
(2010) 04 AHC CK 0073
In the Allahabad High Court
Case No : Second Appeal No. 823 of 1976

Keshav Prasad Jaiswal (D) by L.Rs. and Others	APPELLANT
Vs	
Sita Ram and Others	RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Transfer of Property Act, 1882 — Section 109
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 3, 7C

Citation : (2010) 5 AWC 4427

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Sri Namwar Singh, advocate assisted by Sri Sanjeev Singh, advocate, learned Counsel for the appellant, Sri Vinod Swaroop, advocate, learned Counsel for the respondents and perused the record.

2. This second appeal has been filed against by the appellant challenging the validity and correctness of the judgment and decree dated 15.4.1976, passed by Ist Additional District Judge, Ghazipur in Civil Appeal No. 41 of 1971 arising out of Original Suit No. 82 of 1966 between Sheodani Ram v. Sita Ram and Ors.

3. On 10.5.1976, the appeal was admitted and notices were issued.

4. The relief sought by this appeal is for setting aside the judgment and decrees of the courts below and to dismiss the suit of the defendant-respondent No. 1 with costs through out or grant such other and further relief as this Court deem fit and proper in the facts and circumstances of the case.

5. The brief facts culled out from the record are that Sita Ram/plaintiff-respondent filed Suit No. 82 of 1966 on 22.3.. 1966, alleging that he, Ram Adhar Ram, defendant No. 7 and Shyamchandra Ram, defendant No. 8, are related to one another through family of Narayan Sahu. According to family tree given in

the plaint, Narayan Sahu had two sons namely Nand Kishore Sahu and Jadunandan Sahu. Sita Ram-plaintiff is son of Nand Kishore Sahu, whereas defendants No. 7 and 8, Ram Adhar Ram and Shyamchandra Ram are sons of Jadunandan Sahu. All of them constituted a joint Hindu family but the differences arose amongst them and the joint family disrupted. The plaintiffs as well as defendants No. 7 and 8 agreed to appoint Sri Raghunath Prasad as Arbitrator to settle all their disputes by dividing the joint properties of the parties.

6. Sri Raghunath Prasad by his award dated 8.4.1967 divided the joint properties of the parties as well as joint debts payable by them. The parties accepted the aforesaid award and began to act in accordance with the same. All the three parties have thereafter executed sale deeds of their respective shares independently and have been making payment of taxes separately in respect of their shares of the properties. It appears from record that the house in suit and the adjoining house were given on rent by Narayan Sahu to Raghunath Ram and Ram Sewak Ram who constituted a joint Hindu family. Subsequently the family of the defendants No. 1 to 6 got disrupted.

7. In the circumstances, Ram Adhar Ram, defendant No. 7 sold the adjoining house in the east to Sri Ram Prasad, defendant No. 5 for Rs. 5,000 on 9.9.1959 by exercising exclusive rights in accordance with the accepted partition between the parties as per award rendered by Raghunath Ram. On the other hand, on the same date, Sri Shyamchandra, defendant No. 8 sold his house for Rs. 5,000 to Peerchandra and others by exercising exclusive right in accordance with the partition of 1957. The plaintiff-Sita Ram also sold one house exclusively to Hafiz Abdul Haq in 1963 in the same sense.

8. In the aforesaid facts and circumstances, the plaintiff alone gave a notice on 28.9.1961 to the defendant-Sheodeni Ram (since deceased) son of Raghunath Ram for payment of rent to him. Consequently, Sheodeni Ram filed an application u/s 7C of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, (hereinafter referred to as "Rent Act"), which was registered as Misc. Case No. 70 of 1961. It was admitted by Sheodani that he had received notice dated 28.9.1971 from Sita Ram and since it appears that there was some difference amongst Sita Ram, Ram Adhar and Shyamchandra Ram, hence he continued to deposit the rent of Rs. 28.36 paise in the Court for four months vide paper No. 1 of list 5C. From the order dated 18.8.1962 it appears that Sheodani appeared through Sri Shrikant Varma, advocate in that case and claimed the deposited amount of rent on the ground that he was the sole owner of the said house. None of the other alleged co-sharers approached the Court in Misc. case hence the Court ordered that the entire amount deposited in the Court by Sheodani as rent of the house claimed by Sita Ram be paid to him.

