
(2010) 10 AHC CK 0336
In the Allahabad High Court
Case No : C.M.W.P. No. 61266 of 2010

National Auto Sales and Others

APPELLANT

Vs

Firoz Ahmad

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 2 Rule 3, 17, 3
Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 15, 16
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 3(1)

Citation : (2011) 1 AWC 788

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. This writ petition has been filed by the Petitioners challenging the validity and correctness of the order dated 30.8.2010, passed by the District Judge. Mirzapur in S.C.C. Suit No. 4 of 2009. Firoz v. National Auto Sales and Ors. Further, prayer has been made for direction to the court below to transfer S.C.C. Suit No. 4 of 2009 in another Court having proper jurisdiction from the court of Small Causes Court.

3. Facts of the case in brief are that on the basis of an agreement deed executed between the tenant-Petitioners and landlord-Respondents the Petitioner came into possession over the accommodation in respect of a shop, godown and open land appurtenant from where they started their business. According to the Petitioners, after expiry of the tenure of the agreement, i.e.. 11 months, the parties continued in possession of aforesaid property under an oral agreement.

4. The landlord-Respondent filed a suit for dispossession of the Petitioners from the property in dispute. In paragraph No. 6 of the plaint filed by the landlord

Respondent it is stated that the land over which the shop in question is situated comes under village Bharuhna, Pergana Kantit, Tehsil Sadar, Mirzapur, has been an agricultural land on which the construction has been made after purchasing it in the year 2000 and therefore Act No. 13 of 1972 is not applicable to the land in dispute.

5. The tenant Petitioners filed their objection stating that Respondent is not the sole owner of the property in dispute as stated by him but is co-owner alongwith his mother Haseena and that after expiry of the period of 11 months, the Petitioners proposed for its renewal on which mother of the Respondent gave her consent to the Petitioners to continue over the property in question.

6. During pendency of the suit, the tenant-Petitioners filed an application on 30.8.2010 inter alia that since the Respondent himself has admitted that U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act. 1972 is not applicable over the disputed premises and in paragraph 24 of their objection, the Petitioners have also reiterated the aforesaid fact that Small Causes Court has no jurisdiction over the premises in dispute, hence the aforesaid suit is not maintainable before the Small Causes Court.

7. After going through the record and hearing the parties, the court below rejected the application of the Petitioners vide his order dated 30.8.2010, which has given cause for filing the present writ petition. While passing the impugned order dated 30.8.2010 the court below has not considered the provisions of Section 3(1) of U.P. Act No. 13 of 1972 and as such the impugned order is wholly perverse, arbitrary and is not sustainable in the eye of law ; that in paragraph No. 6 of the plaint the Plaintiff Respondent has himself stated that U.P. Act No. 13 of 1972 is not applicable over the premises in dispute as the same is situated in village, Bharuhna, Tappa-84, Pargana Kantit, Tehsil Sadar, Mirzapur inspite of this the court below has passed the impugned order by overlooking the averments of the Respondent Plaintiff and that it is well-settled that forum of a suit depends on what has been stated in the plaint itself.

8. Earlier, Writ Petition No. 47799 of 2010 filed by the Petitioner was dismissed by the High Court vide order and judgment dated 13.8.2010. The Petitioner submits that as he has not taken the aforesaid point in the earlier writ petition that the suit of the Plaintiff Respondent is not merely a suit for ejectment of the Petitioners tenants and for the recovery of arrears of rent and damages but also for a declaration in regard to what is the annual reasonable rent of the premises @ Rs. 9,000 per month which cannot be decided by the court of Judge Small Causes.

9. It is submitted that in district Mirzapur the Small Causes Court is being presided over by the District Judge himself and as such there will be no court of District Judge within the District in case the court of District Judge exercises the power of the trial court in such a matter. Therefore, the Petitioner had filed the application before the court below which has been rejected illegally by it vide

order dated 30.8.2010.

10. Counsel for the Respondents submits that it is settled law that second writ petition is not maintainable on the ground that a point is not argued or taken in the earlier writ petition as in law it would be deemed that the Petitioners have taken all the points for if a person is permitted to file petition after making application on separate point each time, it will become a never ending litigation which amounts to abuse of the process of the Court, hence second writ petition filed by the Petitioner is not maintainable in the garb of challenging a subsequent order.

