

(2010) 11 AHC CK 0389
In the Allahabad High Court
Case No : C.M.W.P. No. 65695 of 2008

Kamal Raj Patpatiya

APPELLANT

Vs

Smt. Har Bai Sahu and Another

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)

Citation : (2011) 2 AWC 1935 : (2011) 2 RCR(Rent) 81

Hon'ble Judges : Shashi Kant Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shashi Kant Gupta, J.—The present petition is directed against the order dated 4.10.2001 passed by the prescribed authority/J.S.C.C. Jhansi in P.A. Case No. 62 of 2007, Smt. Har Bai Sahu v. Parvesh Chandra Patpatiya whereby it has rejected the application filed by the present Petitioner for his impleadment in release proceedings u/s 21(1)(a) of the U.P. Act No. 13 of 1972 (hereinafter referred to as "the Act").

2. Indisputably Sri. Sikandar Lal Patpatiya, the father of the Petitioner was the tenant of the disputed shop. He died on 15.2.2004 leaving behind, inter alia, the Petitioner as well as the opposite party No. 2 (sons) as his legal heirs. The release application which was registered as P.A. No. 62 of 2007 was filed by the land lady namely Smt. Har Bai Sahu (Respondent No. 1) against the opposite party No. 2 (one of the son of the original tenant late Sri. Sikandar Lal Patpatiya).

3. The opposite party No. 2 is contesting the release application. After almost three years an impleadment application was filed by the present Petitioner. It was pleaded therein that he, being one of the heirs of the deceased Sri. Sikandar Lal Patpatiya, is entitled to be impleaded under Order I, Rule 10 of the Code of

Civil Procedure. The said application was contested by the opposite party No. 1, the land lady on the ground that it is mala fide and has been filed just to delay the proceedings. It was also pleaded that the release application is being contested by Sri. Pravesh Chandra Patpatiya who alone is doing the business in the disputed shop.

4. The prescribed authority by the impugned order has rejected the impleadment application. Learned Counsel for the applicant relying upon the following decisions Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup and another, and Gauri Shankar Gupta Vs. Anita Mishra and Another, has submitted that after the death of the original tenant namely late Sri. Sikandar Lal Patpatiya, the tenancy was inherited by him alongwith his brother as joint tenant, as such, he is necessary and proper party. It has further been submitted that the tenancy cannot be brought to an end by proceeding only against one of the legal heirs without impleading the Petitioner as party in the application filed u/s 21(1)(a) of the Act.

5. Per contra, learned Counsel for the land lady, opposite party No. 1 has submitted that the application filed by the Petitioner is mala fide and has been filed after almost three years just to delay the entire proceedings. It has further been submitted that when the opposite party No. 2 was delaying the disposal of the application, the Writ Petition No. 49474 of 2010 was filed by the landlady in the High Court and this Court directed the land lady to move application before the authority concerned for expeditious disposal of the case in view of decision in Smt. Manju Devi Vs. Additional District Judge VIIIth and Others, It has further been submitted that the Petitioner is neither occupying the premises nor paying any rent nor doing any business from the premises in dispute and the filing of the impleadment application was in aid of the delaying proceedings. It is further submitted that the Respondent No. 2 is exclusively carrying on the business from the disputed shop.

6. Learned Counsel for the Respondent No. 1 has referred the following authorities in support of his submissions; Smt. Sona Devi v. Ghanshyam Dass and Ors. 1994 (2) ARC 207; Krishna Kityal (Smt.) v. Kamlesh Gupta (Smt.) and Anr. 2008 (2) ARC 603 and H.C. Pandey v. G.C. Paul 1989 (2) ARC 26: 1989 (1) AWC 639 (SC).

7. Heard the learned Counsel for the Petitioner, Sri. K.K. Pandey, learned Counsel appearing on behalf of the opposite party No. 1 and perused the record.

8. A bare perusal of the impleadment application filed by the Petitioner goes to show that no averment has been made by him that either he is paying any rent or he is carrying on any business from the disputed shop or he is occupying the said shop in any capacity. It has also come on record that he is running a separate hotel business. The opposite party No. 2 has also not made any averment in his written statement filed in reply to the application u/s 21(1)(a) of the Act that the Petitioner is carrying on any business from the disputed shop. He

has clearly stated in his written statement that the business is being carried out by him (Respondent No. 2) from the disputed shop. Besides this, the Petitioner has not been able to place any material to demonstrate before this Court that in fact he is carrying on any business from the said shop.

9. The Supreme Court in the case of *Harish Tandon v. Additional District Magistrate and Ors.* 1995 (1) ARC 220: 1995 (1) AWC 106 (SC), has held that on the death of tenant, his heirs, succeed the tenancy rights as joint tenants, they represent the estate of the deceased as heirs. It is a single tenancy which devolves on the heirs and there is no division of the premises or of the rent payable therefor, and the heirs succeed to the tenancy as joint tenants.

10. The facts of the *Textile Association India Bombay Unit v. Balmohan Gopal Kurup and Gauri Shankar Gupta v. Anita Mishra and Anr.* (supra) are quite distinguishable. In the case of *Textile Association India Bombay Unit*, the legal heirs of the original tenant after his death were residing in the disputed premises and the ex-parte decree for eviction was passed against the widow and one son of the original tenant without impleading the other son as party in that suit. In this background, the Apex Court held that ex-parte decree obtained against the widow and one of the sons was not binding upon other son who was not impleaded by the landlord, and therefore, the ex-parte decree was set aside, and the landlord was directed to implead the other son of the original tenant as party in the suit. In the said case, admittedly, son of the deceased tenant who had filed impleadment application, was residing in the premises in dispute and had legitimate interest in the said premises. However, in the present case, the Petitioner is neither occupying the shop nor carrying on the business from the said premises.

11. In the case of *Gauri Shankar Gupta v. Anita Mishra and Anr.* (supra) it was not disputed that the third party who had applied for the impleadment was carrying on the business from the disputed shop and hence, he had a legitimate interest in the shop, however, in the present case as has already been observed hereinabove that the Petitioner is neither carrying on any business nor occupying the disputed shop.

12. Besides, in the present case even though an application u/s 21(1)(a) of the Act was filed in the year 2007, the impleadment application has been filed by the Petitioner almost after a lapse of three years and if the Petitioner did have a genuine interest in the disputed shop, he would have definitely filed the impleadment application immediately after the filing of the release application in the year 2007 and could not have remained silent for almost three years, moreover, the Petitioner has not assigned any reason for not filing impleadment application soon after the filing of the release application. It is also notable that it was only after this Court in Writ Petition No. 4974 of 2010 had directed the landlady to file application before the authority concerned for expeditious disposal of the case in view of decision in *Manju Devi* case (supra), the present impleadment application was filed by the Petitioner. It is also noteworthy that the

Petitioner is neither carrying on any business nor occupying the said shop, therefore, he will not be prejudiced at all if the decree of eviction is passed against the contesting Respondent.

13. In this view of the matter, I find no illegality in the impugned order rejecting the impleadment application filed by the Petitioner. Besides, the said impleadment application was filed at a belated stage and it is not a fit case to interfere with the impugned order under Article 226 of the Constitution of India.

14. In the result, the writ petition lacks merit and is dismissed summarily.