
(1997) 05 AHC CK 0109
In the Allahabad High Court
Case No : Civil Revision No. 82 of 1991

Ram Lal Yadav & Another

APPELLANT

Vs

Sri Kulwant Rai Puri & Others

RESPONDENT

Date of Decision : 21-05-1997

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 25(3)

Provincial Small Cause Courts Act, 1887 — Section 25(2)

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 20(4), 30(1), 30(2), 30(6)

Citation : (1997) 05 AHC CK 0109

Hon'ble Judges : S.C.Verma, J

Final Decision : Dismissed

Judgement

S.C. Verma, J

1. This Revision under Section 25 of the Small Cause Court Act, is directed against the judgment and order dated 1.7.1991 passed in SCC Suit no. 94 of 1987 whereby the plaintiffs' suit for arrears of rent and ejectment has been decreed as also for recovery of mesne profits at the rate of Rs. 320 per month. The plaintiffs Sri Kulwant Rai Puri, Sri Vijai Puri, and Dr.(Smt.) Aruna Kapur, claimed to be co owners and landlords of the premises no. 7, Sarojni Naidu Marg, Husainganj, Lucknow and the defendant Ram Lal Yadav and another were the tenant at monthly rent of Rs. 320 in respect of a portion on the ground floor consisting of one room, one kitchen, one bathroom and one room and a store on the mezzanine floor. The defendants fell into arrears of rent from 1.5.1985 to 30.9.1987, amounting to Rs. 9280 which was not paid despite service of notice of demand and ejectment dated 9.10.1987, which was served on 16.10.1987.

2. The defendants contested the suit on the ground that the suit is bad for nonjoinder of the parties inasmuch as one of the colandlord Ravi Bhushan Puri has not been arrayed as plaintifflandlord. The defendants further pleaded that on 26.11.1985 they received notice from Sri Ravi Bhushan Puri requesting them to

pay the rent who claimed to be coowner of the accommodation. The defendants have replied to the demand notice and expressed their willingness to pay the rent to the plaintiffs, if they proved through documents the title in respect of the disputed accommodation. As the plaintiffs Revisionists failed to prove their title, they filed an application for deposit of rent on 9.11.1987 in Misc. Case no. 244 of 1987 and deposited the rent amounting to Rs. 9920 in the Court of Munsif South, Lucknow under Section 30(2) of the U.P. Act no. 13 of 1972 on 23.11.1987.

3. The defendants also pleaded that Sri Ravi Bhushan Puri, had filed two suits being Original Suit no. 151 of 1986 in the Court of Civil Judge, Lucknow and Original Suit no 56 of 1988 in the Court of Munsif South, Lucknow in respect of the disputed accommodation and both were pending. The defendants also alleged that on 22.12.1987, they unconditionally tendered the rent as contemplated under Section 20(4) of the Act at the first hearing of the suit.

4. A replication was filed on behalf of the plaintiffs on 23.5.1988 in which it was pleaded that Bishan Ji Puri had executed a registered Will deed dated 16.8.1982, on the basis of which the rent became payable to the plaintiff no. 1 being one of the heir and sole executor of the Will. The execution of the Will was in the knowledge of the defendants and this fact is also established from para 7 of the plaint dated 5/2 11988 of Regular Suit no. 56 of 1988. The plaintiffs denied the notice dated 26.11.1985 given by Sri Ravi Bhushan Puri to the defendants. The plaintiffs further pleaded that Ravi Bhushan Puri had mortgaged his entire onethird share in the property with possession to the plaintiff no. 2 by registered mortgage deed dated 24.5.1985. The deposit of rent by defendants under Section 30(2) of the Act was illegal and invalid on 23.11.1987 which was much after the receipt of the notice dated 9.10.1987. The plaintiffs admitted the pendency of the suit filed by Sri Ravi Bhushan Puri being suit no. 151 of 1986. The deposits made under Section 20(4) of the U.P. Act no. 13 of 1972 were alleged to be short and insufficient.

5. The defendants filed additional Written Statement and it was stated that after the death of the exlandlord they tried to give rent to the plaintiff no. 1. The defendants denied the notice of the Will dated 16.8.1982 and mortgage deed dated 24.5.1985.

6. The learned District Judge, framed the following issues:

1. Whether there existed relationship of landlord and tenant between the plaintiffs and the defendants, and whether the plaintiffs are entitled to sue for ejectment?
2. Whether the suit is liable to fail on account of non joinder of all co owners/colandlords, as alleged by the defendants?
3. Whether the defendants are entitled to be saved from ejectment, having validly deposited the entire amount, as required under Section 20(4) of the U.P. Act XIII of 1972?

