
(2005) 12 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5863 of 1991

Mohd. Firoz

APPELLANT

Vs

District Judge, Aligarh & Ors.

RESPONDENT

Date of Decision : 12-12-2005

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2005) 12 AHC CK 0104

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—This is tenant's writ petition arising out of suit for eviction instituted by landlordrespondent No. 2, Noor Mohd. against him on the ground of subletting in the form of SCC Suit No. 221 of 1988. Property in dispute is a shop, rent for which is Rs. 15/ per month. In the plaint, it was alleged that shop in dispute had been sublet to Chaman Milk Vendor.

2. Prior to filing of the suit giving rise to the instant writ petition, landlordrespondent No. 2 had instituted another suit on the same ground being Suit No. 560 of 1979, which had been dismissed. Thereafter, release application under Section 21 of U.P. Act No. 13 of 1972 on the ground of bona fide need was filed by the landlord, which was also dismissed.

3. The suit giving rise to the instant writ petition (S.C.C. Suit No. 221 of 1988) was dismissed by J.S.C.C., Aligarh on 2071990 holding that there was no subletting and that in the earlier suit it had been decided that there was no subletting hence the said finding operated as res judicata. Against judgment and decree dated 2071990, landlordrespondent No. 2 filed S.C.C. Revision No. 41 of 1990. District Judge, Aligarh through judgment and order dated 821991, allowed the revision, set aside the judgment and decree passed by the J.S.C.C. and decreed the suit of landlordrespondent No. 2 for ejectment. Through this writ petition, tenant has challenged the aforesaid judgment of the Revisional Court dated 821991.

4. The Revisional Court held that the finding that there was no subletting in the earlier suit did not operate as res judicata as it was quite possible that after the decision of the earlier suit, subletting might have been taken place. In the earlier suit also same person who alleged to be subtenant. In the plaint of the suit giving rise to the instant writ petition, no date of alleged subtenancy was mentioned. Normally, it is not necessary to mention the exact date on which subtenancy is alleged to have taken place. However, in view of the fact that in the earlier litigation it had specifically been held that there was no subtenancy, in the subsequent suit on the ground of alleged subtenancy it was necessary to mention the date or at least the period when subtenancy came into existence.

5. The Revisional Court held the subtenancy proved only on the ground that in the Commissioner's report it was mentioned that at the time of inspection Kullarhs were found in the shop and tenant could not explain the reason for their presence. This is no ground to hold the subtenancy proved. Advocate Commissioner did not mention in his report that at the time of inspection he found the alleged subtenant or any other person in possession or part possession of the shop in dispute. It is correct that in order to prove subtenancy, it is not necessary to prove actual agreement of subtenancy and by exclusive possession of subtenant, sub tenancy can be presumed. However, Revisional Court did not record any finding in respect of possession of alleged subtenant. By mere presence of Kullarhs, subtenancy of Chaman Milk Vendor could not be presumed (tenant petitioner is carrying on the business of General Merchant from the shop in dispute).

6. Accordingly, I hold that the finding of subletting recorded by the Revisional Court is erroneous in law and liable to be set aside.

7. Writ Petition is, therefore, allowed. Impugned judgment and order passed by the Revisional Court is set aside and judgment and decree of the trial Court dismissing the suit of landlord respondent No. 2 is restored.

8. I have held in *Khursheeda v. A.D.J., Allahabad*, 2004(2) JCLR 452(All) : 2004 (13) AIC 42, that while granting relief to the tenant against eviction in respect of building covered by Rent Control Act, Writ Court is empowered to enhance the rent to a reasonable extent. Premises in dispute is a shop, situate in Aligarh. Rent of Rs. 15/ per month is virtually as well as actually no rent.

9. Accordingly, it is directed that with effect from January, 2006 onwards, tenantpetitioner shall pay rent to the landlord respondent at the rate of Rs. 500/ per month.