
(1991) 02 AHC CK 0081
In the Allahabad High Court
Case No : S.C.C. Revision No. 19 of 1991

Jai Shanker Prasad

APPELLANT

Vs

The Town Area Bilariaganj

RESPONDENT

Date of Decision : 20-02-1991

Acts Referred:

Constitution of India, 1950 — Article 136
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 15, 2, 25, 7(1), 7(1)

Citation : (1991) 2 AWC 1

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : S.N. Srivastava, for the Appellant; K.N. Rai, for the Respondent

Final Decision : Allowed

Judgement

R.R.K. Trivedi, J.—In this revision Sri K.N. Rai has put in appearance for Plaintiff opposite party Town Area, Bilariaganj, Tehsil Sagari, District Azamgarh. I have heard learned Counsel for the revisionist Sri S.N. Srivastava and the learned Counsel for the Plaintiff opposite party. Both the learned Counsel are agreed that this revision may be disposed of finally at this stage

2. The facts giving rise to this revision are that the Defendant-revisionist was in tenant of accommodation in dispute, which is owned by Town Area, Bilariaganj, Tehsil Sagari, District Azamgarh, (here-in-after referred to as "Town Area") since April 1988. This accommodation was let out at the rent of Rs. 240/- p.m. Town Area filed S.C.C. Suit No. 3 of 1989 for ejectment of the revisionist inter alia on the ground that his tenancy is on a rent of Rs. 600/- p.m. The accommodation consists of five rooms, the Defendant has failed to pay the rent in spite of the notice served on him. He also made certain alterations in the building. It was further claimed that the Town Area has no accommodation for its office which is being run in a rented room. The accommodation in dispute is well suited and sufficient and suitable for the office of the Town Area. It was claimed that the

Town Area is in urgent tenancy has been terminated. However, the Defendant has neither paid the rent nor has vacated the accommodation in dispute.

3. The suit was contested by the Defendant revisionist inter alia on the allegations that he is tenant since January, 1987 and the rent agreed from very beginning was Rs. 240/- p.m. The official-in-charge of the Town Area demanded rent of the house at the rate of Rs. 700/- p.m. in the arbitrary manner and it was enhanced unilaterally. A notice to this effect was served on the Defendant which was replied by him and the rent due was sent by money order. The Plaintiff Town Area has, however, refused to accept the amount sent by money order. He has not committed default nor his tenancy has been terminated. The notice served on him is illegal. His tenancy rights are not affected. The suit has been filed only due to enmity and for purposes of harassment.

4. The trial court after giving full opportunity of adducing evidence and hearing to both the parties has decreed the suit vide judgment and decree dated 8th January, 1991. The findings recorded by the learned Judge, Small Causes are that agreed rate of rent was throughout Rs. 240/- p.m. and there is no evidence that it was enhanced by agreement of both the sides. The finding has also been recorded that the Defendant revisionist carried the same alteration. The notice served on the Defendant revisionist has been found to be legal and valid. The trial court has recorded the reasons that since the provisions of Act No. 13 of 1972 are not applicable to the accommodation in dispute and the Town Area is in need of the accommodation in dispute for its use, the suit deserves to be decreed.

5. Learned Counsel for the applicant revisionist has argued that the suit of the Town Area was barred u/s 15 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972. The revision has been pressed by the learned Counsel only on this ground. It is relevant to mention here that this plea was neither raised before the court below even in written statement filed by the Defendant revisionist nor has been taken in the memo of revision.

6. I have perused all the 11 grounds taken in memo of revision. There is no ground taken on the basis of Section 15 of the aforesaid Act. Learned Counsel cannot be legally permitted to argue on question which was not raised either in the written statement or in the memo of revision filed before this court. However, Sri S.N. Srivastava placed reliance in a case Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, . In this case Hon'ble Supreme Court has observed thus:

It is undoubtedly true as held by catena of decision of this Court that a pure question of law, untrammelled by question of fact, which goes to the roots of the jurisdiction, could be permitted to be raised for the first time in an appeal under Article 136 of the Constitution. We are afraid, we cannot permit the Appellant to raise this point for the following reasons:

Firstly, except making a bald averment in the written statement that the "suit is

not maintainable" nothing has been pleaded in detail in the written statement. Admittedly this point was neither taken in the writ petition nor argued into High Court. It is not even raised in the grounds of appeal in this Court nor even in points raised in the synopsis of the case. It is stated that remotely it was raised in the rejoinder. Since it is a mixed question of facts and law and not being a pure question of law, we cannot permit to raise the point for the first time, that too, when it would prejudice the Respondent of their case at this stage. We accordingly decline to go into the question.