9. The plaintiff-Sita Ram also gave a notice for the arrears of rent to the defendants 1st set in November, 1963 and terminated their tenancy providing the arrears were not paid within the time stipulated in the notice. The notice was served upon defendant No. 5 to which he replied on 7.11.1973 inter alia that he

was not tenant of Sita Ram. In reply dated 4.12.1963 by defendants No. 1 to 3 submitted through S. K. Varma, advocate the title of Sita Ram was also denied but defendants No. 1 to 3 alleged that they had paid rent to defendant No. 8. In their reply they also referred to a judgment in Suit No. 7 of 1959 in which Sri Srikant Varma as a counsel of Sita Ram had fought for the separate right of the attached property, not including the present house of Sita Ram in accordance with the partition. The plaintiff deposited the decretal amount of the decree holder and as such the proceeding became infructuous.

10. The plaintiff and the defendants II set who are . living separately in the back portion of the ahata in which the house in suit is situated and the defendant I set have although been knowing about the partition in the family of the plaintiff and the defendant No. 5, got sale deed executed by defendant No. 7 as already mentioned on 9.9.1959, on the basis of the partition as per award given by "Raghunath Prasad".

11. The sale deed by defendant No. 8 mentioned above led to Suit No. 216 of 1963 in which all the persons were parties and the partition was upheld in the suit.

12. Since the rent was not paid for the last more than three years the plaintiff prayed for a decree for the same and ejectment against the defendants. The suit was contested by Sheodani Ram, defendant No. 8 on the ground that defendant No. 3 had deposited rent in Misc. Case No. 70 of 1961 in which only Sita Ram laid a claim to the entire amount. On receipt of notice of termination of tenancy as alleged in para 11 of the plaint, it was stated that the house in suit was still joint of the plaintiff and the defendants II set and so the plaintiff alone was not entitled to file this suit; that defendant No. 3 has paid the rent to defendant No. 8 upto October, 1966, as such after the proceeding in Misc. Case No. 70 of 1961, plaintiff-Sita Ram had allowed the defendant No. 3 to continue to pay the rent to Shyamchandra, defendant No. 8.

13. The Munsif while recording finding held that Sita Ram-plaintiff is the sole landlord of the contesting defendant of the accommodation in suit and the contesting defendant has been in arrears of rent and the claim made is due. It was also noted by the said Munsif that nothing on earth could be a greater lie than the para 11 of the W.S. filed by defendant No. 3.

14. Aggrieved by the aforesaid decision the defendant No. 2 filed First Appeal No. 40 of 1971; Sheodani Ram v. Sita Ram on the ground that the plaintiff had laid the claim to the exclusive ownership of the house in suit on the basis of award made by Raghunath Prasad on 6.4.1957 but as the award was not registered it was not admissible in evidence and thus the plaintiff cannot be said to be sole landlord. The other grounds for challenging the finding of Munsif in the suit were that there was no fresh contract of tenancy after the proceeding u/s 7C Rent Act and that there was no forfeiture of tenancy as such the defendant appellant had strictly paid the rent bona fide to the defendant No. 8, hence it could not be said

that he was in arrears of rent.

15. The first appellate court after relying upon judgments in *Munnalal v. Surajbhan and Ors.* 1975 SC 1119 and the judgment in *K.Y. Kabadi v. N.V. Kabadi* 1961 SC 1077 held that "when the parties had asked a person of common confidence to effect the partition and it was not intended to resort to any formal proceeding wider the Arbitration Act, it is not necessary for the parties to execute a formal reference or for the punch to declare a formal written award and that as memorandum of a past event, the document could be received in evidence even though it is not registered". In another case, the first appellate court has held that "the agreement between the members of the joint Hindu family to appoint arbitrators for dividing the family properties amounts to severance of the joint family status from the date of the agreement and the division made by the arbitrators and accepted by the parties is binding upon them." It was further held in the said judgment that "if, thereafter the assets of the family are divided and that division is accepted by the parties, the properties reduced by the parties to their possession must be deemed to be of the individual ownership of the parties to whom they are allotted, and the remaining properties as of their tenancy in common."

