
(2004) 01 AHC CK 0016

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1102 of 2004

Ramanand Vishwakarma and Another

APPELLANT

Vs

Radhey Shyam and Others

RESPONDENT

Date of Decision : 13-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a), 22

Citation : (2012) 2 RCR(Rent) 193

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : Anil Kumar Aditya, for the Appellant; Meva Lal Yadav, for the Respondent

Final Decision : Allowed

Judgement

S.P. Mehrotra, J.—The present Writ Petition has been filed by the petitioners under Article 226/ 227 of the Constitution of India, inter alia, praying for quashing the judgment and order dated 29.11.1991 (Annexure No. 12 to the Writ Petition) passed by the learned IVth Additional Civil Judge/Prescribed Authority, Varanasi and the judgment and order dated 3.12.2003 (Annexure No. 14 to the Writ Petition) passed by the learned Additional District Judge, Court No. 14, Varanasi (Appellate Authority). The dispute relates to the eastern portion of House No. B-35/32 situated in Mohalla Sarainandan, Varanasi. The said portion has hereinafter been referred to as "the disputed portion".

2. From a perusal of the averments made in the Writ Petition and Annexures thereto, it appears that Ram Ji (predecessor-in-interest of the respondents No. 1 to 8 and the respondents No. 11 and 12), Jokhoo (father of the said Ram Ji), Satya Narain and Badri (respondent Nos. 9 and 10 herein respectively) filed a Release Application u/s 21(1)(a) of the U.P. Act No. XIII of 1972 (in short "the Act") against the petitioners for the release of the disputed portion.

3. It was, inter alia, alleged in the Release Application that House No. B-35/32 and N-14/126 situated in Mohalla Sarainandan, Varanasi originally belonged to the said Ram Ji, Jokhoo, Satya Narain and Badri (Applicant Nos. 1, 2, 3 and 4 in the Release Application); and that the said Ram Ji (Applicant No. 1 in the Release Application), Satya Narain (Applicant No. 3 in the Release Application) and Badri (Applicant No. 4 in the Release Application) were real brothers and Jokhoo (Applicant No. 2 in the Release Application) was father of the said Ram Ji, Satya Narain and Badri; and that by oral family settlement, the entire property were divided amongst the said Ram Ji, Jokhoo, Satya Narain and Badri (Applicants in the Release Application) about 35 years back; and that in the said family settlement, House No. B-35/32 came to the share of the said Ram Ji (Applicant No. 1 in the Release Application) and House No. N-14/126 came in the share of the said Jokhoo, Satya Narain and Badri (Applicant Nos. 2, 3 and 4 in the Release Application); and that the said oral family settlement was effected and acted upon; and that the said Ram Ji (Applicant No. 1 in the Release Application) alone realized rent from the petitioners (Opposite Parties in the said Release Application) so long as the petitioners paid the same; and that the said Ram Ji (Applicant No. 1 in the Release Application) being sole owner of House No. B-35/32 had got every right to induct tenant in the said House No. B-35/32 and to realize rent from the tenant and to evict tenants there-from.; and that the said Ram Ji (Applicant No. 1 in the Release Application) was sole owner and landlord of the said premises No. B-35/32.

4. It was, inter alia, further alleged in the said Release Application that the family of the said Ram Ji (Applicant No. 1 in the Release Application) consisted of 10 members, and all the members of the said Ram Ji (Applicant No. 1 in the Release Application) resided with the said Ram Ji in House No. B-35/32; and that the accommodation in possession of the said Ram Ji (Applicant No. 1 in the Release Application) was insufficient for the residence of the said Ram Ji and his family members; and that all the sons of the said Ram Ji (Applicant No. 1 in the Release Application) had grown up and the daughter of the said Ram Ji had also grown up, as such, they also required separate accommodation for observing their sanctity of privacy in the family; and that there was no accommodation for the newly wedded son and his wife; and that the said Ram Ji (Applicant No. 1 in the Release Application) did not have any other house in possession except the said House No. B-35/32; and that the need of the said Ram Ji (Applicant No. 1 in the Release Application) was genuine and bonafide; and that on comparison of hardship, the petitioners (Opposite parties in the Release Application) would neither suffer any hard-ship, nor substantial loss.

5. The said Release Application was registered as Rent Case No. 34 of 1986. Copy of the said Release Application has been filed as Annexure No. 1 to the Writ Petition.

6. The petitioners (Opposite Parties in the Release Application) contested the said Release Application and filed their Written Statement. Copy of the Written

Statement has been filed as Annexure No. 2 to the Writ Petition.

7. It further appears that both the sides filed affidavits and documentary evidence in support of their respective cases.

8. By the judgment and order dated 29.11.1991 (Annexure No. 12 to the Writ Petition), the learned 4th Additional Civil Judge (Prescribed Authority), Varanasi allowed the said Release Application in respect of the disputed portion, and released the same in favour of the said Ram Ji (Applicant No. 1 in the Release Application).