Considering, in the light of the aforesaid observations of Hon'ble Supreme Court, in my opinion, in the present case also the Defendant revisionist cannot be permitted to raise the plea regarding bar of the suit u/s 15 of the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972. Section 15 of the Act reads as below:

15. Bar of jurisdiction--No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under Sub-section (1) of Section 7 or the damages payable under Sub-section (2) of that section or the costs awarded to the State Government or the corporate authority under Sub-section (5) of Section 9 or any portion of such rent, damages or costs.

A perusal of Section 15 shows that for applying the bar of Section 15 it is to be determined as a matter of fact that the occupation of the Defendant applicant was unauthorised and thus it is a mixed question of fact and law and cannot be permitted to be raised at this stage. It is already noticed above that the plea regarding Section 15 was not taken in the written statement nor has been raised in the memo of revision filed in this Court. The Defendant revisionist contested the suit fully and when the decision has gone against him this plea has been sought to be raised for the first time during arguments. In these facts and circumstances the Defendant revisionist cannot be allowed to raise this plea.

7. The learned Counsel, however, further stated that on the facts admitted and found by the court below the bar provided u/s 15 is attracted. It has been said that admittedly the tenancy of the Defendant revisionist was terminated by notice and that notice has been held to be valid by the court below. Thus on these facts the occupation of the Defendant was unauthorised as contemplated under the provisions of U.P. Act No. 22 of 1972. In my opinion this contention of the learned Counsel is also misconceived. The Defendant has throughout pleaded in the suit that he is lawful tenant of the accommodation in dispute and he cannot be ejected. Now it is not open for him to change his stand and say that he was unauthorised occupant of the accommodation in dispute. He cannot take advantage of the pleading of the opposite party. The Defendant in the present case was in lawful occupation of the premises in question under the valid lease granted to him by the Town Area, the mere fact that the Defendant's lease may have been determined prior to the institution of the suit does not per se bring the

Defendant within the mischief of definition of unauthorised occupant u/s 2(g) of U.P. Act No. 22 of 1972. This view has already been taken by this Court in a case Reserve Bank of India v. S.B. Srivastava 1983 ALJ 147.

8. Learned Counsel for the Town Area also placed reliance in a case reported in Ethakota Peddu Raju and Another Vs. Gannamareddi Lakshmayya, . In this case the principle laid down is that where an original suit is tried by Small Cause Court and no objections as to want of jurisdiction is taken before it the High Court is not bound to interfere in revision u/s 25 on that ground. The second case relied by learned Counsel is reported in 1980 ALJ 719. In this case in para 9 it has been observed that a new plea regarding jurisdiction cannot be allowed to be raised which was not taken before the trial court and the Petitioner participated in proceedings and there is nothing to show that any prejudice has been caused to him I respectfully agree with the view expressed in the aforesaid cases. It is well established that at appellate or revisional stage the judgment of the trial court cannot be reversed unless plea of jurisdiction was taken at the first opportunity and serious prejudice has been caused by the trial of the suit in the said court. The learned Counsel for Defendant revisionist, however, has failed to show any prejudice caused to the Defendant applicants by trial of the suit on Small Cause side. Admittedly he participated in the suit without raising any objection.

9. The learned Counsel for the applicant also submitted that the Defendant applicants may be granted some time to vacate the accommodation in dispute so that he may be able to make alternative arrangement. Considering the facts and circumstances of the case, in my opinion, if the Defendant-revisionist is allowed three months time to vacate the accommodation in dispute no serious prejudice shall be caused to the Town Area.

10. For the reasons stated above, this revision lacks merit and has no force. The revision is, accordingly, dismissed. However, the parties shall bear their own costs. The Defendant-revisionist is allowed three month's time to vacate the accommodation in dispute provided he deposits entire decretal amount and rent due upto-to-date within a month from today before the court below and further continues to deposit the future rent by 7th of next month in case of default it shall be open to the Town Area to execute the decree against him. A copy of this order shall be given to the parties counsel, within 24 hours on payment of charges.