

(1998) 03 AHC CK 0110
In the Allahabad High Court
Case No : Civil Revision No. 89 of 1998

Ram Prakash Gupta alias Babu Prakash Gupta alias Babu Lal	APPELLANT
Vs	
Dhakkan Lal and others	RESPONDENT

Date of Decision : 05-03-1998

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2

Citation : (1998) 2 AWC 1152

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : Vijaya Prakash, for the Appellant;

Final Decision : Dismissed

Judgement

B. K. Sharma, J.—Heard learned counsel for the revisionist on admission of this revision. This revision has been preferred by the tenant Ram Prakash Gupta against the order dated 25.11.1997 passed by the Vth Additional District Judge. Ghaziabad, in J.S.C.C. Suit No. 12 of 1992, whereby the amendment application of the plaintiff of the suit had been allowed- The suit has been filed in the year 1992 for ejectment on the basis of the relationship of landlord and tenant stating that Act No. 13 of 1972 was applicable to the building which was an old one. During the pendency of the suit by U. P. Act, No. 5 of 1995. Section 2 (g) of the Act No, 17 of 1972 was amended w.e.f. 29.9.94 to exclude from the operation of the Act any building whose monthly rent exceeded Rs. 2.000.

2. The plaintiff of the suit had moved an amendment application to take up the plea in the suit that the entire building of which this accommodation is a part contains Several tenants, the monthly rent of whom taken together exceeded Rs. 2.000 and consequently. U. P. Act No. 13 of 1972, will become inapplicable in view of the said amendment in law. This amendment application was opposed by the defendant of the suit who is now the revisionist before this Court but the trial Court allowed the amendment observing that at the stage of amendment, it was

not to be seen whether the plaintiff of the suit would be able to get the benefit of the amendment in U. P. Act No. 13 of 1972 or not and that it will be a matter to be seen at the time of the judgment. The trial court while allowing the amendment application also made a clear observation that the objections which are being raised at the time of amendment application, the defendant is free to take in the additional written statement and all these pleas will be considered by the Court at the time of the judgment. There is no legal infirmity in the order of the trial court requiring interference in this revision by this Court. The learned counsel for the revisionist claims that the term "building" under the Act No. 13 of 1972 would mean only the accommodation in suit and not all the accommodations existing in one building taken up together. He also claims that there is an authority of the Apex Court in regard to this plea. However, as observed by the trial court itself, all these legal pleas the defendant will be free to take in the additional written statement which he will be free to file in reply to the amendment made in the plaint of the suit and that this will be considered at the trial and in judgment of the suit. At the stage of the amendment, the trial court could not have properly considered whether the plea said to be taken by the amendment was sustainable in law. The allowing of the amendment application does not mean that the plea has found favour with the Court. The trial court was bound to allow the plea to be taken up in the light of the amendment in law which took place during the pendency of the suit and it was not open for the trial court to consider at the stage of disposal of the amendment application whether in fact, the landlord will be entitled to the benefit of this amendment or not. Furthermore, this amendment also contains factual allegations that there are other tenants in different parts of the building on the respective monthly rent and these averments also could be challenged by the tenant in his additional written statement and so the Court could consider the factual aspects and the legal aspects both only while disposing of the suit.

3. The learned counsel for the revisionist claims that the amendment in question changes the nature of the suit. It cannot be said at this stage that the amendment will change the nature of the suit. The learned counsel for the revisionist claims that the jurisdiction of the S.C.C. Court will be excluded and that the suit will turn into a title suit. Apparently, the amendment does not make the suit title suit. It will remain a suit between the landlord and the tenant. Further if at the trial of the S.C.C. suit the Small Cause Court comes to the conclusion that his jurisdiction is ousted, the law provides a course to be adopted in that case also.

4. The learned counsel for the revisionist has also argued that in any case, there should be direction to the trial court to decide the issue raised by this amendment as a preliminary issue. About this, all that needs to be said is that the S. C. Courts have been constituted to decide the suits in a summary manner to avoid delay and for this reason in S.C.C. Suits, straightaway, the date of hearing is given. It is expected that the trial court would decide the S.C.C. cases and particularly cases between landlord and tenant expeditiously. So. there is no

reason to give any direction to decide any particular issue between the parties as preliminary issue.

5. This revision has no force and is consequently dismissed summarily at the stage of admission itself.