

(2013) 04 AHC CK 0159

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58868 of 2010

Parveen Begum

APPELLANT

Vs

Jarar Hussain (D) Through L.Rs. and Others

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Citation : (2013) 04 AHC CK 0159

Hon'ble Judges : Sibghat Ullah Khan, J

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—This writ petition is utter abuse of process of Court. Petitioner is a tenant of two rooms, one verandah and other amenities.

House in dispute is situate in Kanpur Nagar, which is most expensive city of U.P. Rate of rent is Rs.80/ per month. Admittedly since 1999, no rent has been paid. Learned Counsel for petitioner states that until 1999, rent was paid to the Waqf Board. Thereafter it has not been paid even to the Waqf Board. Jarrar Husain, original respondent No. 1 since deceased and survived by legal representatives instituted suit for eviction against Syed Ashfaq Husain since deceased and survived by petitioners and proforma respondents No. 4 to 12. The suit (Original suit No. 345 of 1991) was decreed for eviction on 17.2.1999 by First Additional Civil Judge (J.D.), Kanpur Nagar (Copy of the judgment is Annexure7 to the writ petition). Against the said decree, First Appeal (Civil Appeal No. 100 of 1999) was filed which was dismissed by A.D.J. on 4.8.2003. Thereafter, Second Appeal No. 998 of 2003 was filed which was dismissed on 16.9.2003, copy of which has been annexed alongwith counteraffidavit.

2. In the suit specific objection was raised by the defendant petitioner to the effect that property in suit was wakf property and plaintiff respondent was not its owner. Issue No. 3, 4, 6 and 9 related to the said objections. Under issue No. 3 it was categorically held that plaintiff was owner of house in dispute. Under issue No. 4 it was held that property was not wakf property. Under issues 6, 9, and 10 it was held that as property was not wakf property hence there was no question

of issuing notice to the wakf board and wakf board was not necessary party and Civil Court had full jurisdiction to decide the suit.

3. Thereafter, petitioner filed application under section 47, C.P. in the form of Misc. Case No. 9/74/10 raising the same objection to the effect that property in dispute being wakf decree was nullity. First Additional Civil Judge (J.D.), Kanpur Nagar dismissed the objections on 20.7.2010, copy of which is Annexure2 to the writ petition. Against the said order, petitioner filed Civil Revision No. 95 of 2010, which was dismissed by District Judge, Kanpur Nagar on 30.8.2010, hence this writ petition.

4. Both the Courts below held that the same objection had been raised in the main suit also, hence it could not be raised in the proceedings under section 47, C.P.C. This view is perfectly correct. Same thing has been held by the Supreme Court in P.V. Jose v. Kanickammal (dead) by L.Ks. A.I.R. 2000 S.C. 2688. The supreme Court has held that in such situation principle of res judicata will apply.

5. Writ petition is therefore dismissed and it is directed that since the date of dismissal of the second appeal till actual eviction, petitioner and proforma respondents 4 to 12 shall be liable to pay rent/damages for use and occupation at the rate of Rs.1500/ per month, which shall be recovered from them in the execution in question itself.