
(2011) 04 AHC CK 0080

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 20391 of 2011

Kailash

APPELLANT

Vs

Shree Hanuman Ji Virajman Mandir and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 15, 15(3)

Citation : (2011) 5 ADJ 859

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Judgement

Arun Tandon, J.—Heard learned Counsel for the Petitioner and Sri R.P. Tiwari, Advocate for the Respondent.

2. Petitioner before this Court seeks quashing of the order dated 11.3.2003 passed by the Judge Small Causes Court in Suit No. 79 of 1993 as well as quashing of the revisional order dated 21.1.2011 passed in S.C.C. Revision No. 12 of 2003.

3. Facts, in short, giving rise to the present writ petition are as follows:

Plaintiff Sri Hanuman Ji Maharaj Virajman Mandir Mahaviran Nagra through its President of the Managing Committee filed Small Cause Suit No. 79 of 1993, for eviction of the tenant from the premises in question namely the Petitioner as well as for recovery of the outstanding rent and damages for use and occupation after the tenancy was terminated. The suit was contested by the Petitioner and it was contended on his behalf that the suit, as filed by the society, was not maintainable. The provisions of the U.P. Act No. 13 of 1972 were not applicable as the property in question was situated in a rural area, and provisions of U.P. Tenancy Act alone would be resorted to for dispossession of the tenant. It was, therefore, contended that the suit was liable to be dismissed. The tenant also denied any default in payment of rent and lastly it was contended that the Plaintiff society had no right to the property in question.

4. After the parties had filed their statements, trial Court framed two issues for determination i.e. (a) whether the Plaintiff had a right to file the suit and the provisions of Act No. 13 of 1972 were applicable and (b) whether the Plaintiff was entitled to damages at the rate of Rs. 40/- per month for the period 10.1.1992 to 17.5.1993. The trial Court decided both the issues in favour of the Plaintiff and accordingly the suit for eviction, payment of arrears of rent, damages for use and occupation of the premises after such termination of the tenancy was decreed vide order dated 11.3.2003. Not being satisfied with the order so passed, Petitioner filed revision u/s 25 of the Small Cause Court Act, being S.C.C. Revision No. 12 of 2003. The revision has been dismissed, after affirming the findings recorded by the Judge Small Cause Court, vide judgment and order dated 21.1.2011. It is against these two orders that the present writ petition has been filed.

5. Before this Court it has been contended by Sri Ajit Kumar, counsel for the Petitioner that the Provincial Small Cause Courts Act will have no application in the facts of the present case as property is situate in a rural area. It is submitted that under U.P. Act No. 13 of 1972, which was published in the official gazette on 15th July, 1972, a provision was made u/s 20(6) to the effect that in second schedule to the Provincial Small Cause Courts Act, 1887 in entry No. (4) the following be inserted at the end, namely:

But not including a suit by a landlord for the eviction of a tenant (after the determination of his tenancy) from a building as defined in the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972.

It is stated that it is only because of such insertion in Second Schedule to Small Cause Courts Act that the suit in respect of eviction of tenant, after termination of his tenancy by the landlord from the building, could be filed under the U.P. Act No. 13 of 1972 before the Judge Small Cause.

He submits that Section 20(6) was deleted by Section 8 (ii)(b) of U.P. Act No. 37 of 1972, which read as follows:

8. Amendment of U.P. Act XIII of 1972.- In the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972-

(i)....

(ii) in Section 20--

(a)....

(b) Sub-sections (3) and (6) shall be omitted.

6. Therefore, it is contended that because of deletion of Section 20(6) by U.P. Act No. 37 of 1972, the addition made in entry No. 4 of Second Schedule of the Provincial Small Cause Court Act, 1887 would become inoperative in the eyes of law automatically. He, therefore, submits that in the matter pertaining to tenant and landlord, qua a suit covered by U.P. Act No. 13 of 1972, could not be filed

before the Judge Small Cause Court.

The contention so raised on behalf of the Petitioner is totally misplaced, inasmuch as by means of U.P. Act No. 37 of 1972 provisions of Section 20(6) were deleted but at the same time amendment were made in the Small Cause Courts Act itself i.e. Act No. IX of 1987, by Section 2 and Section 4 of U.P. Act No. 37 of 1972, which read as follows:

2. Amendment of Section 15 of At IX of 1887.--In Section 15 of the Provincial Small Cause Courts Act, 1887, as amended in its application to Uttar Pradesh, hereinafter referred to as the principal Act, in Sub-section (3), the following proviso shall be inserted, namely:

Provided that in relation to suits by the lessor for the eviction of a lessee from a building after the determination of his lease, or for recovery from him of rent in respect of the period of occupation thereof during the continuance of the lease, or of compensation for the use and occupation thereof after such determination of lease, the reference in this Sub-section to two thousand rupees shall be construed as a reference to five thousand rupees.

