
(1983) 02 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 11877 of 1982

Mst. Hamidan

APPELLANT

Vs

The Vth Additional District Judge and Others

RESPONDENT

Date of Decision : 22-02-1983

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 3
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 15(2)

Citation : (1983) 02 AHC CK 0005

Hon'ble Judges : N.D. Ojha, J

Bench : Single Bench

Advocate : Shyam Narain and Shiva Ji Misra, for the Appellant; Raj Kumar Jain, for the Respondent

Judgement

N.D. Ojha, J.—One Mohammad Yaqub was the owner of house No. 66, Akbarpur (Pura Manohar Das), Allahabad. He died leaving the Petitioner as his widow and four sons who have been arrayed as Respondents 4 to 7 in the present writ petition. The house in question was in occupation of Abdul Rashid, Respondent No. 3 as a tenant on behalf of Mohammad Yaqub. An application was made by the Petitioner against the Respondent No. 3 u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter to be referred as the Act) for the release of the said house in her favour on the ground that she needed it bonafide for her own use. A copy of the said application has been filed as Annexure 1 to the writ petition. In paragraph 3 of this application it has been stated that the Petitioner's family consisted of herself and her four sons, namely, Respondents 4 to 7. It has also been stated that one of the sons is married and has his wife and two children, whereas another son, who too is married has his wife and one child. The need, as was pleaded by the Petitioner, was in respect of the members of her family referred to above.

2. The application was contested by the Respondent No. 3 inter alia on the

ground that the Petitioner was not the landlord and her need was not bonafide. It was also asserted on behalf of the Respondent No. 3 that in the event of the application for release being allowed greater hardship would be caused to him than the hardship likely to be caused to the Petitioner on the said application being dismissed. After taking into consideration the evidence produced by the parties, the Prescribed Authority held that the Petitioner was not the exclusive landlord of the accommodation in question but she was a co-landlord along with her four sons, namely, Respondents 4 to 7, all of them having inherited the house in question from Mohammad Yaqub. It accordingly held that the application for release was not maintainable in view of Rule 15(2) of the Rules framed under the Act, the same not having been signed by Respondents 4 to 7 along with the Petitioner. On the question of bonafide need also, the Prescribed Authority accepted the plea raised by Respondent No. 3 and held that the need of the Petitioner was not bonafide.

3. The Petitioner preferred an appeal against the order of the Prescribed Authority which was transferred to the court of the 5th Additional District Judge, Allahabad, Respondent No. 1. After re-appraisal of the evidence produced by the parties, Respondent No. 1 agreed with the findings of the Prescribed Authority that on the death of Mohammad Yaqub the Petitioner and Respondents 4 to 7 became co-owners of the house in question, all of them having inherited it from Mohammad Yaqub, and that the application on behalf of the Petitioner alone was not maintainable. On this finding Respondent No. 1 did not consider it necessary to go into the question as to whether the need of the Petitioner was bonafide as also into the question of comparative hardship. The appeal filed by the Petitioner was dismissed on 12-10-1982. It is these two orders passed by the Prescribed Authority and the Additional District Judge, which are sought to be quashed in the present writ petition.

4. It has been urged by the Counsel for the Petitioner that it had been established on the evidence on record that after the death of Mohammad Yaqub rent was paid by Respondent No. 3 to the Petitioner and as such she was the landlord of the house in question within the definition of that term contained in Section 3(j) of the Act. It has been urged that even though in the affidavit filed by the Petitioner this fact has been specifically asserted, the Prescribed Authority repelled the claim of the Petitioner in this behalf by making an observation that there was no evidence on the record to establish the aforesaid plea. For the Respondent No. 3 on the other hand it has been urged that the Petitioner has been taking inconsistent pleas. It was pointed out that even though in one of her affidavits she has stated that rent was realised by her from Respondent No. 3 after the death of Mohammad Yaqub, in another affidavit she stated that she was realising rent on behalf of her sons. According to the Counsel for Respondent No. 3 on the face of such inconsistent pleas taken by the Petitioner her application was rightly held to be not maintainable.

5. Having learned Counsel for the parties at some length, I am of opinion that

the impugned orders cannot be sustained. However, taking into consideration the circumstance that the matter has been pending since long, I consider it expedient that in place of quashing both the impugned orders, the order of the Additional District Judge may alone be quashed and he may be directed to decide the appeal filed by the Petitioner afresh.

