
(2012) 12 AHC CK 0163
In the Allahabad High Court

Case No : Writ Petition No. 9 of 2004(R/C) & Writ Petition No.9 (R/C) of 2004

Niyamatullah and Others

APPELLANT

Vs

1st Addl.District Judge, Bahraich and Others

RESPONDENT

Date of Decision : 06-12-2012

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 23

Citation : (2012) 12 AHC CK 0163

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J

Final Decision : Dismissed

Judgement

SaeedUzZaman Siddiqi, J.—By means of this writ petition, petitioners have sought for a writ in the nature of certiorari, quashing the order dated 26.10.1998, passed by the learned Judge, Small Causes Court / Civil Judge (J.D.), Bahraich, contained as Annexure No.1 and judgment and order dated 16.12.2003, passed by First Additional District Judge, Bahraich, contained as Annexure No.10, to the writ petition.

2. Heard learned counsel for both the parties and gone through the records.

3. The admitted facts between the parties are that the petitioners are tenants of the disputed premises. The opposite party no.3, claiming himself to be landlord filed a small cause case for eviction and recovery of rent and damages for use and occupation before the learned Trial Court. Opposite party no.2 filed written statement and challenged the ownership of opposite party no.3, who was plaintiff before the Judge, Small Causes Court. Replication was also filed by opposite party no.3. The suit was filed on 2.9.1992. Written statement was filed by the petitioners on 21.10.1993. The replication was filed on 22.3.1994, against which the defendants / petitioners filed another application on 22.08.1996. On the same date, the petitioners moved application before the learned Judge, Small Causes Court under Section 23 of the Provincial Small Cause Courts Act, 1887, for returning the plaint on the ground that intricate question of ownership is involved in this case, which was numbered as Paper No.116C. It was rejected

vide order dated 26.10.1998. The petitioners filed S.C.C. Revision No.21 of 1998, which was also dismissed vide judgment and order dated 16.12.2003. Aggrieved by both the orders, petitioners have knocked the door of this Court.

4. Admittedly, the petitioners are tenants of the disputed shop. They are raising issue of ownership on the ground that Nazar Mohammad was the owner of the disputed premises who executed will on 25.05.1968 in favour of his widow who along with her five sons and one daughter sold it. In the said sale deed all the heirs of Nazar Mohammad were not party. The petitioners have raised a plea that since Smt. Sughra Bano widow of Nazar Mohammad was heir and under Islamic law a will cannot be executed in favour of an heir. The will was void. It is undisputed that a muslim can bequeath his property up to the extent of one third but if the said will is in favour of an heir all the other coheirs must consent to it. In either case, through sale deeds the opposite party no.3 became owner. His ownership can be challenged by the heirs of Nazar Mohammad. That may be a question of title involved as amongst the heirs of Nazar Mohammad, but such dispute cannot entitle the tenant to raise it in a small cause case and plead that it is an intricate question of title, upon which the plaint should be returned for presentation to the proper court. This misconception of law and creation of the ground of a mischievous tenant to prolong the possession in the disputed premises. Section 23 of the Small Cause Courts Act, 1887 is reproduced as under:

"Return of plaints in suits involving question of title(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Cases depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under subsection (1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure (14 of 1882) and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1877 (15 of 1877), be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction."

5. In view of the above mentioned provisions of law the right of plaintiff and the relief claimed by him must depend upon proof or disproof of title. Title of the plaintiff is not at all involved in this case which is based upon relationship of landlord and tenant. Admittedly the plaintiffs are the tenants. The factum of ownership is foreign to the scope of Judge, Small Causes Court.

6. In *M/s. Hiralal Ratanlal v. STO*, AIR 1973 SC 1034, this court observed:

"In construing a statutory provision the first and foremost rule of construction is the literally construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision

the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."

7. A full Bench of this Court has held in *Gopal Das v. Additional District Judge, Varanasi*, 1987 (1) ARC 281, in which it was held that one coowner is competent to maintain an action for eviction of the tenant of the entire premises, since he can be considered as a "landlord" within the meaning of Section 3(5) of U.P. Act No.13 of 1972. It was further held that one coowner alone would be competent to sign such application.

