
(2006) 04 AHC CK 0143
In the Allahabad High Court
Case No : Writ Petition No.31 of 2006 (R/C)

Raj Kamal Ojha

APPELLANT

Vs

Special Judge (E.C.Act), Bahraich and Others

RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 04 AHC CK 0143

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.

1. Heard Sri A.R. Khan, learned counsel for the petitioner and the learned Standing counsel appearing for the opposite parties No. 1 and 2 and perused the record.

2. This is a tenant's writ petition, arising out of the eviction proceedings initiated against him by the landlord, Sri Rajesh Kumar Goyel son of Sri Chhedi Lal Goel on the ground of default in payment of rent for the period from 1.3.2002 to 31.7.2002 and the house tax from 1.4.2001 to 31.7.2002. A suit No.10 of 2002, was filed on 30.9.2002 by the landlord for payment of arrears of rent and eviction of the petitioner from the shop situated in Indira Nagar, Risia Bazar, Bahraich. Since the shop in dispute was rented out in April, 1995, the provisions of Act No. 13 of 1972 were not applicable in the present case. The landlord filed the suit under the provisions of Provincial Small Causes Court Act which was decreed by the Judge, Small Causes Court on 21.11.2005 and the petitioner-tenant was directed to vacate the premises and pay arrears of rent etc. within one month. Aggrieved thereby a Revision No. 16 of 2005, was preferred by the tenant before the Additional District Judge, Bahraich/Special Judge, E.C. Act, which was also dismissed on 4.2.2006.

3. Sri A.R.Khan, learned counsel for the petitioner-tenant has assailed the above

orders dated 4.2.2006 and 21.11.2005 on the ground that Sri Raj"esh Kumar Goel son of Sri Chhedi Lal Goel was not the landlord and thus he had no right to file the suit and seek eviction of the tenantpetitioner. As the shop in question was rented out to the petitionertenant by Sri Chhedi Lal Goel, (father of Rajesh Kumar Goel), both the Courts below have wrongly treated Sri Rajesh Kumar Goel as landlord of the shop. The correspondence between Sri Chhedi Lal and Raj Kamal Ojha, petitionertenant which proves that Sri Chhedi Lal was a landlord, was misread and construed. The petitionertenant throughout denied the claim of Rajesh Kumar Goel as landlord of the shop in dispute. The Revisional Court has misconstrued and misread the judgments cited before it. The petitionertenant has been evicted at the instance of a person who is not the landlord and Sri Chhedi Lal Goel, the real landlord did not give a notice to the petitioner, demanding the rent or any intimation regarding change of ownership of the shop. The said suit was barred by Section 23 of the Provincial Small Cause Courts Act. The trial Court ought to have written the plaint for presentation before the proper Court for settlement of the dispute. The question of landlordship and title etc. was involved in the suit in question. The notice served on the petitioner was defective.

4. I have gone through the judgments passed by the Courts bellow and other material available on record.

5. It has been admitted by the petitionertenant in his statement dated 7.4.2005 recorded before the Judge, Small Causes Court that Sri Rajesh Kumar Goel was son of Sri Chhedi Lal Goel, the real landlord. The petitioner was inducted as tenant on 7.4.1995 by Sri Chhedi Lal Goel. No written agreement was executed between the parties. A legal notice issued on 13.8.2002 under Section 106 of Transfer of Property Act, demanding five months" rent and house tax etc., was served on him on 14.8.2002. The reply was sent by the petitioner on 11.9.2002. As a result of nonvacating the premises and default in paying the rent and house tax, Sri Rajesh Kumar Goel has filed a suit for his ejection from the shop in dispute.

6. On the basis of rent receipts and the statement of Sri Chhedi Lal Goel, the real landlord (father of Rajesh Kumar Goel), the learned Courts below have come to the conclusion that as a result of family partition, Sri Rajesh Kumar Goel became the owner of the shop or the landlord as defined in the rent laws. The petitionertenant had signed the carbon copies of the rent receipts issued by Sri Rajesh Kumar Goel who was collecting the rent on his own behalf and for himself (not for Sri Chhedi Lal). Sri Chhedi Lal, landlord had himself appeared before the Courts below and deposed that as a result of family partition the disputed shop was given to his son Rajesh Kumar Goel. The rent receipts, counterfoil Books and Paper No.43 Ga, proved that Raj Kamal Ojha, the tenantpetitioner had been paying rent to Sri Rajesh Kumar Goel. The tenantpetitioner paid rent to him upto February, 2002. Although the tenantpetitioner denied these receipts but both the Courts below had tallied the signature of the tenantpetitioner put on the carbon