9. On consideration of the material on record, it was, interalia, held in the said judgment and order dated 29.11.1991 that the Release Application for the release of the disputed portion in favour of the said Ram Ji (Applicant No. 1 in the Release Application) was maintainable; and that the said Ram Ji (Applicant No. 1 in the Release Application) had only two rooms in his possession in the said House No. B-35/32 wherein 10 family members of the said Ram Ji (Applicant No. 1 in the Release Application) were residing; and that the need of the said Ram Ji (Applicant No. 1 in the Release Application) was real and bonafide; and that on comparison of hardship, the said Ram Ji (Applicant No. 1 in the Release Application) would suffer greater hardship, in case, the Release Application in respect of the disputed portion was not allowed than would be suffered by the petitioners (Opposite Parties in the Release Application) in case, the Release Application in respect of the disputed portion was allowed.

10. Thereafter, the petitioners (Opposite Parties in the Release Application) filed an Appeal u/s 22 of the Act which was registered as Rent Appeal No. 2 of 1992.

11. By the judgment and order dated 3.12.2003 (Annexure No. 14 to the Writ Petition), the learned Additional District Judge, Court No. 14, Varanasi (Appellate Authority) dismissed the said Rent Appeal No. 2 of 1992.

12. On consideration of the material on record, it was, interalia, held by the Appellate Authority that as a result of the family partition, the said House No. B-35/32 came in the share of the said Ram Ji (Applicant No. 1 in the said Release Application), and therefore, the said Release Application was maintainable at the instance of the said Ram Ji (Applicant No. 1 in the said Release Application); and that it was not necessary for the said Ram Ji (Applicant No. 1 in the said Release Application) to have impleaded, the said Jokhoo, Satya Narain and Badri as parties in the said Release Application. It was, interalia further held that the conclusion of the Prescribed Authority that the said Ram Ji (Applicant No. 1 in the said Release Application) had two rooms in his possession, while other two rooms were in possession of the petitioners (Opposite Parties in the said Release Application) was correct; and that the need of the said Ram Ji (Applicant No. 1 in the said Release Application) having regard to the number of family members of the said Ram Ji (Applicant No. 1 in the said Release Application) was bonafide; and that the said Ram Ji (Applicant No. 1 in the Release Application) would suffer greater hardship, in case, the said Release Application was not allowed than

would be suffered by the petitioners (Opposite Parties in the said Release Application), in case, the said Release Application was allowed.

13. It may be mentioned that during the pendency of the litigation before the authorities below, the said Jokhoo and the said Ram Ji expired and their respective heirs and legal representatives were brought on record.

14. The petitioners have now filed the present Writ Petition seeking the reliefs as mentioned above.

15. I have heard Sri Anil Kumar Aditya, learned counsel for the petitioners, and Sri Mewa Lal Yadav, learned counsel for the caveartor-respondent No. 11 at length.

16. It is submitted by Sri Aditya, learned counsel for the petitioners that the authorities below acted illegally in accepting the plea of oral family partition/settlement raised on behalf of the said Ram Ji (Applicant No. 1 in the said Release Application) and in holding that the said Release Application at the instance of the said Ram Ji (Applicant No. 1 in the said Release Application) was maintainable. It is, interalia, further submitted that the petitioners did not admit the plea of oral family partition/settlement raised on behalf of the said Ram Ji (Applicant No. 1 in the said Release Application).

17. I have considered the submissions made by Sri Anil Kumar Aditya, learned counsel for the petitioners, and I find myself unable to accept the same.

18. The authorities below, on consideration of the material on record, have accepted the version of the said Ram Ji (Applicant No. 1 in the said Release Application) in regard to the oral family partition/settlement, and have held that the Release Application at the instance of the said Ram Ji (Applicant No. 1 in the said Release Application) was maintainable. The said finding regarding the oral family partition/settlement is basically is the finding of fact. No illegality or perversity has been shown in the said finding recorded by the authorities below. No interference is called for with the said finding recorded by the authorities below.

19. Sri Anil Kumar Aditya, learned counsel for the petitioners has relied upon the following decisions in support of his plea against the oral family partition/settlement set up by the said Ram Ji (Applicant No. 1 in the said Release Application) :-

1. Smt Ram Kali and others v. 4th Additional District Judge, Gorakhpur and others, 2001(2) A.R.C. 469.

2. Smt Anjum Ara v. XIth Additional District Judge, Jhansi and others 2001 (2) A.R.C. 122.

In Smt Ram Kali case (Supra), the petitioners filed the Release Application u/s 21(1)(a) of the Act. It was, interalia, asserted by the petitioners that they had received the disputed property in their share on the basis of the family partition

dated 15.12.1982. The Prescribed Authority allowed the said Release Application, interalia, believing the version of the petitioners regarding partition. However, on appeal, the Appellate Authority set-aside the said order of the Prescribed Authority, interalia, disbelieving the case set-up by the petitioners regarding partition and holding that the petitioners could not be treated to be landlord of the disputed property.

Thereupon, the petitioners filed a Writ Petition before this Court.

