

(2010) 04 AHC CK 0114
In the Allahabad High Court

Ramji and Others

APPELLANT

Vs

Ram Lakshaman Janaki Bal Mukund Ji Trust and Others

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2010) 04 AHC CK 0114

Hon'ble Judges : Devendra Pratap Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Devendra Pratap Singh, J.—Heard learned Counsel for the parties.

2. This petition is directed against concurrent judgments dated 31.10.2007 and 12.1.2009 by which both the courts below have decreed the suit filed by the respondent-landlord for eviction and arrears of rent.

3. The necessary facts are that the respondent-landlord instituted a suit No. 24 of 2002 before the Judge, Small Cause Court inter-alia with the allegation that Late Kishori Lal Srivastava occupied the disputed shop as a tenant where he was running a tailoring shop. After his death, his heirs became joint tenants. Initially the rent of the shop was Rs. 4/-per month but from January, 1990 with mutual consent, it was increased to Rs. 100/-per month and the defendant No. 1 was running the business in the disputed shop on behalf of all the heirs but he defaulted in payment of rent from January, 1990 and in fact, had closed down the shop and despite notice dated 12.2.2002, neither the rent for about 45 months was paid nor the shop was vacated and therefore, he filed the suit for arrears of rent from 20.2.1999 to 20.3.2002 and eviction. During the pendency, defendant Nos. 1 and 2 died whereupon their heirs were brought on record.

4. The petitioner-tenant contested the suit inter-alia with the allegation that initially the rate of rent was Rs. 2/-per month in 1970 which was subsequently increased and currently was Rs. 4/-per month only. It was also stated that the

landlord did not issue monthly receipt but after expiry of three years, he used to issue block receipt and that all the rent was duly paid and after receipt of notice, when the rent was tendered through money order at the rate of Rs. 4/- per month it was refused where-after an application for deposit in Court was made.

5. After the parties had led their evidence, both the courts below have decreed the suit.

6. It is urged on behalf of the petitioner that the trial court had erroneously applied the amended provision of Order 17 CPC in rejecting the adjournment on the ground that more than three adjournments had already been granted. It is also urged that even if the amended Order 17 was applicable to the facts of the case, in view of the decision of the Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), the court had discretion to grant more than three adjournments. It is further contended that had the adjournment been granted the court could not have returned the finding that the rate of rent was Rs. 100/- per month.

7. No doubt, the Apex Court in Salem Advocate Bar Association Case (Supra) has held that to save the proviso to Order 17 Rule (1) from the vice of Article 14 of the Constitution, it was necessary to read it down so as not to take away the discretion of the court in extreme and hard cases. However, it goes on to hold that grant of any adjournment, let alone the first, second or third adjournment, is not a right of a party. The court has gone through the order sheet of the suit and finds that sufficient opportunity was granted to the petitioner and even at the stage of leading the evidence, he was granted more than five adjournments but yet he did not lead evidence and therefore, the courts were justified in closing the evidence of the petitioner. Though trial court did consider the amended provision of Order 17 but the aforesaid fact itself would reveal that already more than three adjournments had been granted to the petitioner. The record reveals that the petitioner was granted full opportunity for presenting his evidence. Both the courts below have gone into detail of various dates fixed including the date fixed for leading the evidence on behalf of the petitioner but he himself did not avail the opportunity and therefore the finding of grant of reasonable opportunity to the petitioner, on the facts of the case, appears to be justified. The courts below, especially the revisional court, after examining the assessment records of the Nagar Palika which showed that Late Kishori Lal Srivastava was a tenant at Rs. 60/- per month in the disputed premises vide assessment of 1976. It would be preposterous to even suggest that he could now be a tenant at Rs. 4/- in 1990. Therefore, it has rightly drawn an inference in favour of the landlord. This finding does not appear to be vitiated or perverse. Even before this Court the petitioner has not disclosed the nature of the evidence by which he could prove that the rent was only Rs. 4/- per month in the teeth of the aforesaid documentary evidence on record. He has also not challenged the entry of the assessment list.

8. For the reasons above, this is not a fit case for interference under Article 226

of the Constitution of India. Rejected.