

(2016) 09 AHC CK 0153
In the Allahabad High Court
Case No : S.C.C. Revision No. 241 of 2016.

Mohd. Ikraail And 2 Others - Revisionists @HASH Naushaba A. Sabri And 7 Others - Opposite Parties

Date of Decision : 12-09-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2016) 3 ARC 489

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Pankaj Kumar, Advocate, for the Revisionist; Pankaj Agarwal, Advocate, for the Opposite Party

Final Decision : Dismissed

Judgement

Pankaj Mithal, J. - This revision under Section 25 of the Provincial Small Cause Courts Act, 1887 has been preferred against the order dated 16.7.2016 by which the objections of the revisionist under Order 21, Rule 97 C.P.C. have been rejected.

2. The suit was filed against the father of the revisionist Ismail Khan for arrears of rent and eviction. On his death his two sons Mohd. Israil and Atula were substituted. The suit was decreed on 16.2.2004 but without substituting or impleading the revisionists.

3. The judgment, order and decree dated 16.2.2004 passed in SCC Suit No.20 of 2002 was put in execution. In the said execution, the revisionists who are sons and daughter of late Ismail Khan preferred objection contending that as they were not party in the suit the decree cannot be implemented against them.

4. The revisionists are claiming rights in the property only through their father Ismail Khan who was the tenant. On his death the tenancy devolved on all his heirs and legal representatives jointly. In such a case when there is no division of the tenanted accommodation amongst the heirs and legal representatives of the

deceased-tenant or apportionment of rent amongst them, they succeed to tenancy as joint tenants. Therefore, the suit could have proceeded against any of the heirs and legal representative as tenancy is deemed to be a single tenancy and the decree passed against any one of them would have been binding against all of them.

5. The aforesaid is the view of the Supreme Court settled in *Harish Tandon v. A.D.M.*, AIR 1995 SC 676 and *A.C. Jucker v. K.P. Mantri* AIR 2001 SC 2251. Both the above decisions lay down that after the death of the tenant his heirs inherit the tenancy jointly and the decree against one joint tenant is binding against all of them.

6. In view of the above settled position of law, the decree of eviction passed in the above suit against two joint tenants would also be binding upon the revisionist who are also the joint tenants with them. Therefore, their objection that the decree is not executable against them is misconceived and has rightly been turned down by the court below.

7. The revision has no merit and is dismissed.