20. A learned Single Judge of this Court dismissed the said Writ Petition. It was, interalia, held that the said findings recorded by the Appellate Authority disbelieving the partition-case setup by the petitioners and holding that the petitioners could not be treated to be the landlord of the disputed property, did not suffer from any illegality or infirmity. The facts of Smt. Ram Kali case (Supra) are distinguishable from the facts of the present case. In the present case, the authorities below have believed the version of the said Ram Ji (Applicant No. 1 in the said Release Application) regarding oral family partition/settlement. The said finding has been recorded on consideration of the material on record.

Thus, the decision in Smt. Ram Kali case (Supra) is not applicable to the facts and circumstances of the present case.

21. In Anjum Ara case (Supra), the petitioner filed a Release Application u/s 21(1)(a) of the Act, interalia, alleging private partition. The Prescribed Authority allowed the said Release Application. However, on appeal, the Appellate Authority allowed the appeal and rejected the said Release Application filed by the petitioner. The version of the petitioner regarding the private partition was evidently not believed by the Appellate Authority.

Thereupon, the petitioners filed a Writ Petition before this Court.

22. A learned Single Judge of this Court dismissed the said Writ Petition. It was, interalia, held that the entire facts regarding partition appeared to have been concocted to create an artificial need to oust the tenant. Therefore, the Appellate Authority rightly rejected the said Release Application filed by the petitioners.

23. It will, thus, be seen that the facts of Smt. Anjum Ara case (Supra) are distinguishable from the facts of the present case.

In the present case, as noted earlier, both the Authorities below, on consideration of the material on record, have accepted the version of the said Ram Ji (Applicant No. 1 in the said Release Application) regarding oral family partition/settlement. The decision in Smt. Anjum Ara case (Supra), thus, does not help the learned counsel for the petitioners.

24. Sri Aditya, learned counsel for the petitioners next submits that the authorities below have taken into consideration the report of the Commissioner submitted in Original Suit No. 59 of 1986 in deciding the question of extent of accommodation in House No. B-35/32. It is further submitted by Sri Aditya,

learned counsel for the petitioners that the said report of the Commissioner did not establish that the said House No. B-35/32 was single-storied house.

25. I have considered the submissions made by Sri Aditya, learned counsel for the petitioners and I find myself unable to accept the same. Besides the report of the Commissioner submitted in Original Suit No. 59 of 1986, copy whereof had been filed along with an affidavit (Paper No. 40Ga) by the said Ram Ji (Applicant No. 1 in the said Release Application) before the Prescribed Authority, the Authorities below also considered the other material on record, and concluded that the said House No. B-35/32 was single-storied wherein two rooms were in possession of the said Ram Ji (Applicant No. 1 in the said Release Application), while two other rooms were in possession of the petitioners (Opposite Parties in the said Release Application).

26. The said finding recorded by the Authorities below, on consideration of the material on record, including the said report of the Commissioner, is a finding of fact. No illegality or perversity has been shown by the learned counsel for the petitioners in the said finding recorded by the Authorities below. No interference is called for with said finding of fact under Article 226/ 227 of the Constitution of India.

27. Sri Aditya, learned counsel for the petitioners then tries to assail the findings recorded by the Authorities below on the questions of bonafide need and comparative hardship. The said findings on the questions of bonafide need and comparative hardships recorded by the Authorities below are findings of fact. The High Court in exercise of its Writ Jurisdiction under Article 226 of the Constitution of India or its Supervisory Jurisdiction under Article 227 of the Constitution of India, normally does not interfere with the findings of fact recorded by the authorities below on consideration of the material on record unless such findings are shown to be suffering from jurisdictional errors or manifest illegality or perversity.

28. Neither any jurisdictional error has been shown in the findings recorded by the Authorities below on consideration of the material on record on the questions of bonafide need and comparative hardship, nor has any illegality or perversity been shown in the said findings recorded by the Authorities below. No interference is, therefore, called for with the said findings recorded on the questions of bonafide need and comparative hardship.

29. In view of the aforesaid discussion, I am of the opinion that the Writ Petition lacks merit, and the same is liable to be dismissed. The Writ Petition is dismissed accordingly.

30. Sri Anil Kumar Aditya, learned counsel for the petitioners then submits that reasonable time be granted to the petitioners for vacating the disputed portion.

31. I have heard Sri Aditya, learned counsel for the petitioners and Sri Mewa Lal Yadav, learned counsel for the caveator-respondent No. 11 on the said question

also.

32. Having regard to the facts and circumstances of the case and having considered the submissions made by the learned counsel for the parties, it is directed that the petitioners will not be evicted from the disputed portion till 30.6.2004 provided the petitioners give an undertaking on their joint personal affidavit within six weeks from today incorporating the following conditions:

1. The petitioners will vacate the disputed portion on or before 30.6.2004 and will handover its peaceful vacant possession to the respondents.
2. The petitioners will continue to pay rent/damages in respect of the disputed portion to the respondents till the date of vacating the disputed portion.

In case, the aforesaid undertaking is not given within the time mentioned above or any of the aforesaid conditions incorporated in the said undertaking is violated, this order granting time to the petitioners will stand automatically vacated, and it will become open to the respondents to execute the release order forthwith.