4. Whether the defendants are defaulters and the plaintiffs are entitled to the relief's of ejectment, arrears of rent and damages as claimed?

7. With regard to issue no. 1, the learned District Judge held that there was no dispute till the life time of Bishan Ji Puri who was the landlord and had realised the rent upto April, 1985. It was held that plaintiff no. 1 Kulwant Rai Puri had 1/3 rd share while late Bishan Ji Puri had onethird share and the remaining onethird share was held by Ravi Bhushan Puri. According to the Will dated 16.8.1982 (Ex. 7), the onethird share of Bishan Ji Puri was bequeathed in favour of Smt. Aruna Kapoor, plaintiff no. 3 by the said Will. A certified copy of the registered Will dated 16.8.1982 was proved by plaintiff no.1 and Sri. S.M. Ezaz Rizvi (PW. 2). The only objection raised by the defendant was that the Will does not appear to bear the signatures of late Bishan Ji Puri. It was indicated that Sri. Bishan Ji Puri had received the rent upto April, 1985 and signed the receipt himself which indicates that he was in full senses at the time when the Will was executed. The onethird share held by Sri Ravi Bhushan Puri was mortgaged with possession in favour of Sri Vijai Puri by registered mortgage deed. A certified copy of the mortgage deed was placed on record as Ex.17. The mortgage deed was also proved by the P.W. 3 Sri P.L. Talwar. The learned Judge, however held that the execution of the Will and the Mortgage deed does not appear to have been intimated to the defendants. However the fact remains that the plaintiffs are the ownerlandlords of the disputed premises and Ravi Bhushan Puri had no claim as coowner. The relationship of landlord and tenant existed between the plaintiffs and the defendants and they are entitled to sue for ejectment.

8. As regards issue no. 2 it was held that the suit was not bad for nonjoinder of parties as Sri Ravi Bhushan Puri had executed registered mortgage deed dated 24.5.1985 in favour of plaintiff no. 2 Sri Vijai Puri for consideration of Rs. two lacs. Sri Ravi Bhushan Puri wanted to be impleaded as party in the present suit but the application was dismissed and the same was upheld by Hon''ble High Court by order dated 22.12.1988 and as such the suit was not bad for nonjoinder of necessary party.

9. With regard to issue no. 3, it was held that the defendants applied on the first date of hearing i.e. 22.12.1987 vide application No. 15C for deposit of Rs. 2420, representing rent for December, 1987 amounting to Rs. 320, Courtfee amounting to Rs. 1680, processfee etc. amounting to Rs. 50, Lawyer's fee amounting to Rs. 325 and Clerkage amounting to Rs. 45. The amount of Rs. 2420 was deposited on 24.12.1987. The learned District Judge held that only the amount deposited under Section 30(1) of the Act is liable to be adjusted under section 20(4) of the Act whereas the amount deposited on 23.11.1987 in Misc. Case no. 244 of 1987 under Section 30(2) of the Act is not liable to be adjusted towards payment under Section 20(4) of the Act. The deposits made under Section 30(2) of the Act would not enure to the benefit of the defendants to be treated as deposits under section 20(4) nor they would be treated as valid deposits under Section 30(2) of the Act made on 23.11.1987 for Rs. 9920 towards arrears of rent from

1.5.1985 to 30.11.1987 after a period of one month of receipt of notice. The defendants committed default and these deposits would not save the liability for eviction. The suit of the plaintiffs was decreed for ejection from the disputed accommodation as also for recovery of arrears of rent and mesneprofits at the rate of Rs. 320 per month from 1.5.1985 upto the date of delivery of possession of the accommodation.

10. Challenging the judgment of the learned District Judge dated 1.7.1991, the learned Counsel for the applicants submitted that the learned District Judge had no jurisdiction to try the present SCC Suit between lessor and lessee for eviction. This contention can not be accepted in view of the notification issued by the State Government in exercise of powers under Section 25(3) of Bengal, Agra and Assam Civil Courts Act, 1887. After the notification was published in U.P. Gazette the High Court issued Notification under Section 25(2) of Bengal, Agra and Assam Civil Courts Act, 1887 dated October, 25. 1972, published in U.P. Gazette dated 11.11.1972, which is quoted below

?Notification under Section 25(2) of Bengal, Agra and Assam Civil Courts Act, 1887 October 25, 1972, No. 525 In exercise of the powers conferred by subsection (2) of Section 25, of the Bengal, Agra and Assam Civil Courts Act, 1887 (Act XII of 1887), as amended by the Uttar Pradesh Civil Laws (Amendment) Act, 1972 (U.P. Act no. 37 of 1972), delegated by the State Government under subsection (3) of the said section 25 to the High Court, the High Court is pleased to confer upon all the District Judges and Additional District Judges, the Jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Causes Courts Acts, 1887 (Act IX of 1887) for the trial of all suits (irrespective of), their value) of the nature referred to in the said subsection (2).

