall and in this view of the matter we have found it unnecessary to record any finding on the merits of the preliminary objection.

5. The sub-letting is said to have taken place in 1943. No registered deed of sub-lease was executed and the sub-lease even according to the case set up by Hari Shanker would be from year to year. In Birendra Pratap Singh and Another Vs. Gulwant Singh and Others, it was held that if a sub-lease commenced from 1st of July and was one from year to year, it would expire on the 30th of June and if the sub-tenant was allowed to continue by his land holder on the 1st of July following he would become entitled to hold the land for another year expiring on 30th June next. During that year the sub-lease would be held to be for two years and so on.

6. In the instant case, if we proceed on the assumption that the sub-lease for the first year commenced on 1-7-1943 and had Habib Ahmad allowed the sub-lease to continue, the period of five years would have elapsed on 30-6-1948 and the sub-lease would have entered its 6th year on 1-7-1948. It is then that it would have become in contravention of Section 40 of the Act. Before, however, the said contingency could happen the Act was amended and Section 295-A was added to it which reads:

Notwithstanding any contract to the contrary or, anything contained in this Act, or any other law for the time being in force, every person who on the date of the

commencement of the U.P. Tenancy (Amendment) Act, 1947 is a sub-tenant shall, subject to the provisions of the proviso to Sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947, be entitled to retain possession of this holding for a period of five years from that date and for this period nothing in Sub-section (2) of Section 44 or Section 171 shall render the land-holder of such subtenant liable to ejectment under the provisions of Section 171:

Provided that nothing in this section shall authorise a sub-tenant of a person who belongs to one of the classes mentioned in Section 41, to retain possession of his holding after the disability of such person has ceased.

The aforesaid section Was introduced by U.P. Act No. X of 1947 and came into force on 14-6-1947.

7. As a consequence of Section 295-A Habib Ahmad was not entitled to sue Ida for his ejectment from 14-6-1947 to 14-6-1952, On 14-6-1947 even four years had not expired from the date of the sub-lease.

8. In Ram Sunder Misra Vs. Triloki Nath Pandey and Others, proceedings for the ejectment of a sub-tenant u/s 175 of the Act were commenced in 1044. The suit was decreed on 1-9-1945 by the trial court which decree was affirmed on 20-3-1946 by the lower appellate court. A second appeal was pending in this Court when Section 295-A was introduced. Finding that the suit could no longer be decreed till 14-6-1962, when the second appeal came up for hearing before a Bench of this Court on or about 15-11-1951, on a reference by a Single Judge, it was urged by the Plaintiff's counsel that a decree may be passed in anticipation of the cause of action that would arise after 14-6-1952. The argument was repelled and it was held:

As regards the second contention, the Act makes it apply clear that the Defendant being b sub-tenant is not liable to ejectment for a period of five years from the date the Act came into force. The Plaintiffs cannot, therefore, claim that they have now any subsisting cause of action which would entitle them to a decree for ejectment. Their cause of action for ejectment would arise on the expiry of a period of five years and we cannot pass a decree in anticipation of the cause of action arising in 1952.

9. In the case of VLrendra Pratap (supra), the emphasis was laid on the act of the tenant in allowing the subtenant to continue on 1st of July each year. Allowing to continue implies volition on, the part of the tenant. It has to be a conscious and deliberate Act. It may also be, the result of an omission to file a suit for ejectment if a suit could legally be filed. If, however, there is a statutory prohibition as a result of which the tenant cannot file a suit and is helpless the cause of action for filing a suit for ejectment itself does not subsist. In view of the authority of Ram Sunder's case (supra) Habib Ahmad did not have any cause of action to file a suit for ejectment of Ida from 14-6-1947 to 14-6-1952. Since he could pot file a suit even if he very much liked to do so, being helpless in the matter, his omission to file a suit cannot in law be treated to mean that he

allowed the sub-tenant to continue; on 1-7-1947 and on the successive first days of July. When Section 295-A was introduced, even four years had not elapsed from the commencement of the sub-lease as it was to elapse on 30-6-1947, The cause of action having remained suspended from 14-6-47 to 14-6-1952, the aforesaid period has to be excluded from consideration. In this view of the matter, the 5th year of the sub-lease would commence on July 1, 1952 and the sub-lease would have become in contravention of Section 40 if Habib Ahmad had not filed a suit for the ejectment of Ida on 1-7-1953. Much before 1-7-1953, however, a new bar was introduced by a Govt. notification No. 9734/I-A1278-52 dated 23-1-1953, issued u/s 10 of the U.P. Agricultural Tenants Acquisition of Privileges (Amendment and Miscellaneous Provisions) Act, 1950, whereby it was provided that suits u/s 175 of the Act shall remain stayed u/s 10 of the aforesaid Act in respect of lands which were included on 7-7-1949 in a municipality or a notified area, w a cantonment or a town area. It is not disputed that the land in dispute falls within the ambit of the aforesaid notification.

10. Learned Counsel for Hari Shanker, however, urged that the said notification placed no bar on the institution of a suit. It only provided for staying such suits as may have been filed and since Habib Ahmad did not file a suit for ejectment of Ida on 1-7-1953, the sub-lease became for a period of more than five years on the said date. We are, however, not impressed by this argument. A suit is filed for a particular relief. If the suit that may be filed is only to be stayed and not to be decided on merits with the result that the relief prayed for cannot be granted, the filing of such a suit would be in vain and in-feasible. No person can be penalised for not filing a suit in such a situation. *Lex neminem cogit ad vana seu impossibilia*--the law obliges no man to do vain or infeasible things. It cannot be said that in issuing the notification aforesaid, the intention was that the tenants should continue to file suits u/s 175 for the ejectment of their sub-tenants even though they cannot get any relief and the suit is to be stayed on its institution. The law always intends that is agreeable to reason--*Lex semper intendit quod convenit ratione*.

11. It is again not disputed that the bar created by the aforesaid notification was in force even on 1--2-1961 when Hari Shanker filed the suit for ejectment of Habib Ahmad and Ida u/s 171 of the Act. We are, therefore, of the opinion that at no point of time before Hari Shanker filed the aforesaid suit, the sublease in favour of Ida became in contravention of Section 40 of the Act and consequently, the suit was not maintainable. The writ petition filed by Ida, challenging the order of the Board of Revenue in the suit u/s 171, therefore, deserves to be allowed. As already pointed out, on the said order being quashed, the proceedings in execution of the said decree passed by the Board of Revenue would automatically fall and the writ petitions too, therefore, deserve to be allowed on this short ground even without going into the merits of the various contentions raised therein.

12. In the result the special appeals as well as the writ petitions are allowed. The

judgment of the learned Single Judge is set aside and the order of the Board of Revenue dated 13-8-1963/17-4-1964 decreeing the suit for Hari Shanker for ejectment of Habib Ahmad and Ida u/s 171 of the U.P. Tenancy Act is quashed. The suit is dismissed. The writ petitions are also allowed and the proceedings in execution of the aforesaid decree of the Board of, Revenue are quashed. Under the circumstances of the case, however, we make no order as to costs. Appeals allowed.