

(1981) 01 AHC CK 0058

In the Allahabad High Court

Case No : Civil Mic. Writ Petition No. 9073 of 1979

Maresh Dutt Awasthi

APPELLANT

Vs

Third Addl.District Judge, Kanpur and others

RESPONDENT

Date of Decision : 16-01-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21

Citation : (1981) 01 AHC CK 0058

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

Final Decision : Allowed

Judgement

S. D. Agarwala, J.

This is a petition under Article 226 of the Constitution of India arising out of a suit No. 1069 of 1973 filed by the opposite parties No. 3, 4 and 5 against the petitioner for ejectment, recovery of arrears rent and damages. The petitioner is the tenant. Opposite parties No. 3, 4 and 5 are the landlords. During the pendency of this petition, opposite party No. 4 died and his heirs have been brought on record. The property in dispute is a portion of house No. 32/12 Chawal Mandi, Kanpur, which is in the tenancy of the petitioner at the rate of Rs. 65/ per mensem. Subsequently because of U P. Act XIII of 1972 25% rent was enhanced. On 5/10/1972 a notice of demand and ejectment was served on the petitioner and according to the opposite parties 3 to 5 since the petitioner did not comply with the said notice of demand, he was a defaulter and as such liable for ejectment. On this basis the suit was filed. The suit was contested by the petitioner on the ground that all the lessors have not joined in the suit, hence the suit is bad for nonjoinder of necessary parties and the plaintiffs opposite parties 3 to 5 alone have no right to sue. The suit was decreed by the Additional Judge (Small Causes) Court, Kanpur on 2nd September, 1975. Against the said judgment a revision was filed under Section 25 of the Small Causes Court Act before the District Judge, Kanpur. The revision was decided by the II Additional

District Judge, Kanpur by Judgment dated 20th July, 1976. The revision was dismissed. The petitioner has now challenged the judgment dated 29/1975 as well as 28/1976 by means of the present petition.

Learned counsel for the petitioner has urged that since one of the colandlords, namely, Smt. Gango Devi having not filed the suit, the suit was not maintainable and as such no decree for ejectment could be passed against the petitioner.

I have heard the learned counsel for the parties at length.

It is admitted on record that originally the landlord was one Ram Lal. He died in May, 1968. After the death of Ram Lal the property vested in Panna Lal Jain, Radhey Shyam Jain, Ghanshyam Jain and Smt. Gango Devi, sons and daughter of Ram Lal. On 3/1970 a notice was given on behalf of all the four persons mentioned above to the petitioner demanding arrears of rent. This notice has been attached as Annexure "II" to the supplementary affidavit of Mahesh Chand Awasthi dated 11th October, 1979. This supplementary affidavit shall be, hereinafter referred to as the supplementary affidavit. In this notice dated 3/1970 the categorical case of the opposite parties No. 3 to 5 was that Smt. Gango Devi was also one of the landlords. Subsequently another notice was given on 12/11/1970 which is Annexure "III" to the supplementary affidavit. In this also Smt. Gango Devi was alleged to be one of the colandlords of the premises. On 9/1970 in reply to the first notice the petitioner categorically stated that he was remitting the money orders to the three brothers only as Smt. Gango Devi is not staying in the house in dispute and is married and is staying outside. He did not allege that Smt. Gango Devi is not a colandlord. Thereafter on 5/10/1972 a notice was sent only by the opposite parties No. 3 to 5 and Smt. Gango Devi was not made a party to this notice. In reply to this notice the petitioner categorically denied that he was a defaulter and it was specifically stated that he had already sent the money orders in view of the earlier demands made by all the four landlords. From the facts on record it is therefore, apparent that the petitioner had accepted all the four persons mentioned above who were the heirs of Ram Lal as the colandlords of the premises in dispute. The rent was only remitted to the three brothers for the reasons that Smt. Gango Devi was staying outside.

In *Smt. Sarju Devi v. Prescribed Authority* (1977 (U.P.) R.C.C. p. 17), the Division Bench of this 4. Court has taken the view that under the general law all the coowners should join in a suit for eviction of the tenant and that it is not open to some of the coowners to bring a suit for eviction of the tenant unless the remaining colessors have authorised the former to bring the suit for eviction. Similarly in *Abdul Sami v. Mohammad Ashfaq* (1978 (I.P.) S.R.C.C. p. 672), it was held that where there are two or more colessors, all the colessors must join in giving a notice. If, however, only one of the colessors sends notice there must be evidence to show that the colessor who had sent notice had been authorised by the other colessors to send the said notice. It was further held that if a suit had been filed by only one colessor and the other colessor are not arrayed either as

plaintiff or defendant, the suit for ejectment could not be maintainable. In the instant case the opposite parties No. 3 to 5 and Smt. Gango Devi were coowners of the property. After the death of Ram Lal, they became colandlords and the petitioner never denied that they are colandlords. The rent was only sent to opposite parties No. 3 to 5 for the reasons as I have already stated above as Smt. Gango Devi 4 was staying outside, but the petitioner had accepted Smt. Gango Devi as colandlord. There is no further evidence led on behalf of the opposite parties No. 3 to 5 that they were authorised by Smt. Garigo Devi to either file a suit for ejectment or to send notice on her behalf. The ultimate effect is that one of the colandlords, namely, Smt. Gango Devi was not impleaded as party to the suit. In view of the principles laid down above, the suit for ejectment was clearly not maintainable in law as one of the colandlords who was necessary party was not impleaded in the suit at all.

In the result, the decree for ejectment is liable to be set aside. The petition is accordingly allowed. The judgments dated 29/1/1975 and 28/7/1976 are quashed to the extent that the decree for ejectment passed is set aside. Rest of the judgment shall, however, stand. In the circumstances of the case, parties are directed to bear their own costs.