6. Much emphasis has been placed by the authorities below on an affidavit said to have been filed by the Petitioner before the Nagar Mahapalika in which it was stated that after the death of Mohammad Yaqub there was some private settlement whereunder the house in question was given to Respondents 4 to 7 alone and the Petitioner was given half share in another house being house No. 308, Pura Manohar Das, Allahabad. Suffice it to say that the aforesaid affidavit was filed in proceedings for mutation. Even if the averment made therein is treated to be an admission of the Petitioner it could not be relevant in proceedings for determination of the question of title. If authority were needed reference may be made to *Bhurey v. Pit Bux* 1973 AWR 279 (DB) and *Rajpati v. Deputy Director of Consolidation*, Azamgarh 1979 AWC 302 (DB).

7. Moreover, as has been held by the Supreme Court in *Ambika Prasad v. Ram Ekbal Rai* AIR 1966 SC 605 title cannot pass by mere admission. Apart from the admission in the aforesaid affidavit no other evidence about the private settlement referred to therein seems to have been produced. The Petitioner appears to have set up a case that in pursuance of some gift made by her husband she alone was entitled to the house in question. That case has not been believed by the authorities below. Indeed in her affidavit filed subsequently on which reliance has been placed even by Counsel for Respondent No. 3 the Petitioner had given up her case that she was the exclusive owner of the house in question. In the absence of a valid gift in favour of the Petitioner and the admission made by her in the proceedings for mutation not being relevant for determination of the question of title, it was apparent that on the death of Mohammad Yaqub the house in question devolved on all his heirs, namely, the Petitioner and Respondents 4 to 7. As such all of them became co-owners of the house in question. Since in their capacity as co-owners of the house they were all entitled to realise rent from the Respondent No. 3, they would be co-landlords also. It is, however, open to even one of the several co-landlords to realise rent from the tenant on behalf of the co- landlords and normally it is convenient for the tenant also to pay rent to one of the several co-landlords. In the absence of any finding as to ouster the Petitioner even if, she was realising the rent exclusively will be deemed to be realising it not only on her behalf but on behalf of the other co-landlords also. This being the legal position the assertion of the Petitioner in one of her affidavits that she was realising rent herself and her assertion in the other affidavit that she was realising it on behalf of her sons would not be material. In *Kanta Goel Vs. B.P. Pathak and Others*, while dealing with almost a similar question under the Delhi Rent Control Act it was held by the Supreme Court:

Where a landlord who had let out his premises to a tenant, dies and his heirs succeed to his estate, one co-heir to whom the rent is being paid by the tenant and who receives it on behalf of the estate, would be landlord for the purposes of the Act. The co-heirs constituted the body of landlords and, by consent, implicit or otherwise, of the plurality of landlords, one of them representing them all, was collecting rent. In short, he functioned for all practical purposes as the landlord, and was therefore, entitled to institute proceedings for eviction against the tenant qua landlord.

8. As regards Rule 15(2) of the Rules framed under the Act, it was held in *Roop Narain v. Radha Mohan Katiyar* 1980 (2) RCC 212 that a non petitioning co-landlord can be arrayed as proforma Respondent and omission to sign application by a landlord, in such a case would be of no consequence. Reliance in the case of *Roop Narain* (supra) was placed on an earlier case of this Court in *Yogesh Saran v. Jyoti Prasad* 1978 ACC 408 wherein it was held that the omission to sign the application by all the landlords is of a formal character and an application made by a landlord cannot be rejected on this basis. In *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, it was held:

Now a code of procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its ends; not a penal enactment for punishment and venalities; not a thing designed to trip people up. Too technical a construction of Sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to "both" sides) lest the very means designed for the furtherance of justice be used to frustrate it.

9. In this connection, however, it was urged by the Counsel for Respondent No. 3 that in the application for release Respondents 4 to 7 had not been impleaded even as opposite parties and the application was defective on this score. In regard to this submission it may be pointed out that an application was made on behalf of the Petitioner before the Prescribed Authority, a copy whereof has been filed as Annexure 2 to the writ petition with a prayer that Respondents 4 to 7 may be impleaded in the application for release. It was also stated in paragraph 6 of the said application that in the prayer of the application for release after the word in favour of the applicant" the word "for the use and occupation of her sons for whose benefit the property is held" may also be added. This application was, however, dismissed by the Prescribed Authority by an order, a copy whereof has been filed as Annexure 3 to the writ petition. A perusal of the said order indicates that the reasons given for rejecting the application for amendment was that merely living of certain persons along with the landlord did not give them the status of landlord within the definition of that term and in any case they could not be arrayed as opposite parties to the petition. It was further observed by the Prescribed Authority that there was nothing on the record to show that the case of the Petitioner would in any way be prejudiced on account of non-impleadment of Respondents 4 to 7. It is true that in the application, a copy whereof has been