16. It appears that the matter was agitated in Second Appeal No. 1104 of 1960, where partition was accepted by the High Court on 21.8.1972 wherein it has been held that "in the instant case not only the fact of partition is admitted by the other co-sharers but there was a proceeding in which the application of Sita Ram u/s 3 claiming to be the sole landlord was granted after a contest. There was also evidence that there had been actual partition and this document could be looked for verifying the fact of partition."

17. It also appears that partition by arbitrator between the parties regarding their mutual partition and its lists of the property and liability shared by each of the erstwhile co-sharers did not require any registration.

18. In the facts and circumstances of the case, the lower appellate court decided issue No. 1 in Special Appeal No. 419 of 1971 holding that "Sita Ram is only raising a plea that the property was divided by the consent of the parties and he is sole owner of it. This tenant could pay all the rent to Sita Ram when a demand was made and the same had the imprint of the Court also in Section 7C proceeding and thereafter it was simply mala fide for him to introduce defendant No. 8 who himself never came to challenge the partition."

19. The appeal was dismissed with costs and the judgment and decree passed by the Munsif was confirmed by judgment and order dated 15.4.1976.

20. The impugned judgment and order dated 15.4.1976 has been challenged by legal heirs/representatives of Sheodani Ram on the ground that the award dated 6.4.1957 given by Raghunath Prasad who was appointed arbitrator by the co-sharers by which the plaintiff-respondent Sita Ram claims exclusive ownership over the shop is an unregistered document while the award requires registration

as it created exclusive right in property worth more than Rs. 100, hence the award could not have been looked into by the courts below in passing the judgment and decree in this case.

21. In support of his contention learned Counsel for the appellant has relied upon the following judgments:

- (1) Ratan Lal Sharma Vs. Purshottam Harit,
- (2) Shiromani and Others Vs. Hem Kumar and Others, and
- (3) Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate,

22. On the basis of the aforesaid judgments, learned Counsel for the appellant has submitted that:

(a) The award dated 9.4.1997 given by Raghunath Prasad who was appointed arbitrator by the co-sharers by which the plaintiff respondents Sita Ram claims exclusive ownership over the shop is an unregistered document while the award required registration as it created exclusive right in property worth more than Rs. 100. Unregistered award could not be looked into for passing judgment in any case.

(b) Assuming without conceding that the co-sharers accepted among themselves award it will bind only the co-sharers and in that case the exclusive ownership claimant plaintiff respondent was under a duty to apprise lessee appellant of the award which being an unregistered and purely a private document was not in the knowledge of the lessee appellant. No attempt was made by the plaintiff respondent to serve the copy of the award on the lessee appellant so that the appellant would have reason to believe that the plaintiff was an exclusive owner and was entitled to the rent.

(c) A notice was given by transferee plaintiff respondent but no such notice was given by the landlord defendant No. 8 Narain Sahu and others about acceptance of award and after his death his sons Shyam Chandra, Ram Adhar, who were acting as landlords after the death of Narain Sahu and went on receiving the rent from the defendant appellant lessee therefore the lessee appellant was under no obligation nor had any reason to believe about the exclusive ownership of plaintiff respondent.

(d) Proviso to Section 109 of the T.P. Act specifically provides that lessee must reason to believe that any alleged transfer has been made in favour of the plaintiff respondent by other co-sharer. Proviso is quoted below:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The courts below while deciding the exclusive ownership of plaintiff respondent

which was denied by the defendant-appellant lessee did not address themselves to aforesaid aspects of the case, therefore, their findings are no findings in the eye of law and are not binding in this appeal.

(e) Both the court below have recorded the findings that an unregistered award was made and by way of that award a partition had taken place among the co-sharers. The other finding that was shop in question fell to the share of plaintiff respondent and no co-sharer has denied the aforesaid facts by filing the written statement the defendant lessee appellant is not affected by that finding but that findings is based on the conduct of co-sharers conclusively on account of fact that the original landlord went on receiving rent from the defendant-appellant lessee without telling the appellant about the alleged partition therefore even if the finding about partition and award was legally tenable but that finding would not affect the lessee appellant unless all the co-sharers apprised the appellant about the aforesaid partition with the specific details of partition to the notice of the appellant to make him believe about the ownership of Sita Ram plaintiff therefore the ruling of learned Counsel for the respondent was besides the points.