Published in U.P. Gazette, dated 11.11.1972 page 3758.?

11 From the perusal of the above notification, it is established that there was no lack of jurisdiction in deciding the present suit by the learned District Judge, Lucknow.

12. The other submissions raised by the learned Counsel for the applicants was that the defendants had no knowledge of the execution of the Will dated 16.8.1982 and the mortgage deed dated 24.5.1985. This plea was accepted by the learned District Judge, and as such there was a valid reason for the defendants asking the plaintiffs to establish the title and the deposits made under section 30(2) of the Act on 23.11.1987. The defendants have received notice from Sri Ravi Bhushan Puri on 26.11.1985 and in view of the suit no. 151/86 filed by Sri Ravi Bhushan Puri for declaration of his title and injunction to restrain the plaintiffs nos. 1 and 3 to receive rent of the disputed premises, the deposits were rightly made under Section 30(2) of the Act. The defendants had no notice with regard to the colandlords and the shares held by them. The notice under section 106 also did not intimate these facts nor in the suit any pleadings,

in this regard were framed.

13. It can not be disputed that the notice was sent by the plaintiffs nos. 1 to 3 claiming rent from 1.5.1985 to 30.9.1987. The defendants fully knew that the plaintiff no. 1 is the son of deceased Bishan Ji Puri and had share in the property as colandlord. Even in the notice sent by Sri Ravi Bhushan Puri dated 26.11.1985, and in the suit no. 151 of 1986 no claim was made by Sri Ravi Bhushan Puri that Sri Kulwant Rai Puri, plaintiff no. 1 is not the colandlord or that there was any partition in the family or Ravi Bhushan Puri was the sole landlord. The defendants can not be misled by these facts and after they received notice on 16.10.1987 from Sri Kulwant Rai Puri, Vijai Puri and Smt. Aruna Kapoor through their Counsel, there was no reason not to remit the rent to the plaintiff no. 1 as colandlord. The defendants were living in part of the same accommodation with the landlord and they had knowledge of these facts. In any view of the matter the remittance of the rent to one of the colandlords i.e. plaintiff no. 1 would have enured to the benefit of other colandlords and the defendants would be saved from the liability of becoming a defaulter liable for eviction.

14. The registered Will dated 16.8.1982 executed by Sri Bishan Ji Puri exlandlord, a certified copy of which was filed as Ext. 7 has been duly proved by the plaintiff as P.W.1 and by Sri S.M. Azaz Rizvi, P.W.2. The validity of the Will was not in question so as to require the filing of original Will and formal proof. A certified copy of the Will has been filed and proved for collateral purposes which was admissible in evidence as secondary evidence. Similarly a copy of the registered mortgage deed dated 24.5.1985 has been filed which has also been proved.

15. In the case of Kalyan Singh v. Smt. Chhoti and others. AIR 1990 Supreme Court 396, it was held:

?Section 63 of the Evidence Act mentions five kinds of secondary evidence, Clauses (1), (2) and (3) refer to copies of documents, Clause (4) refers to counterparts of documents and clause (5) refers to oral accounts of the contents of documents. Correctness of certified copies referred to in clause (1) is presumed under Section 79 but that of other copies must be proved by proper evidence. A certified copy of a registered sale deed may be produced as secondary evidence in the absence of the original.?

The learned District Judge has not committed any error of law in holding that the Suit is not bad for nonjoinder of necessary parties and the relationship of the landlord and tenant also existed and the plaintiffs are entitled to sue for ejectment of the defendants and the Suit is maintainable.

16. The third submission of the learned Counsel for the defendantsRevisionists is also not tenable in law in view of the undisputed fact that the deposits made on 23.11.1987 in Misc. Case no. 244 of 1987 were under Section 30(2) of the Act.

17. The provisions of Section 30 of the Act are quoted below

?30. Deposit of rent in Court in certain circumstances

(1) If any person claiming to be a tenant of a building tenders any amount as rent in respect of the building to its alleged landlord and the alleged landlord refuses to accept the same then the former may deposit such amount in the prescribed manner and continue to deposit any rent which he alleges to be due for any subsequent period in respect of such building until the landlord in the meantime signifies by notice in writing to the tenant his willingness to accept it.