3....

4. Amendment of the Second Schedule to Act IX of 1887.- In the Second Schedule to the principal Act, for Article (4), the following article shall be substituted, namely:

(4) a suit for the possession of immovable property or for the recovery of an interest in such property, but not including a suit by lessor for the eviction of a lessee from a building after the determination of his lease, and for the recovery from him of compensation for the use and occupation of that building after such determination of lease.

7. It is, therefore, clear that what have been taken away with the deletion of Section 20(6) of U.P. Act No. 13 of 1972 in fact stood introduced in the Small Cause Courts Act itself by Section 2 and 4 of Amending Act No. 37 of 1972.

In view of the aforesaid, the contention raised on behalf of the Petitioner that the provision of Small Cause Courts Act will have no application in respect of eviction of tenant from a building situate in rural area covered by Act No. 13 of 1972 has to be repelled by this Court. It is held accordingly.

8. At this stage counsel for the Petitioner refers to Section 242 of the U.P. Tenancy Act, 1939 for the proposition that since the disputed premises is situate within the territorial limits of a Gram Sabha, the exclusive jurisdiction to try the suit, for eviction of the person occupying the same, would be before the Revenue Court.

The contention so raised on behalf of the Petitioner has also to be rejected by this Court. Out of various suits cognizable by U.P. Tenancy Act, 1939, the category of suit between the landlord and tenant, where the possession of the

premises, after determination of tenancy, has been directed to be considered by the Judge Small Cause by the Act No. IX of 1987. Therefore, it cannot be said that because of Section 242 of the U.P. Tenancy Act the Small Cause Court will have no jurisdiction to try the suit in respect of dispossession from the premises to which provisions of U.P. Act No. 13 of 1972 are applicable.

It is then contended on behalf of the Petitioner that the society, which had filed the suit, had been de-registered under the order of the Assistant Registrar, Firms, Societies and Chits dated 25.5.1992, copy whereof has been enclosed as Annexure-17 to the present writ petition. It is stated that this order was subjected to challenge by way of appeal before the Commissioner u/s 12(1) of the Societies Registration Act, being Appeal No. 1 of 1991-92 and the appeal was also dismissed on 23rd November, 1994. It is, therefore, submitted that the suit as filed in the year 1993 was by an unregistered society, which cannot claim any right or title as landlord over the premises in dispute.

9. This Court has examined the order of the Assistant Registrar, Firms, Societies and Chits dated 25.5.1992. From the order it is apparently clear that two societies were registered in the same name. Therefore, the Assistant Registrar in exercise of powers u/s 12(D)(1)(c) has held that so long as the earlier registered society exists, no second society by identical name could have been registered and therefore subsequent registration has been cancelled.

What logically follows is that the original registration of the society was not interfered with and it continued in operation even after the order of the Assistant Registrar dated 25.5.1992. Dismissal of the appeal against the said order by the Commissioner dated 23rd November, 1994 will not in any way dilute the existence of first society.

10. It has, therefore, to be held that the original society continued to remain in existence and therefore it has rightly been held to be the landlord of the property in question. The Petitioner had admitted payment of rent to the said society.

11. This Court may record that it was not the case of the Petitioner that the suit has been filed by an office bearer of the society, which was registered subsequently and which had been de-registered.

12. This Court holds that the second contention raised on behalf of the Petitioner also has no substance.

13. Both the authorities have recorded that the Petitioner was a tenant of the registered society, the renewal of registration whereof was also brought on record before the Court below, and further that the tenant had committed default in payment of rent. This Court finds no good ground to interfere with the orders impugned.

14. Writ petition is dismissed.

15. At this stage counsel for the Petitioner made a request that some reasonable

time may be granted to vacate the premises, as he is in occupation of the premises for last more than 30 years and it is the only source of livelihood.

In the opinion of the Court nine months period for the purpose would be just and equitable in the facts of the case.

16. Accordingly, it is provided that the Petitioner shall not be evicted from the premises till 31st December, 2011 provided (a) he files an affidavit in form of an undertaking before the Prescribed Authority within one month from today categorically stating that he shall handover peaceful possession of the premises to the landlord on or before 31st December, 2011 and (b) he deposits the decretal amount alongwith damages for use of the premises up to 31st December, 2011 in advance, as determined under the impugned orders, through a bank draft in favour of the landlord alongwith the undertaking.

The draft so deposited shall be handed over to the landlord for encashment. In case of default Petitioner shall not be entitled to the benefit of this order.