
(2015) 11 AHC CK 0118
In the Allahabad High Court
Case No : Writ-A No. 41505 of 2015

Ram Gupta and Others

APPELLANT

Vs

Additional District Judge and Others

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2015) 11 AHC CK 0118

Hon'ble Judges : Sunita Agarwal, J.

Bench : Single Bench

Advocate : H.N. Sharma, for the Appellant; Nath Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Agarwal, J.—Heard Sri Manish Tandon, learned counsel for the petitioners and Sri Shri Nath Dwivedi, learned counsel for the respondents.

2. The orders passed in release proceeding under Section 21(1)(a) of the U.P. Act No. 13 of 1972 is challenged on the ground that the co-owners had objected to the release application. The release application has been filed for the need of his son by the applicant Sri Sanjay Kumar stating therein that his son is doing work of motor cycle mechanic in a rented shop. The disputed shop is a joint family property, however, a family settlement has been arrived between the co-owners and the applicant has been authorised to receive rent of the same.

3. The petitioners contested the release application on the ground that no family settlement has been brought on record and the applicant cannot be said to be the landlord of the disputed shop. Other co-owners had not joined the applicant in the release proceeding. An issue on the dispute of the landlord tenant relationship, raised by the petitioners was framed. The Prescribed Authority recorded a finding that in the Misc. Case No. 597/70/92, the co-owners i.e. the respondent Nos. 4 and 5 had admitted that the applicant was entitled to receive

the rent from the petitioners and therefore, there was no dispute between the co-owners. No one had filed objection to the release application. Admittedly, the rent was tendered by the petitioner to the applicant Sri Harish Chandra Verma and hence the relationship of the landlord and the tenant was proved. On bonafide need, it has recorded that the applicant's son was carrying on the business of repairs of motor cycle in a tenanted shop near the shop in question. On the other hand, the tenant had two shops in his possession in another locality namely Govind Nagar Nand Lal Chauraha. The papers pertaining to Trade Tax of the tenant's shop were produced before the Court below to establish that a business in the said shop in the name of "Munna Samosa and Kachauri" was registered under the Trade Tax, in the proprietorship of the petitioner No. 1/1 Sri Raj Babu Gupta.

4. Learned counsel for the petitioners has not been able to dispute the findings on bonafide need and comparative hardship recorded by the courts below. Rather by way of a supplementary affidavit dated 30.7.2015, he submits that respondent Nos. 4 and 5, the co-owners of the disputed shop filed an application for their transposition as the applicants in the release application. They also filed their written statement showing their willingness to continue the tenancy of the petitioners and further prayed to record them as successors from their predecessors.

5. Learned counsel for the petitioner has relied upon judgment of Apex Court in India Umbrella Manufacturing Co. and Others Vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla and Others, ; to submit that in case other co-owners object to the release, the release application cannot proceed.

6. Replying to this contention, learned counsel for respondents has relied upon the Full Bench judgment of this Court in Gopal Dass and others v. Ist Addl. District Judge, Varanasi 1987 (1) ARC 281; to submit that one of the co-owners can maintain the release application seeking eviction of the tenant. The consent of other co-owners is assumed as taken unless it is shown that other co-owners were not agreeable to eject the tenant. This proposition has attained affirmation of the Apex Court in the matter of M/s. India Umbrella Manufacturing Co. (supra) relied upon by the petitioner. Paragraph "6" of the said judgment is relevant:--

"6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See Sri Ram Pasricha Vs. Jagannath and Others, ; Dhannalal Vs. Kalawatibai and Others, . This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice

the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."

7. He further submits that in the transposition application and the written statement filed by the co-owners, they only prayed for their impleadment as applicants in the release application. Their plea was that they had wrongly been impleaded as proforma parties. Being co-sharers and co-owners of the disputed property they were entitled for the release. In the additional plea in written statement it was stated that there was no family settlement. However, it is nowhere stated that they do not agree for the release of the shop in question or they dispute the relationship of the landlord and the tenant between the applicant and the petitioner.

8. In a short counter affidavit filed by Sri Sanjay Verma son of applicant Sri Harish Chandra Verma, it is stated that the impleadment application was filed before the court below by the respondent Nos. 4 and 5 in collusion with the tenant. The said application was rejected on 17.2.2012 and thereafter, the request to file written statement made by respondent Nos. 4 and 5 on 28.2.2012 was also rejected by the court below on the ground that they were aware of the proceedings since the year 2000, for the last almost 12 years. The prayer made after such a long time was an effort to linger on the proceedings. These orders have become final and there is no challenge before any Court of law.

9. Further respondent Nos. 4 and 5 as well as Sri Ram Gupta the father of the petitioners had appeared before the Prescribed Authority on 7.11.2000. They both engaged one counsel and sought time to file written statement. Copy of the Vakalatnama jointly signed by Sri Amar Chandra Verma, Sri K.C. Verma and Pt. Ram Krishna Bajpai, Advocates dated 7.11.2000 is on record. The application moved by the respondents on 7.11.2000 seeking time to file written statement is also on record.

10. On the strength of these documents, submission of the respondent is that the written statement of the co-owners appended with the supplementary affidavit filed by the petitioner cannot be taken into consideration to conclude that the co-owners had objected to the release application.

11. In fact before the Prescribed Authority, the arguments were heard on 21.2.2012 and on the adjournment sought by respondent Nos. 4 and 5, 24.2.2012 was the date fixed. On 24.2.2012, respondent Nos. 4 and 5 filed an application paper No. 162 with the prayer to keep their written statement on record. On 28.2.2012, this application paper No. 162 was rejected by the Prescribed Authority by a reasoned and speaking order on the ground that it was filed in collusion with the tenant after a period of 12 years without any

explanation for delay with a view to linger on the proceeding. On 15.3.2012 the release application was allowed. Respondent Nos. 4 and 5 did not appear before the appellate court and after decision in the appeal on 25.4.2015, now the petitioners cannot be allowed to raise the plea that the co-owners had objected to the release application.

12. Having heard learned counsel for the parties and perused the record, there is no dispute about the facts stated by learned counsel for the respondents. The co-owners respondent Nos. 4 and 5 never appeared either before the appellate court or before this Court.

13. The supplementary affidavit dated 30.7.2015 has been filed by petitioner No. 1/2 Sri Manoj Kumar Gupta raising the dispute that the co-owners had contested the release and opposed the eviction of the petitioners sought by the applicant. At this stage even the respondent Nos. 4 and 5 are not before this Court.

14. This fact alone is sufficient to reach to an irresistible conclusion that the co-owners in fact did not oppose the release. They were set up by the petitioners tenant at some stage, but they did not dispute the eviction of the tenant rather sought their impleadment as plaintiffs/applicants in the release application.

15. Paragraphs "14" and "16" of the additional plea in the written statement filed by respondent Nos. 4 and 5 are as under:--

"14. That there is no family settlement between the petitioner and the answering defendants.

16. That the answering defendant are co-sharers and co-owners of the disputed property consequently they are entitled for the Release."

16. A perusal of the said assertion clearly establishes that the co-owners sought the release of the disputed accommodation on the plea that there was no family partition. The question as to whether one of the co-owners is entitled to ask for the release of the tenanted accommodation is no longer re-integra.

17. Only contention of the petitioners is that in view of the objection raised by the co-owners to the release, the tenant would be benefited. This contention is not supported from the evidence on record. It does not lie in the mouth of the tenant to plead that there was no family partition. Further it cannot be pleaded that the co-owners had objected to the release when they themselves have not come forward.

18. There is no merit in the writ petition, hence dismissed.