8. In view of the legal propositions as mentioned above the petitioners are dragging the landlord / opposite party no.3 in the litigation since 1992. Twenty years have elapsed and suit is yet to see light of the day. This is a case of sheer abuse of court process. In *Atma Ram Properties (P) Ltd. v. Federal Motors Pvt. Ltd.*, 2005 (1) SCC 705, Hon"ble Supreme Court has held as under:

"Landlordtenant litigation constitutes a large chunk of litigation pending in the Courts and Tribunals. The litigation goes on for unreasonable length of time and the tenants in possession of the premises do not miss any opportunity of filing appeals or revisions so long as they can thereby afford to perpetuate the life of litigation and continue in occupation of the premises."

9. This writ petition demonstrates how a determined and dishonest litigant can interminably drag on litigation to frustrate the results of a judicial determination. The history of this litigation shows nothing but cussedness and lack of bonafide on the part of the petitioners. Apart from their tenacity and determination to prevent the opposite party no.3 from enjoying the fruits of decree, there appears to be nothing commendable in the case. In view of the conduct of the petitioner they deserves condemnation which can only be indicated by imposition of cost on the petitioners.

10. While holding this I rely upon the law laid down by the Hon"ble Apex Court in *Gayatri Devi and others v. Shashi Pal Singh*, 2005 AIR (SC) 2342.

11. In *Rajappa Hanamantha Ranoji v. Mahadev Channabasappa & ors.* Reported in 2000 SCFBRC 321, the Hon"ble Supreme Court also made the following observations:

"It is distressing to note that many unscrupulous litigants in order to circumvent orders of Courts adopt dubious ways and take recourse to ingenious methods including filing of fraudulent litigation to defeat the orders of Courts. Such tendency deserves to be taken serious note of and curbed by passing appropriate orders and issuing necessary directions including imposing of exemplary costs. As noticed, despite eviction order having become final nearly a quarter century ago, respondent no.1 still could not enjoy the benefit of the said order and get possession because of the filing of the present suit by the brother of the person who had suffered the eviction order. Under these circumstances, we quantify the

costs payable by the appellant to respondent no.1 at Rs.25,000/."

12. In *Ravinder Kaur v. Ashok Kumar & anr.*, reported in 2003 AIR SCW 7158, the Hon"ble Supreme Court has held as under:

"Courts of law should be careful enough to see through such diabolical plans of the judgmentdebtors to deny the decreeholders the fruits of the decree obtained by them. These type of errors on the part of the judicial forums only encourage frivolous and cantankerous litigations causing law"s delay and bringing bad name to the judicial system."

13. In *Dalip Singh v. State of U.P. and others*, reported in (2010) 2 SCC 114, the Hon"ble Supreme Court has held as under:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

14. The Hon"ble Supreme Court in the above said case has further held as under:

"In *K.D. Sharma v. Steel Authority of India Ltd. and others* (2008) 12 SCC 481, the court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in *G. Jayshree and others v. Bhagwandas S. Patel and others* (2009) 3 SCC 141."

15. This is the experience of this Court that in last 40 years, a new breed of litigants has cropped up. Those, who belong to this breed, do not have any respect for truth. They shamelessly resort falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new generation of litigants, the Courts have, from time to time evolved new rules and, it is now well established that the litigants, who attempt to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, are not entitled to any relief, interim or otherwise. I find force while holding this, by the law laid down in *Dalip Singh v. State of U.P.* (2010) 2 SCC, 114 by Hon"ble Supreme Court. The Hon"ble Apex Court has held in *Welcome Hotel v.*

State of A.P. AIR 1983 S.C. 1015 that a party which has misled the Court in passing an order in its favour, is not entitled to be heard on the merits of the case.

16. The law laid down by this Court as well as Hon''ble Apex Court in Shamim Akhtar v. Iqbal Ahmad and another, 2000 AIR SCW 3793, supports the cause of opposite party no.3.

17. On the basis of discussions made above, writ petition deserves to be dismissed. Writ petition is accordingly dismissed with a cost of Rs.25,000/ to be paid by the petitioners to opposite party no.3 within thirty days from today or in case of refusal by opposite party no.3 the same shall be deposited before the learned Judge, Small Causes Courts within stipulated time, which shall be a condition precedent for the petitioners to participate in the proceedings of S.C.C. Suit No.22 of 1992. Both the order under challenge are hereby confirmed. Learned Judge, Small Causes Court, Bahraich, where the suit is pending is directed to proceed on with the case, on day to day basis, in such a fashion, that it is decided within three months from the date of production of a certified copy of this order.