(f) That the details of partition through award dated 9.4.1997 were never published so that the defendant-appellant lessee would have received the knowledge to pay the rent to plaintiff respondent. The appellant has been regularly paying rent to its erstwhile landlord therefore there was no question of his intention to refuse to pay the rent to the claimant landlord but in the absence of the alleged notice by all co-sharers and transferee plaintiff respondent about the landlords, therefore the alleged notice by plaintiff had no legal value unless supported transfer of landlords also who were actually and regularly receiving the rent before the transfer and thereafter.

23. In view of the above the ruling cited on behalf of the respondents are besides the points and distinguishable, and even if accepted did not answer the question raised on behalf of the tenant appellant. In that view of the matter the appellant has made out perfectly valid grounds to allow the appeal with costs.

24. The contention of Sri Vinod Swaroop, learned Counsel for the respondent is that property in dispute was divided by the award in metes and bounds amongst the three brothers. They have equal shares in the property in their individual rights separately. He further submits that case cited by Ratan Lal Sharma Vs. Purshottam Harit, ; Shiromani and Others Vs. Hem Kumar and Others, and Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate, do not apply to the facts and circumstances of the case where the members of the joint Hindu family are agreed to partition of the properties and act upon it and thereafter ownership having exclusive right over the portion then in that case agreement is not necessary. In this regard Sri Vinod Swaroop has relied upon 1975 SCC 1119; 1971 SCC 1077 as well as 1966 SCC 228. He further submits that Sri Sita Ram claimed himself to be the exclusive ownership and landlord of the property of which the appellant claims to be the tenant and admittedly in the facts and circumstances of the case he had not paid any rent to Sri Sita Ram son of Nand

Kishore Sahu. He further submits that notice was given to the appellant regarding termination of tenancy and that Sri Sita Ram was landlord but was not being paid rent, hence, even if, award which is claimed on the basis of document filed by the appellant was unregistered and the partition had taken place amongst brothers.

25. It is vehemently submitted by the learned Counsel for the respondent that since after the death of landlord he was not entitled to remain as tenant or claimed any tenancy right as provided in Section 109 of the Transfer of Property Act.

26. After hearing learned Counsel for the parties and after perusal of the record, it appears that the ancestral property of Hindu undivided family was partitioned by metes and bounds amongst three brothers, i.e., plaintiff and defendant Nos. 7 and 8 respectively of them claimed exclusive rights of his portion to the share one and debts in the property as was divided amongst them by the sole arbitrator Raghunath Prasad. The partition had taken place and the appellant had given notice of termination of tenancy informing his tenant Sheodani with regard to partition. In fact the appellant appeared to have denied the ownership and title of plaintiff to the property as landlord, in collusion with Shyam Chandra. In this manner he remained in possession of the property during the period of litigation since termination of his tenancy. He paid Rs. 12 as rent not to the landlord but to his brother Ram Chandra and Shyam Chandra on the ground that he had reasons to believe that transfer of property in dispute has not been made to Sri Sita Ram by way of partition. The court below has rightly recorded findings that partition had taken place amongst the co-sharers and that shop in question and the share in the shop of plaintiff respondent Sita Ram was not denied by any other co-sharer by filing written statement. It is wholly incorrect to say that appellant had no knowledge about the partition of the property in 1957 amongst co-sharers. In fact only Sita Ram was the landlord of the portion in which the appellant claimed to be tenant and in this regard he was served with sufficient notice. The appellant mala fidely had not paid rent to his landlord, Sita Ram but had paid it to defendant No. 8 to whom rent was not payable after partition of the property and the part of the property in which the appellants are living.

27. In the circumstances, I do not find any force in the contention, of learned Counsel for the appellant.

28. The second appeal is, accordingly, dismissed.