There is no dispute that the defendantsrevisionists had made deposits under* Section 30(2) of the Act.

18. SubClause (2) of Section 30 is as follows:

? (2) Where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any building, the tenant may likewise deposit the rent stating the circumstances under which such deposit is made and may, until such doubt has been removed or such dispute has been settled by the decision of any competent court or by settlement between the parties, continue to deposit the rent that may subsequently become due in respect of such building.?

19. The provisions of Section 30(6) provided as follows:

?30(6) In respect of a deposit made as aforesaid, it shall be deemed that the person depositing it has paid it on the date of such deposit to the person in whose favour it is deposited in the case referred to in subsection(I) or to the landlord in the case referred to in subsection (2).?

20. The amount of Rs. 9920 towards arrears of rent from 1.5.1985 to 30.9.1987 have been deposited under Section 30(2) of the Act on 23.11.1987 and this amount would be deemed to have been paid on the date of such deposit to the landlord. The amount can not be treated to have been paid within one month of service of notice of demand i.e. by 16.11.1987. In the case of Pyare Lal v. 1st. Additional District Judge. Kanpur and another 1989 (1) Allahabad Rent Cases 169, It has been held:

?it consequently, follows that in case the tenant wants to take benefit of the deposit made under Section 30 of the Act, he should make the deposit under Section 30 of the Act within one month from the date of the service of the notice of demand upon him so that on the date of deposit it is deemed that the amount had been paid to the landlord under Section 30(6) of the Act. If, however, the deposit under Section 30 of the Act is not made within one month then a tenant cannot be relieved of the default which had already been committed. In the circumstances it is clear that if any deposit is made under Section 30 of the Act beyond the period of one month from the date of the service of the notice of demand upon the tenant then he cannot get the benefit of such a deposit and, in law, will treat him to be a defaulter liable for ejectment. In Mohammad Snamin Ashmi v. The 1st Addl. District Judge Allahabad and Others. 1980 Allahabad Rent

Cases 203 this Court has also taken the same view, namely, that the deposit made under section 30 of the Act would not be of any consequence to a tenant if he has already committed a default within the meaning of clause (a) of Section 20(2) of the Act.?

21. The said amount would also not enure towards deposit under Section 20(4) of the Act as the provisions of Section 20(4) provided for only deductions made in respect of the deposits made under Section 30(1) of the Act. Section 20(4) is quoted below:

20 (4) In any suit for eviction on the ground mentioned in clause (a) of subsection (2), if at the first hearing of the suit the tenant unconditionally pays or (tenders to the landlord or deposits in Court) the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of nine percent per annum and the landlord's costs of the suit "in respect thereof, after deducting therefrom any amount already deposited by the tenant under subsection (1) of Section 30 the Court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on that ground.

Provided that nothing in this subsection, shall apply in relation to a tenant who or any member of whose family has built or had otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area.

Explanation For the purposes in this subsection

(a) the expression "first hearing" means the first date for any step or proceeding mentioned in the summons served on the defendant;

(b) the expression "cost of the suit" includes one-half of the amount of Counsel's fee taxable for a contested Suit.?

The deposits made, under Section 20(4) of the Act were only to the extent of Rs. 2420 and they can not be treated to be in full compliance of deposits made under Section 20(4) of the Act.

22. In the case of Ghulam Sabir v. District Judge. Lucknow and another 1992(2) Allahabad Rent Cases 198, it has been held:

Section 30(6) is a deeming clause. This clause applies when deposit has been made in accordance with the preceding clauses of Section 30. This is apparent from the use of the words "deposit made as aforesaid." Although when deposit is made in Court the money does not come in the hands of the landlord. This clause creates the fiction of payment to the landlord, but this fiction will be attracted only when the deposit has been made "as aforesaid." Thus for the fiction available under this clause, a deposit referable to subsection (1) must be made when rent has been tendered to the landlord and he has refused to accept the

same. If there has been no tender of rent and no refusal the deposit will not be referable to subsection (1) and the fiction created by subsection (6) will not be available to the tenant. When deposit is made on fulfilment of the conditions prescribed in subsection (1) two fictions arise (1) payment has been made to the person in whose favour the deposit has been made, and (2) the payment has been made on the date the amount has been deposited in court.?

