
(2010) 06 UK CK 0082
In the Uttarakhand High Court

Rajendra Prasad

APPELLANT

Vs

New India Chemical and Pharmaceutical and Others

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (2010) 06 UK CK 0082

Hon'ble Judges : V.K. Bist, J

Bench : Single Bench

Judgement

V.K. Bist, J.—Heard Shri Neeraj Garg, learned Counsel for the petitioner and perused the record.

2. Present petition has been filed by the petitioner for a direction to the learned Civil Judge (Jr. Div.), Dehradun to decide the Suit No. 347 of 1987, "Shri Rajendra Prasad v. New India Chemical & Pharmaceutical Works (P) Ltd." as expeditiously as possible.

3. Brief facts of the case, as narrated in the writ petition, are that the respondent No. 1 was a tenant of Smt. Shakuntala Devi wife of Shri Manohar Singh, of the property being No. 14, Tyagi Road, Dehradun at the rate of Rs. 70/- per month. The aforesaid property was sold by Smt. Shakkuntala Devi to Smt. Satya Dawar W/o Shri Kishan Chand Dawar R/o 360 Chkhuwala Dehradun vide registered sale deed dated 05.03.1980 and thus respondent No. 1 became tenant of Smt. Satya Dawar. Thereafter, Smt. Satya Dawar, vide registered sale deed dated 14.05.1984 sold the said property to the petitioner and thus respondent No. 1 accordingly became tenant of the property in suit on behalf of the petitioner. Vide notice dated 18.06.1984, Smt. Satya Dawar informed to respondent No. 1 that the property in suit under his tenancy has been sold to the petitioner and that the petitioner has become the owner and landlord and is entitled to recover rent etc. The respondent No. 1 denied the title against Smt. Satya Dawar as well as of the petitioner. The arrears of rent were due against the respondent No. 1, which he illegally refused to pay to the petitioner. Therefore, vide notice dated

03.08.1984 the arrears of rent were demanded and tenancy of the respondent No. 1 was terminated. The respondent No. 1 sublet the property in question to the husband of respondent No. 2 (Shri D.S. Dhamija) and thus he is also liable for ejectment and to pay mesne profits and costs of the suit. The petitioner on 01.09.1987 filed a suit seeking decree of ejectment of the respondents from the property in question and also claimed decree for arrears of rent before the Court of learned Munsif, Dehradun which was registered as Suit No. 347 of 1987, "Shri Rajendra Prasad v. The New India Chemical & Pharmaceutical Works (P) Ltd." Despite sufficient service the respondent No. 1 did not appear, therefore the learned Court proceeded the suit ex-parte as against the respondent No. 1. Thereafter, the husband of present respondent No. 2, Shri D.S. Dhamija appeared before the Court and filed written statement. On 19.03.1990 issues were framed in the aforesaid suit and matter was fixed for recording of evidence. The respondent Shri D.S. Dhamija filed a suit before the Court of Civil Judge (Sr. Div.), Dehradun which was later on transferred to the Court of 1st Additional Civil Judge (Sr. Div.), Dehradun being Original Suit No. 346/1991, "D.S. Dhamija v. Rajendra Prasad and Anr." for declaration of his rights as owner by way of adverse possession over the property in question, which was subject matter of suit No. 347/1987. Thereafter, issue No. 9 was framed and decided vide order dated 11.10.1996 by the Court of 1st Additional Civil Judge (Sr. Div.), Dehradun in Suit No. 347/1987 as to whether the proceedings of suit No. 347/1987 are liable to be stayed till the pendency of suit No. 346/1991. The Trial Court decided the issue in favour of respondents and stayed the proceedings of previously instituted suit against the mandate of Section 10 C.P.C. Suit No. 346/1991 "D.S. Dhamija v. Rajendra Prasad" was decreed vide judgment and order dated 28.09.1999 by 1st Additional Civil Judge (Sr. Div.), Dehradun in favour of respondent Shri D.S. Dhamija and he was held the owner by way of adverse possession over the property in question. The petitioner filed Civil Appeal No. 51 of 1999 "Rajendra Prasad v. D.S. Dhamija and Ors." before the Court of District Judge, Dehradun challenging the judgment and decree passed by the Trial Court in suit No. 346/1991. Vide judgment and decree dated 19.04.2005 petitioner's first appeal was allowed and decree passed by Trial Court was set aside. During the pendency of first appeal Shri D.S. Dhamija expired. The legal heirs of Shri D.S. Dhamija filed second appeal No. 23/2005 before this Court against the decree passed by first Appellate Court. The second appeal No. 23/2005 was dismissed vide judgment and decree dated 17.07.2007. Against the aforesaid judgment and decreed passed by second Appellate Court respondents filed Special Leave to Appeal before Hon"ble Apex Court and the same was also dismissed vide judgment dated 07.08.2009 by the Hon"ble Apex Court.

4. Hearing of the case could not be done in the year 1996 as proceedings were stayed by the Trial Court u/s 10 C.P.C. Learned Counsel for the petitioner stated that after the judgment of Hon"ble Supreme Court the controversy in suit No. 346/1991 was finally decided. After final disposal of the Suit No. 346/1991, the proceedings of present case have now started in year 2009.

5. Since the suit was instituted in the year 1987, this Court thinks it fit and proper to direct the Civil Judge (Jr. Div.), Dehradun to decide the Suit No. 347 of 1987, "Shri Rajendra Prasad v. New India Chemical & Pharmaceutical Works (P) Ltd.", expeditiously. Therefore, the Civil Judge (Jr. Div.), Dehradun is directed to decide the Suit No. 347 of 1987, "Shri Rajendra Prasad v. New India Chemical & Pharmaceutical Works (P) Ltd." within a period of 9 months from the date of production of certified copy of this order.

6. With the aforesaid direction, the writ petition is disposed of.