

(1995) 05 AHC CK 0097

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1224 of 1990

Rajendra Kumar

APPELLANT

Vs

District Judge, Jaunpur and others

RESPONDENT

Date of Decision : 02-05-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 115, 116
Official Languages Act, 1963 — Section 7

Citation : AIR 1996 All 178

Hon'ble Judges : R.B. Mehrotra, J

Bench : Single Bench

Advocate : D.S.M. Tripathi, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. For the decision of the writ petition, the essential facts are as under:

Jwala Prasad Plaintiff instituted Small Cause Suit No. 2 of 79 in the Court of J.S.C.C. (Civil Judge) against Raj Kumar and 10 other defendants and alleged in the suit that the disputed shop along with Kothari described at the foot of the plaint was given on rent to defendant No. 1 and Vishwanath for Rs. 30/- per month and in that connection the defendant No. 1 and Vishwanath executed rent deed in plaintiffs favour on 1st March, 1970. It was also alleged that after the death of Vishwanath his legal representative became the tenant of the said shop. It was also alleged that on the demand of rent from 1 July 1973 to 31 January, 1975 at the rate of Rs.40/- per month, the defendant did not pay the same even despite repeated demand, on that basis plaintiff does not want to continue the defendants as tenants, the plaintiff terminated the tenancy of defendants by notice and the plaintiff prayed for the relief that the plaintiff be put in possession of this disputed shop by evicting the defendants also demanding the decree of mandatory nature in plaintiffs favour.

2. The defendants contested the aforesaid suit and alleged that the defendant No. 1 and father of the remaining defendants has taken on rent the aforesaid shop initially from Smt. Chhabriaji widow of Gokul Prasad at the rate of Rs. 18/- per month, 8 or 10 years ago. There is no relationship of landlord and tenant between the plaintiff and defendant.

3. The Judge Small Causes Court by order dated 23.4.1975 directed that Judge Small Cause Court has no jurisdiction to hear the case accordingly the plaint was returned. The plaintiff filed the plaint in the Court of Munsif, Jaunpur along with the said order on the regular side. On 13-12-1975 Munsif, Jaunpur ordered that the suit is cognizable only by Small Causes Court and the said suit is not cognizable in Munsif Court on regular side. Accordingly it was directed that plaint be returned to be filed before competent Court. Consequently, the plaintiff again filed the plaint on 4-12-1979 in the Court of Small Causes Court. On 14-10-1987, the plaintiff's suit was decreed against the defendants by the Judge Small Cause Court. Aggrieved by the said judgment, the defendants preferred revision in the Court of District Judge Jaunpur. District Judge, Jaunpur by judgment dated 22-12-1989 dismissed the revision of defendants. Aggrieved by the said judgment, the present writ petition was filed by defendant Rajendra Prasad, the plaintiff has been arrayed as Respondent No. 3 to the writ petition. The other legal representative of original tenant Vishwanath have been arrayed respondents 5 to 12 to this writ petition.

4. I heard the learned counsel for the parties at length in support and the opposition of the writ, petition in order.

Sri D.S.M. Tripathi learned counsel for the petitioner has raised two points in support of the writ.

1. If the Small Cause Court returned the plaint with the direction that the Small Cause Court has no jurisdiction to hear the suit, that again on return of the plaint by Munsif Court, the Court of Small Cause had no jurisdiction to hear, again the same suit. The first order of Judge Small Cause Court had attained finality between the parties and against the tenor of that judgment the decree passed by the Small Cause Court is without jurisdiction.

2. The so called rent note allegedly executed on 1st March, 1970 as set out by defendant was not a registered document. Accordingly the admission of the said rent note in evidence by the appellate Court is against law and liable to be set aside.

So far as the first point raised by the learned counsel for the petitioner is concerned. It is a settled principle of law that the wrong decision on the point of jurisdiction does not attract the principle of res judicata between the parties.

5. In this way the only point worthy of consideration in this writ is whether the rent note executed by defendants was compulsorily registrable and in the absence of that registration, whether the said rent note is admissible in evidence,

if not, its effect?

6. The learned counsel for the petitioner in support of this point invited the attention of this Court to the following judgments.

1. *Jairam Agarwal v. Fourth Additional District Judge, Allahabad* (1987) 2 ARC 506.

