

(2009) 11 AHC CK 0158
In the Allahabad High Court
Case No : Second Appeal No. 1142 of 2009

Ram Bux Singh (DEAD) by Lrs.

APPELLANT

Vs

Pooran Chand Kanodia

RESPONDENT

Date of Decision : 19-11-2009

Acts Referred:

Citation : (2009) 11 AHC CK 0158

Hon'ble Judges : Arun Tandon, J

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard learned counsel for the parties.

This is defendants" second appeal. Plaintiffrespondent filed original suit no. 26 of 1999 for eviction and arrears of rent against the tenants i.e. defendants. The suit was contested by the defendants and it was stated that although they had been inducted as tenants by the plaintiff in the premises in question and that rent was also prayed for use and occupation thereof, but now since the lease granted in favour of plaintiff by the Nagar Nigam had expired, the suit at his behest was not maintainable as he ceases to have any title over the land in dispute because of expiry of the term of the lease. The trial court vide judgment and decree dated 3rd December, 2008 decreed the suit as filed by the plaintiff and held that defendants had committed default in payment of rent. It therefore, directed ejectment of the defendants along with payment of arrears of rent due from 1st November, 1997 with compensatory cost for use and occupation thereof at the rate of Rs. 26/ per day. Not being satisfied with the judgment and decree passed by the trial court, the defendants filed Civil Appeal No. 8 of 2009. The appeal has also been dismissed by the first appellate court vide judgment and order dated 12th August, 2009 after recording identical findings. Hence the present second appeal.

2. It is contended on behalf of the appellants that since the lease granted in favour of the landlord by the Nagar Nigam qua the land in dispute had already expired, he ceases to have any title over the property in question, therefore, the

suit as filed by him for the relief prayed for was liable to be dismissed.

3. I have considered the submissions made by the learned counsel for the parties and have gone through the records of the present second appeal.

4. I am of the considered opinion that since the relationship of tenant and landlord between the plaintiff and defendants was admitted to the defendants including the payment of rent at particular point of time, the issue as to whether lease of the land in favour of the landlord had expired is of no consequence, so far as the relationship between plaintiff and defendant is concerned. I am of the considered opinion that landlord had a better right than the tenant and therefore, he could maintain the suit for eviction of the tenant from the land in question on the ground of default in payment of rent.

5. So far as the issue with regard to the suit being barred under the provisions of Act No. 13 of 1972 is concerned, the courts have recorded that the property which has been let out is only an open piece of land and therefore, the provisions of said Act No. 13 of 1972 will not apply.

6. There is no illegality in the findings recorded by the courts below in decreeing the suit filed by the plaintiff. No substantial question of law arises.

The present second appeal lacks merit and is accordingly dismissed.