

(2005) 11 AHC CK 0011
In the Allahabad High Court
Case No : C.M.W.P. No. 2556 of 2005

Nasiruddin

APPELLANT

Vs

Zameel Ahmad Ansari and Another

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

Citation : (2006) 5 AWC 4532

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Advocate : R.K. Shukla, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Vikram Nath, J.—The Petitioner is a tenant of the premises in dispute. There being default in payment of rent, the landlord filed S.C.C. Suit No. 15 of 2003 in the court of Judge Small Causes Court, Bijnor. The Petitioner filed an application (paper No. 34C) praying therein that the question of jurisdiction of the Judge Small Causes Court be determined first as Smt. Saeeda Begum had executed a registered agreement of sale on 19.7.2000 in his favour after taking advance amount of Rs. 50,000 out of total sale consideration of Rs. 1,25,000. It may be noticed that Smt. Saeeda Begum has not filed the suit for arrears of rent and ejectment, while the suit has been filed by Zameel Ahmad Ansari and Mohd. Iqbal Mansoor claiming themselves to be owner and landlord. This application of the tenant Petitioner was opposed by the landlord and objection to the same was filed. The trial court vide order dated 17.8.2004, came to the conclusion that the title does not stand transferred in the Petitioner tenant merely on the basis of the agreement to sell and, therefore, there is no dispute of title involved and accordingly rejected the application. The Petitioner preferred a revision against the said order being S.C.C. Revision No. 28 of 2004. The said revision has also been dismissed by the District Judge, Bijnor, vide judgment dated 9.12.2004. Aggrieved by the same the Petitioner has filed the present writ petition.

2. I have heard Sri Ramesh Kumar Shukla learned Counsel for the Petitioner and have also perused the record.

3. Learned Counsel for the Petitioner has contended that where registered agreement to sell has been executed and on its basis the alleged purchaser has entered into possession, and substantial amount of sale consideration has been passed on the rights of the Petitioner would be virtually that of the owner and, therefore, there did arise of a bona fide dispute with regard to the title. He has placed reliance on the judgment of the Apex Court in the case of *R. Kanthimathi v. Mrs. Beatrice Xavier*, 2002 (1) ARC 101. The said judgment of the Apex Court does not apply to the facts of the present case inasmuch as in the said case it was the landlord who had executed the registered agreement to sell after taking substantial amount of the sale consideration and in such circumstances the Apex Court had observed that the relationship of landlord and tenant to be that of purchaser and seller and after execution of agreement to sell the relationship of landlord and tenant between them ceases and fresh rights and obligation flow from the said agreement. In the present case the agreement to sell has been executed by Smt. Saeeda Begum and not by the landlords who had filed the suit and secondly less than 50% of the sale consideration had been passed, which cannot be said to be substantial part of the sale consideration.

4. In this view of the matter, I do not find any error in the judgment of the court's below. The petition lacks merit and is, accordingly dismissed.