filed as Annexure 2 to the writ petition it had not been specifically stated that Respondents 4 to 7 were co-landlords of the accommodation in question. It was, however, stated that the application for release had been made for use and occupation of these Respondents and they deserved to be impleaded. In view of the legal position pointed out above that on the death of Mohd. Yaqub the Petitioner and Respondents 4 to 7 inherited the house in question as the heirs of Mohd. Yaqub and were co-landlords, the non assertion in the said application that Respondents 4 to 7 were co-landlords should not have been given undue emphasis. As seen above, even in application for release it was stated by the Petitioner that she needed the house in question for the use of her entire family including Respondents 4 to 7. The crucial question which, therefore, fell for consideration was as to whether the need so asserted by the Petitioner was bonafide or not. Respondent No. 3 knew from the very beginning as to what was the case of the Petitioner in regard to her bonafide need. As such if the application for amendment had been allowed and Respondents 4 to 7 had been impleaded as opposite parties no prejudice at all would have been caused to Respondent No. 3. In so far as the merits of the case of the Petitioner that she needed the house in question bonafide for the use of the members of the family are concerned, the burden on Respondent No. 3 to disprove it would be the same whether Respondents 4 to 7 were impleaded as opposite parties or were not so impleaded. On the other hand if Respondents 4 to 7 had been permitted to be impleaded the application for release would not have been dismissed on the aforesaid technical ground raised by Respondent No. 3 as has been done by Respondent No. 1 without going into the merits of the claim made by the Petitioner that her need was bonafide. In *H A. Thadani v. G.R. Kermani* 1982 AWC 201 (SC) it was held by the Supreme Court that it is well settled that the court should be extremely liberal in granting the prayer for amendment of pleadings unless serious irreparable loss is likely to be caused to the other side. In view of the law laid down by the Supreme Court in the case of 1982 AWC 201 (supra) and in view of the facts of the instant case pointed out above the Prescribed Authority committed a manifest error of law in dismissing the application for amendment made by the Petitioner. That it was not right in taking the view that the dismissal of the said application would cause no prejudice to the Petitioner, is borne out from the circumstances that the application for release was ultimately dismissed by the Respondent No. 1 only on the ground that Respondents 4 to 7 had not been impleaded in the application for release.

10. It was also urged by Counsel for the Petitioner that an application had been made on behalf of the Petitioner before the Prescribed Authority for inspection of house No. 308, Pura Manohar Das, Allahabad to indicate that the said house was not in a habitable condition but the said application was erroneously dismissed. Since Respondent No. 1 is being directed to decide the appeal filed by the Petitioner afresh and it will be open to the Petitioner to urge that his application for inspection was wrongly dismissed, I am not inclined to express any opinion on the merits of this submission.

11. Before parting with the case I may point out that Respondents 4 to 7 have put in appearance in the present writ petition and have engaged Sri. Wasim Alam as their Advocate. Respondent No. 5 has also filed an affidavit in the writ petition on November 3, 1982 on his own behalf and as pairkar of Respondents 4, 6 and 7. In paragraph 3 of the said affidavit it has been stated that the contents of the writ petition are correct and Respondents 4 to 7 support the same. In paragraph 4 of the affidavit it has been stated that the Petitioner alone had been realizing rent of the disputed accommodation from Respondent No. 3. In paragraph 5 thereof it has been stated that it was only for the purposes of payment of Municipal Taxes that the names of Respondents 4 to 7 were mutated over the house in question. It is thus apparent that even after Respondents 4 to 7 are impleaded in the application for release as opposite parties it would not be necessary to give any opportunity to these Respondents to produce additional evidence inasmuch as they are supporting the case of the Petitioner.

12. In the result the writ petition succeeds and is allowed. The impugned order dated 12-10-1982 passed by Respondent No. 1 is quashed and he is directed to decide the appeal filed by the Petitioner afresh in accordance with law keeping in mind the observations made above, after allowing the application for amendment of the application for release and giving Respondent No. 3 an opportunity to file a reply to the amended application. Inasmuch as in pursuance of an earlier ex-parte order allowing the application for release, possession had been taken by the Petitioner over the house in question and her dispossession had been stayed meanwhile by this Court which order in the interest of justice deserves to be continued till the disposal of the appeal by Respondent No. 1 afresh, the Additional District Judge will decide the appeal as expeditiously as possible preferably within one month from the date on which a certified copy of this order is produced before him. Sri. Wasim Alam, Counsel for Respondents 4 to 7 has made a statement that Respondents 4 to 7 shall themselves put in appearance before the Additional District Judge and it would not be necessary to issue any fresh notices to these Respondents after they have been impleaded as opposite parties in the application for release. In view of this statement it would not be necessary for Respondent No. 1 to issue any fresh notices to Respondents 4 to 7 after their being impleaded in the application for release. In the circumstances of the case the parties shall bear their own costs.