
(1995) 01 AHC CK 0131
In the Allahabad High Court
Case No : C.R. No. 637 of 1989

Jawahar LaL

APPELLANT

Vs

Ghasi Ram Jain

RESPONDENT

Date of Decision : 17-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 151, 152
Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20, 20(4)

Citation : (1995) 01 AHC CK 0131

Hon'ble Judges : D.S. Sinha, J

Bench : Single Bench

Advocate : Ravindra Rai, for the Appellant; Z.K. Hasan, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Sinha, J.—Heard Sri Ravindra Rai, learned Counsel for the Defendant-revisionist and Sri Z.K. Hasan, holding brief of Sri R.K. Jain, learned Counsel appearing for the Plaintiff-opposite party.

2. The Plaintiff-opposite party instituted S.C.C. Suit No. 98 of 1987 against the Defendant-revisionist for ejectment and recovery of arrears of rent at the rate of Rs. 300 per month.

3. The Defendant-revisionist deposited in the court the entire amount of rent and damages for use and occupation of the building in his occupation claimed by the Plaintiff-opposite party and invoked the provisions of Sub-section (4) of Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, hereinafter called the Act, for being relieved of his liability for eviction on the ground of default in payment of arrears of rent. Thereafter, the Plaintiff-opposite party moved an application for deciding the suit in terms of the provisions of Section 20 of the Act as the Defendant-revisionist, had deposited the entire amount that was required to be deposited Under the said provision. On

the application of the Plaintiff-opposite party, the Defendant-revisionist made the following endorsement:

No objection to the withdrawal of the amount, but without prejudice to the allegations of the W.S., the suit may be dismissed as prayed.

The court, therefore, dismissed the suit of the Plaintiff-opposite party and permitted him to withdraw the amount in deposit vide order dated 25th February, 1988.

4. After the lapse of a period of about two months, on 14th April, 1988 the Defendant-revisionist moved an application Under Sections 151 and 152 read with Order XLVII and Section 114 of the Code of Civil Procedure, 1908, hereinafter called the Code. Later on, it appears that, on being confronted with the problem of limitation with regard to review application, the Defendant-revisionist amended his application and confined it to be one Under Sections 151 and 152 of the Code. By this application the Defendant-revisionist prayed that the decree and judgment dated 25th February, 1988 be rectified as, according to him, the rate of rent was Rs. 210 only and riot Rs. 300 as claimed in the suit and which he had deposited.

5. The application of the Defendant-revisionist has been dismissed by the Impugned order dated 3rd May. 1989 on the ground that the suit was dismissed on the basis of the endorsement made by the Defendant-revisionist and also that the judgment and decree did not suffer from any such clerical or arithmetical mistake which required correction by amending the same.

6. After hearing learned Counsel for the parties, the court is clearly of the opinion that the impugned order is perfect and sound in law and instant revision is frivolous. The Defendant-revisionist having agreed to the dismissal of the suit as prayed by the Plaintiff-opposite party and the decree and judgment dated 25th February, 1988 dismissing the suit and permitting the withdrawal of the amount deposited by him, cannot be permitted to turn around and raise a plea that the said decree and judgment was erroneous. Indeed, he is estopped from doing so. No doubt while endorsing no objection to the withdrawal of the amount deposited by him by the Plaintiff-opposite party, he qualified his no objection" by saying "but without prejudice to the allegations of the W.S. The reservation made by the Defendant-revisionist with regard to his allegations in the written statement might be available In future proceedings but is not available in relation to the claim of the Plaintiff-opposite party in the suit which has been dismissed on the basis of his endorsement agreeing to the dismissal of the suit. Once the Plaintiff-opposite party and the Defendant-revisionist agreed to the dismissal of the suit, the court was fully justified in dismissing the suit and permitting the Plaintiff-opposite party to withdraw the amount deposited therein by the Defendant-revisionist. It was under no obligation to decide the dispute with regard to the rate of rent. The court also could not determine he dispute regarding the rate of rent in the proceedings initiated by the Defendant revisionist u/s 152 of the Code.

7. In any event, the alleged error in permitting the Plaintiff-opposite party to withdraw the amount deposited by the Defendant-revisionist is, by no stretch of imagination, a clerical or arithmetical mistake either in the judgment or decree arising therein from any accidental slip or omission obliging the court to exercise powers u/s 152 of the Code.

8. The foregoing discussion leads to an irresistible conclusion that the impugned order is not liable to be interfered with by tills court in exercise of its revisional Jurisdiction u/s 25 of the Provincial Small Cause Courts Act, 1987, and that the revision is totally devoid of merit and frivolous.

9. In the result, the revision fails and is hereby dismissed summarily with casts, quantified at Rs. 1000.