

(2010) 09 UK CK 0240

In the Uttarakhand High Court

Case No : Writ Petition No. 1267 (M/S) of 2003

Kashmiri Lal

APPELLANT

Vs

District and Sessions Judge, Haridwar and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2010) 3 UC 1680

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Mr. Piyush Garg, for the Appellant; Mr. Lok Pal Singh, Advocate, for the Respondent

Judgement

Hon"ble Sudhanshu Dhulia, J.—Heard Mr. Piyush Garg, Advocate for the Petitioner as well as Mr. Lok Pal Singh, Advocate for Respondent No. 3 at length.

2. This writ petition has been filed by the Petitioner challenging the order of the revisional court dated 26.9.2003, by which the order and decree of the trial court passed in S.C.C. Suit No. 6 of 2000 was set aside.

3. Brief facts of the case are that the Petitioner had filed a suit for eviction of Respondent No. 3 as well as for the arrears of rent stating that the disputed accommodation which is a shop at Haridwar, which was given by the landlord/petitioner to Respondent No. 3 who is in arrears of rent which is at the rate of Rs. 800/- per month. The trial Court decreed the suit of the Plaintiff and granted a decree of eviction as well as arrears of rent to be calculated at the rate of Rs. 800/- per month since 1999. The revisional court, however, reversed the finding stating that notice is defective inasmuch as the rent was Rs. 400/- per month and not Rs. 800/- per month.

4. The Petitioner has filed the present writ petition challenging the order of the revisional court stating that the revisional court has no powers under the revisional jurisdiction to alter the finding recorded by the trial court that the rent was not Rs. 800/- per month but was Rs. 400/- per month and consequently the

order of the revisional court is totally without jurisdiction.

5. Learned Counsel for Respondent No. 3 Mr. Lok Pal Singh states that the revisional court has rightly recorded the finding that the rent was Rs. 400/- per month as there was not much evidence before the trial court placed by the Plaintiff which could show that the rent of the accommodation was Rs. 800/- per month. Moreover, in his examination, the landlord has categorically stated that he is not sure as to the rent and he is not able to produce the agreement, though he has entered into several agreements with the tenant.

6. Learned Counsel for the tenant/respondents Mr. Lok Pal Singh has stated that he would be satisfied if the finding of rate of rent remains at the rate of Rs. 400/- per month. Learned Counsel for the landlord/petitioner has no objection to the submission of the counsel for the tenant and as long as the decree of eviction stands in favour of the landlord/petitioner.

7. In view of the admitted position of the parties, the order of the revisional court is set aside and the order of the trial court is upheld with modification as to the rate of rent, which is fixed at the rate of Rs. 400/- per month.

8. It is directed that as far as the eviction of the tenant/respondents is concerned, the same shall stand as it is, however, the arrears of rent shall be paid by the tenant at the rate of Rs. 400/- per month. On this calculation in case any excess amount has been paid by the tenant the same shall also be adjusted. It is also directed that the tenant shall give an undertaking by way of an affidavit before the court below within one month from today indicating therein that he would vacate and handover peaceful possession of the disputed shop to the landlord/respondent within one year from today i.e. on or before 20.9.2011. In addition to the aforesaid, the tenant would regularly pay the monthly rent to the landlord at the rate of Rs. 400/- per month. In the event, the undertaking is not filed within one month from today and in the event of violation of any of the conditions mentioned in the said undertaking, as stated above, it would be open to the landlord to proceed forthwith for the eviction of the Petitioner.

9. The order of the revisional court dated 26.9.2003 is hereby set aside. The order of the Judge, Small Causes Court dated 10.12.2002 is upheld to the modification already stated above.

10. With the above observations, the present writ petition is disposed of.

11. No order as to costs.