11. He also submits that Petitioner had earlier also filed W.P. No. 47799 of 2010, M/s. National Auto Sales and Ors. v. Firoz Ahmad on the same ground of oral agreement and of jurisdiction as in this case and for registration of electric connection. The writ petition was dismissed by judgment and order dated 13.8.2010. The relevant extract of the judgment is as under:

It appears that landlord Respondent filed a suit for dispossession of the Petitioners from the shop. In paragraph No. 6 of the plaint filed by the landlord Respondent it has been stated that the land over which the shop in question is situated comes under village Bharuhna, Pergana Kantit, Tehsil Sadar, Mirzapur, has been an agricultural land on which the construction has been made after purchasing it in the year 2000 and therefore Act No. 13 of 1972 is not applicable over the land in dispute. The tenant Petitioners filed their objection stating that Respondent is not the sole owner of the property in dispute as stated by him but is co-owner alongwith his mother Haseena and that after expiry of the period of 11 months, the Petitioners proposed for its renewal on which mother of the Respondent gave her consent to the Petitioners to be continued over the rented land in question.

During pendency of the suit, the tenant Petitioners filed two applications, (i) that they are still in possession over the land in question as per oral agreement which is required to be verified by the Court Amin which is necessary for proper adjudication of the case and (ii) prayer was made to the court below to direct

the Respondent to restore electricity connection to them as per the oral agreement. Both these applications have been rejected by the impugned order dated 8.7.2010, passed by the District Judge, Mirzapur, against which the present writ petition has been filed.

It is apparent that the tenant Petitioners had entered into agreement for taking the accommodation in question for a period of 11 months. Mother of the landlord Respondent was not a signatory of the agreement for giving the property in question on rent, hence it cannot be said that Petitioner tenant can continue in possession after 11 months as his mother has consented. The Petitioner tenant cannot claim hold over the property after expiry of period of agreement until and unless it is renewed. Admittedly, the Petitioner has also not paid the rent after expiry of period of 11 months in the agreement and for this reason also cannot

claim himself to be a tenant of the Respondent. This petition having been filed challenging the interlocutory order on the applications, paper Nos. 23 Ga and 28 G, does not require any interference at this stage under Article 226 of the Constitution of India.

For the reasons stated above, the orders impugned do not warrant any interference in extraordinary powers under writ jurisdiction. The writ petition is accordingly dismissed. No order as to costs.

He submits that the writ petition is based by principles of res judicata as held in paragraphs 79 and 82 of the judgment rendered in *Manzurul Haq and Another Vs. Hakim Mohsin Ali*, are as under:

79. The dispute between the parties in the court of Small Causes was about the rate of rent. That dispute had been determined by that Court in a fair manner. In the subsequent suit out of which the revision application arise, the Plaintiffs while praying for ejectment of the Defendants, claimed rent for the period preceding the second suit on a different rate. In these circumstances, the question arose whether the decision given by the Judge Small Causes Court about the rate of rent will operate as res judicata in the subsequent suit filed before the Munsif for arrears of rent and ejectment. In the light of principle laid down by the Supreme Court in the case of *Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat)*, I am of opinion that the decision of the Judge Small Causes Court shall operate as res judicata on the question of the rate of rent both because it is a Court of exclusive jurisdiction and also on the basis of the general principles of res judicata.

82. Civil Revision No. 1269 of 1967 is allowed and it is directed that the case be sent back to the court of learned Munsif for decision in accordance with law in the light of the observations made by this Court.

12. In *Akhilesh Chand Varshney Vs. Smt. Bhagwati Devi and Others*, the Court in paragraph 4 has held that forum of a suit depends on the averments made in the plaint and the reliefs claimed in the suit. Paragraph 4 of the judgment is as under:

4. It is settled that the forum of a suit depends on what has been stated in the plaint itself. The relief claimed in the suit indicated that the present suit was not merely a suit for ejectment of the Defendant-tenant, and for the recovery of arrears of rent and for the recovery of damages for the use and occupation but also for a declaration in regard to what was the annual reasonable rent of the premises. It will at once be noticed that while the first three reliefs were such which came under the purview of the Small Causes Court or Courts invested with the powers of Small Causes Court, but the relief as regards the declaration of the annual reasonable rent of the premises was one which did not come within the ambit and scope of the Provincial Small Cause Courts Act, 1887. A suit in which a relief for a declaration or the fixation of the reasonable annual rent was sought was not triable by a court of Small Causes, or by a Court invested with the powers of a Small Cause Courts. So in the present suit three of the reliefs

namely, for ejectment, for arrears of rent and for damages for use and occupation could be tried by the court of Small Causes but the other relief in respect of the declaration was not triable by the court of Small Causes.