copies of the rent receipts and the one put on Vakalatnama. The tenantpetitioner has failed to produce any expert opinion. Interestingly, the litigation was initiated by serving notice on the petitionertenant on 14.8.2002 and the petitioner's statement is that he had, in fact, paid rent to Sri Chhedi Lal upto 2004. No receipts have been produced before the Courts below to prove this contention. The Courts below have rightly held that tenantpetitioner was signing the carbon copy of the rent receipts and paying Rs.350/ to Sri Rajesh Kumar Goel son of the landlord. Under Hindu Law, oral partition is permissible in the family. Some shops were given by Sri Chhedi Lal Goel to his son, Rajesh Kumar Goel in 1993. The Courts below have also indicated that a father can settle his affairs in respect of the property with his son. It has also been noted by the Courts below that originally, Sri Chhedi Lal Goel had submitted an application on 7.12.1993 in the off ice of Town Area Committee, Risia, requesting it to mutate nine shops in the name of his son, Rajesh Kumar Goel. The carbon copy of the application, documents No.76 Ga/1 and 76 Ga/2, submitted by Sri Chhedi Lal Goel to the Town Area Committee in December, 1993 do indicate that Sri Rajesh Kumar Goel became the landlord in the year 1993, much before eviction of the tenantpetitioner, Sri Raj Kamal Ojha on 7.9.1995. Moreover, the tenant was paying rent regularly to Sri Rajesh Kumar Goel upto March, 2002 after obtaining receipts and signing the carbon copies.

7. The application dated 25.8.2000, (Annexure No.8 of the writ petition) submitted to the Executive Engineer, Distribution Division, U.P. Electricity Board, Bahraich by Sri Raj Kamal Ojha and other shopkeepers, tenants of Indira Nagar Market, indicates that electricity connection of the shop rented out to the petitioner was in the name of Sri Rajesh Kumar Goel. Thus on 25.8.2000, the electricity connection, which was used by the petitioner in the shop in question was in the name of Sri Rajesh Kumar Goel. Since the petitioner was paying rent to Sri Rajesh Kumar Goel, the same must have covered electricity charges from the electricity connection which was in the name of Sri Rajesh Kumar Goel.

8. The Courts below have considered and appreciated the rulings cited by the petitionertenant. In the present case, it has been proved on the basis of documentary and oral evidence that Sri Rajesh Kumar Goel was the landlord and the tenantpetitioner himself was paying rent to him upto March, 2002 after obtaining receipts. Most of the cases are not applicable in the present set of circumstances. It has been rightly held by the Courts below that Sri Rajesh Kumar Goel became landlord after formal partition in the year 1993.

9. The question of title in dispute was not raised before the Judge, Small Causes Court. It was a petty simple case as was said by the landlord that the petitioner had stopped paying rent after March, 2002. He had committed default in payment of rent and did not even pay the House Tax. The Act No.13 of 1972 was not applicable in this case as the shops were constructed in the year 199192 and the petitioner was engaged as tenant on 7.4.1995. The letters placed on record were written after initiation of the legal proceedings against the petitioner. The

evidence put forth by the tenantpetitioner were not reliable and trustworthy. Moreover, in the present case, the suit was filed under the Provincial Small Causes Courts Act. In such cases, summary proceedings are to be held and the dispute should be settled expeditiously.

10. From a perusal of the judgments and orders passed by the learned lower Courts below, it is clear that they contain essentially findings of pure facts, written by the impugned orders. These judgments and orders are capable of challenge on a very limited ground under Article 226 of the Constitution of India. The findings are regarding relations between the petitioner, tenant and the respondent, present landlord.

11. The High Court in exercise of its powers under Article 226 of the Constitution of India has a supervisory jurisdiction. Normally this Court does not interfere in the findings of facts recorded by the Courts below.

12. After consideration of material on record, both, the learned trial Court and the learned revisional Court have recorded findings, based on consideration of oral and documentary evidence, total material on record. These findings do not suffer from any jurisdictional error or shown to be manifestly illegal or perverse. Learned counsel for the petitioner has failed to point out any illegality or perversity in these findings, recorded by the learned trial Court and the learned revisional Court. Merely because, as per petitioner, another view of evidence on record is reasonably possible, the same cannot be a ground for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Both the Courts below have given wellconsidered, detailed judgments. They have dealt with each and every point raised by the petitionertenant including the question regarding title. It was established beyond doubt that the petitionertenant was merely a tenant of the respondent. All the points raised by the petitionertenant have been appreciated and considered and detailed reasons and findings have been recorded by the learned revisional Court, while concluding the controversy. This Court, under Article 226 of the Constitution of India, is not required to sit in appeal over the findings of the revisional Court in a simple private dispute between the landlord and the defaulting tenant.

13. In view of above discussion, the writ petition is devoid of merits and the same is dismissed.

(Petition dismissed)