
(1984) 11 AHC CK 0035
In the Allahabad High Court
Case No : Writ Petition No. of 1979

Jannat Khatoon and others

APPELLANT

Vs

1st Addl Distt.Judge and others

RESPONDENT

Date of Decision : 29-11-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(2)

Citation : (1984) 11 AHC CK 0035

Hon'ble Judges : S.Saghir Ahmad, J

Final Decision : Dismissed

Judgement

S. Saghir Ahmad J.

1. Mohammad Rafiq who had originally filed this petition, was the owner of a shop situate in the town of Deva Sharif, district Barabanki which was in the tenancy of opposite party no. 3. Mohammad Rafiq has died during the pendency of the petition and has been substituted by his heirs who are petitioners 1/1 to 1/7.

2. Mohammad Rafiq instituted a suit for the eviction of opposite party no. 3 from the shop in question on the ground, inter alia, that the shop originally was a kachcha shop and the parties had agreed that it would be constructed pucca and the rent would be enhanced to Rs. 35/. In pursuance of that agreement the shop was constructed anew in November 1971 and opposite party no. 3 became liable to pay rent at the rate of Rs. 35/ p. m. with effect from 11271. He did not pay rent with effect from 111972 and consequently a composite notice of demand and termination of tenancy was issued to him on 28772 by registered A/D post which was served on him on 1872 but he did neither pay the arrears of rent nor vacated the shop and consequently the suit had to be instituted against him. It was pleaded that the shop was not governed by the provisions of U. P Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. Opposite party no.

3 who was a tenant in the said shop pleaded that the shop was an old construction and was governed by the provisions of the aforesaid Act. He also pleaded that he had not agreed to the enhancement on rent to Rs. 35/ p.m. and that the shop had not been constructed anew.

3. The learned munsif, who tried the suit as a court of small causes framed necessary issues which, on being translated into English, would read as under :

- (1) Whether the plaintiff has constructed a pucca shop as pleaded in the plaint ?
- (2) Whether the parties had agreed to enhance the rent from Rs. 15/ to Rs. 35/?
- (3) Whether the court had no jurisdiction to try the suit (4) To what relief was the plaintiff entitled ?

4. The trial court held that the shop in question had been constructed pucca and that the defendant had agreed to enhance the rent from Rs. 15/ to Rs. 35 p.m. It also held that the court had jurisdiction to try the suit. With these findings the suit was decreed.

5. Opposite party no. 3, thereafter, filed a revision in which he assailed the findings recorded by the trial court. The revision was allowed by the 1st Additional District Judge, Barabanki by his Judgment and order dated April. 1979 (certified copy of the judgment does not bear the date of the judgment).

6. The revisional court was of the opinion that the findings recorded by the trial court were perverse and that there was no Agreement to enhance the rent from Rs. 15/ to Rs. 35/. The court was further of the opinion that the burden of proof, so far as the question of constructing the shop anew was concerned, was wrongly placed on the defendant (opposite party no. 3). The revisional court, therefore, set aside the decree passed by the trial court and dismissed the suit. It was in these circumstances that Mohammad Rafiq filed the present petition.

7. I have heard the learned counsel for the parties. It has been contended on behalf of the petitioner that the findings recorded by the trial court on the question of agreement about the enhancement of rent as also the construction of the shop anew in 1971 were findings of fact which were fully supported by the evidence on record and it was not within the jurisdiction of the revisional court to set aside these findings. He, in support of his contention, relied upon the decision of this court in the case of Tara Chand and another v. Shyam Lal (1978 ALJ 1095) in which a decision of the Supreme Court *Malini Ayyappa Naicker v. Seth Manghraj Firm* (AIR 1969 SC 1344) has been relied upon. He has also cited the decision of the Karnataka High Court in *M.S. Narayanagouda v. Smt. Girijamma and another* AIR 1977 Karnataka 58) to show that if the findings are against the" weight of evidence on record they cannot be said to be perverse. Perverse findings, according to him, mean findings which are against the evidence.

8. The question whether the findings recorded by the trial court in the instant case were perverse or could have been legally set aside by the revisional court

need not be gone into as I am of the opinion that the decree passed by the trial court cannot be sustained on other grounds.

9. It will be noticed that Mohd. Rafiq had pleaded that the shop was not governed by the provisions of U.P. Act No. XIII of 1972. This fact was denied by opposite party no. 3 in his written statement. Consequently the basic issue, which had to be decided, was whether U. P. Act No. XIII of 1972 was applicable to the shop in question. If the Act was not applicable the defendant (opposite party no. 3) could have been evicted from that shop at the instance of Mohd. Rafiq under the provisions of the general law applicable to the accommodation in question. If, however, the Act was applicable, the suit could not have been decreed unless it was founded on any of the grounds mentioned in Section 20 of the Act and such ground was found at the trial to have been established. Since the trial court did not frame any issue on this question and did not at all advert its mind to this aspect of the matter, the decree, as observed earlier, cannot be sustained. Moreover, issues nos. 1 and 2 had to be considered in a wider perspective so as to cover the legal aspect of the matter that even if the agreement as set out in the plaint was found proved, was that agreement a valid agreement and could a tenant legally agree to give up the protection available to him under the Act.

10. I, Consequently, allow the writ petition and quash the judgment and decree passed by the trial court as also by the revisional court, which are contained in Annexures nos. 1, 2, and 3, and remand the suit to the trial court to decide it afresh after framing necessary issues in the light of the observation made above and in accordance with law. The parties shall bear their own costs.