2. (1979) 1 ARC 90 : 1978 ALJ 1204).

7. Before considering the said points, it is pertinent to mention here that the petitioner did not raise any objection in the Court below regarding non registration of the rent note, and on the inadmissibility of the rent note in evidence and did not contend that the suit can not be decreed on that basis. In the absence of such objection the lower Court holding the rent note as proved, recorded the finding that rent note is proved that the plaintiff was the landlord of the disputed shop and defendants were tenants of the same. In this connection it has to be mentioned that rent note was not the only evidence on which the Lower Court has held the relationship of landlord and tenant to be established but it was also on the basis of other evidence that Lower Court held so.

8. In that connection it is essential to incorporate the following portion of the part of Judgment of trial Court;

"As against this the receipts filed by the plaintiff in respect of tenants is from 1966 to 1979 are prepared in accordance with the rules and the same bear the signatures of tenant. A perusal of those receipts indicate that during this whole period Vishwanath had paid rent. It appears that only to create complications in this case the plea of jurisdiction has been raised by denying the relationship of landlord and tenant and at any rate the same is not fit to be accepted and on this very ground alone, the defendants are liable to ejectment."

9. Both the lower Courts have recorded finding that the defendants have not paid rent from 1970 to 1975 and also held that defendants have failed to establish that they are tenant of someone else except the plaintiff. It is clear that both the Courts below have recorded finding of fact on the basis of evaluation of evidence that defendants were tenants of plaintiff and the defendants did not pay rent to plaintiff despite notice of demand and decreed the suit of the plaintiff on that basis against the defendants for evicting them. The petitioner has for first time raised plea in the writ that the rent note is not admissible in evidence for want of registration.

10. It is the established principle of law that in a writ of certiorari, the impugned order can be set aside in exercise of powers under Articles 226 and 227 of the Constitution of error of jurisdiction apparent on the face of record, or on error of law established on record and the said error should be apparent on the face of judgment. The petitioner did not raise any objection before the lower appellate Court regarding the non registration of rent note hence on that basis it cannot be considered whether in fact the said rent note being non registered was

admissible in evidence or not. In this connection, this fact also was relevant for consideration, whether in fact the document that was described as rent deed is a document which falls within the definition of rent deed. A true copy of the said documents has been filed by way of supplementary to the writ petition as Annexure-1 by the petitioner. A reading of that document indicates that by virtue of the said document Raj Kumar and Vishwanath agreed to pay rent Rs. 30/- per month in respect of disputed premises to Jwala Prasad son of Gokul Prasad and in that condition agreed to some conditions themselves, the document is not a bilateral document and does not come within the definition of contract between the parties. In reality it was a question of fact whether the said document comes within the purview of definition of such document under the Registration Act or not ? requiring compulsory registration. Whether mere written admission of tenant in favour of landlord can be held to be rent deed ? This is a question of fact which can be decided by the evidence of the parties by the trial Court. No such question having been raised by defendants before trial Court, consequently the trial Court has not considered this point. In this background I find no justification to decide the objection raised by the writ petitioner in this writ petition.

11. In this connection the third point that require determination is whether in the teeth of provisions of Sections 115 and 116 of Evidence Act the defendants are estopped from denying the title of plaintiff. The trial court believing the rent receipts produced held that the defendants were paying rent in respect of disputed, property, it is clear from the said conclusion that the defendants held the plaintiff to be the landlord of the premises and under the provisions of Section 116 of the Evidence Act, the defendants are estopped from questioning the title of plaintiff and in view of that provision, the objection raised by the petitioner for the first time is not worthy of consideration in the writ petition. On the above basis I am firmly of the view that the judgment of Lower Court does not suffer from any such legal infirmity which require interference in exercise of powers under Articles 226, 227 of Constitution by way of certiorari.

12. Accordingly the writ petition dismissed with costs. Under the circumstances of the case, the parties will bear their own costs in this writ.

Dated: 2-5-1995.

13. Under the mandatory provisions of Section 7 of Official Language Act, the Registrar, of the Court is directed to get English translation of a copy of this Judgment done through a competent persons, get approved by the Court within a month furnish the same to parties as per rules. Without annexing the English Translation, the copy of Judgment be not furnished to parties nor the copy of judgment be sent to Court below without translation.

14. Petition dismissed.