13. The Allahabad High Court in Mathura Das Vs. Distt. Judge and Others, has relied upon Akhilesh Chand Varshney Vs. Smt. Bhagwati Devi and Others, wherein it has noticed various provisions of law dismissing the writ petition and has held the suit was maintainable before the civil court. The Court in its conclusion held that:

2. u/s 17, CPC it is provided as under:

17. Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate: Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

3. Even if the aforesaid section does not apply ipso facto to the suits where jurisdiction to decide the suit in respect of part of the property is vested in regular civil court and jurisdiction to decide the suit in respect of other part of the property is vested in J.S.C.C. still the principle underlying the said Section will be applicable to such types of suits.

4. It has been held by the Full Bench Authority of this Court in Manzurul Haq and Another Vs. Hakim Mohsin Ali, that the court of Small Causes is a court of preferential jurisdiction and not of exclusive jurisdiction.

5. Under Order II, Rule 3, CPC Plaintiff may combine in the same suit several causes of action against the same Defendant. It has been held in Brij Kishore Jain v. IInd Additional District Judge, Aligarh and Ors. 1985 WC 742, that provisions of Sections 15 and 16 of Small Causes Courts Act (which provide for cognizance of suits by courts of Small Causes) do not override provisions of Order II, Rules 2 and 3, Code of Civil Procedure.

14. Similarly in paragraph 11 of the judgment rendered in Brij Kishore Jain Vs. IInd Additional District Judge and Others, it has been held that:

11. In Manzurul Haq v. Hakim Mohsin Ali 1970 AWR 23, a Full Bench of this Court held:

The marginal heading of Section 16 of the Provincial Small Causes Court Act shows that the court of Small Causes exercises exclusive jurisdiction. The meaning of the word "exclusive" in that heading is ambiguous.

It is clear that the court of Small Causes is apparently a court of preferential but not exclusive jurisdiction. Further, Section 3, CPC provides that every court of Small Causes is subordinate to High Court and the District Court. Section 16 of the Small Cause Court Act thus cannot override or affect the provisions of Rules 2 and 3 of Order II, CPC Rules 2 and 3 of Order II, CPC read together would

provide to include the whole claim. In *Sidramappa Vs. Rajashetty and Others*, , it has been held that cause of action means the cause of action for which the suit was brought. In *Sardar Balbir Singh Vs. Atma Ram Srivastava*, , a Full Bench of this Court held that Rule 3 of Order II, CPC permits a Plaintiff to unite in the same suit several causes of action against the same Defendant or the same Defendants jointly and that no question of convenience or inconvenience was material under Rule 3 of Order II, CPC. It was further held that the intention of Order II, Rule 2, CPC was to prevent multiplicity of suits by prohibiting splitting of claims arising from the same cause of action.

15. Admittedly, the Petitioner was put a possession over the property in dispute by the Respondent only for 11 months under licence agreement. The Petitioner claims that he continued in possession pursuant to an oral agreement with the mother of the Respondent landlord but the oral agreement was not proved by him while taking the property on rent the tenant Petitioner did not raise any objection that Respondent landlord was not the sole owner of the property in dispute. If that is the case then the very initial agreement was invalid and the Petitioner was unauthorized occupant. Furthermore, according to the Petitioner he continued to remain in possession after expiry of 11 months with the consent of the mother of the Respondent landlord. It is apparent that Respondent was not a party to oral consent alleged to have been given by the mother of the Respondent landlord and that he had filed suit for dispossession of the tenant.

16. Neither the Petitioner proved the oral agreement as stated earlier nor he examined the mother of the Petitioner to establish that she was co-owner in the property in dispute. She has not come forward to be impleaded or raise any objection in the suit that she is co-owner of the property and had orally allowed the Petitioner to continue in possession as licensee. If the Petitioner could initially not be regarded as tenant/licensee for 11 months because he states the property was under joint ownership, he on the same principle cannot continue after expiry of contract/agreement of 11 months pursuant to an oral consent given by the mother alone of the Respondent landlord.

17. It appears that the Petitioner had introduced the element of continuance over the property in dispute to delay proceedings of the Court.

18. The writ petition earlier filed by the Petitioner on the same grounds has already been dismissed by the High Court.

19. In view of the law and in the facts and circumstances of the case, there does not appear to be any illegality committed by the courts below in the impugned orders. For these reasons stated above, the order impugned does not warrant any interference in extraordinary powers under writ jurisdiction. The writ petition is accordingly dismissed with cost of Rs. 10,000.