23. In the case of *Smt. Mridula Dayal v. Vltth Addl. District Judge. Allahabad and Others*, 1986(2) Allahabad Rent Cases 132 following has been held:

?The rationale behind the provision contained in Section 20(4) of the Act permitting the tenant to deduct the amount deposited by him under subsection (1) of Section 30, from out of the rent, interest and costs payable by him is to be found in subsection (6) of Section 30, which creates a fiction to the effect that deposits made under subsection (1) of Section 30, are deemed to be payments made to the concerned person. The fiction under subsection (6) of Section 30, arises where the deposits have been made by the tenant in the circumstances enumerated in subsection (1) or subsection (2) of Section 30 and not otherwise. Subsection (1) of Section 30, countenances deposits being made by a person in the prescribed manner

(i) if such person claims to be a tenant of the building.

(ii) he tenders any amount as rent in respect of that building to the alleged, landlord and

(iii) the alleged landlord refused to accept the same.

The section envisages that there may be a controversy between the person claiming to be a tenant and the person whom he alleged to be his landlord with regards either to their relationship of being landlord and tenant or about the rate of rent payable by the person claiming to be the tenant or even about the actual amount of rent due from such person. The Person alleging himself to be the tenant can deposit the amount which was tendered by him as rent to the person whom he claims to be his landlord, and such person had refused to accept the same irrespective of whether the refusal of the landlord in accepting the said amount was justified or not. Any deposit so made by the person claiming to be a tenant is, as laid down in subsection (6) of Section 30, deemed to be the amount, of rent paid to be the person in whose favour it has been made. Accordingly whenever a question regarding extent of the amount of rent paid to the landlord arises, the amount deposited in accordance with the provisions of subsection (1) of Section 30 of the Act has to be taken into consideration and accounted for. The fiction does not come into play where the deposit has been made by a person in circumstances not covered by subsection (1) of Section 30 (we are omitting from consideration the provisions of subsection (2) of Section 30, as they are not relevant for our purposes.)?

24. In the case of *Chunni Lal and another v. Ramesh Chand and others*. 1992(2)

Allahabad Rent Cases 411, it has been held

?There is, therefore, no escape from the conclusion, that unless the condition precedent, envisaged under Section 30(1) of the said Act is alleged to exist, the tenant can not have recourse to the remedy of depositing the amount of rent in those proceedings and entitled as such to the benefit envisaged under Section 30(6) of the Act.

The mere fact that an application under Section 30 for permission to deposit the arrears of rent has been allowed by the Munsif, cannot absolve the tenant from establishing before the Court, where the suit for eviction was filed, that the landlord had refused to accept the rent lawfully tendered. It stands well settled that the Court trying the suit for eviction cannot be precluded from enquiring about the validity of the deposit made under the proceedings under section 30 of the U.P. Act no. 13 of 1972.

25. In the case of Chokha Mal alias Chaula Ram v. Ram Autar 1982(2) Allahabad Rent Cases 212, it has been held

?It is evident from the above that only a deposit under Section 30(1) is entitled to consideration under Section 20(4) of the Act. A deposit made under Section 30(2) of the Act is not to be taken into consideration. The reason behind this is clear. Where there is no dispute as to who the landlord is and he has refused to accept the rent, the tenant has been given an option to make the deposit in Court (as provided in Section 30(3) of the Act). Where there is a dispute as to who is entitled to receive the rent, the tenant may make a deposit under Section 30(2) of the Act but then he has not been given the benefit of such a deposit under Section 20(4) of the Act, for in such a case the person filing the suit for eviction has first to establish his rights to be entitled to receive the rent. It is also evident from the above that the making of the deposit is complete when subrules (1) and (2) of Rule 21 are complied with. If the application is made in the proper court in the prescribed form with the requisite number of copies, process fee and notices in the prescribed form and the deposit is made under the prescribed head as stated in subrule(2) the tenant has performed his part of duty. Subrule (1) contemplates that if there is compliance with subrule (1) and subrule (2) then notice shall be issued to the landlord. As a matter of fact, subrule(3) contemplates the duty cast on the Court. The words used are the Court shall cause notice of the deposit to be served on the opposite party along with a copy of the application. In case the notice is returned unserved, the duty is cast on the Court to intimate to the depositor to take fresh steps within a certain period of time or even extend the period of time so initially fixed. In case the tenant fails to do the needful then in that event notice would not be issued and the amount would be liable to be refunded to the depositor.?

26. Thus in view of the above law and facts of the present case the defendants have been rightly held to be defaulters liable for ejectment. The learned District Judge, has not committed any error of law or error apparent on the face of

record in decreeing the suit of the plaintiffs for ejectment and arrears of rent.

27. The revision is accordingly dismissed.

(Revision dismissed.)