

(2011) 05 AHC CK 0445

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4912 of 1997

Rana Pratap Vinayak and Others

APPELLANT

Vs

VIIIth A.D.J. and Others

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2011) 7 ADJ 372 : (2011) 5 AWC 4849

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon'ble S.U. Khan, J.—Heard Sri N.C. Rajvanshi, learned Senior Counsel assisted by Sri M.K. Rajvanshi, learned counsel for the petitioners and Sri Ajay Rajendra, learned counsel for contesting respondents.

2. Late Sri Ram Lal Bakshi predecessor in interest of the petitioners took the house in dispute situate at Topkhana, Meerut Cannt. Meerut on rent from its owner late Sri Rameshwar Sawaroop predecessor in interest of respondent Nos. 3 to 12 at the rent of Rs. 16/- per month. Thereafter on 4.7.1966, late Sri Rameshwar Swaroop, the owner of the house in dispute sold the same to the tenant late Sri Ram Lal Bakshi for Rs. 1500/- Thereafter on 2.9.966 late Sri Ram Lal Bakshi executed an agreement for sale in favour of late Sri Rameshwar Swaroop, copy of the agreement is annexed as Annexure 1 to the writ petition. Under para-1 of the said agreement it was stipulated that whenever Rameswar Swaroop returned the amount, Ram Lal Bakshi would execute sale-deed of the house in dispute in his favour and thereafter Ram Lal Bakshi would re-continue to be a tenant.

3. Thereafter Rameshwar Swaroop filed Original Suit No. 525 of 1968 for specific performance which was decreed on 5.2.1975 by City Munsif, Meerut. Appeal filed against the same being Civil Appeal No. 97 of 1975 was dismissed on 14.4.1977

by II Additional Civil Judge, Meerut. Thereafter, Sri Ram Lai Bakshi filed second appeal which was numbered as 1880 of 1977 in this Court. The said second appeal was pending when writ petition was filed. In the written argument filed by Shri Ajay Rajendra it is mentioned in para-3 that the said second appeal has been dismissed as abated by order dated 16.12.2009.

4. Thereafter Rameshwar Swaroop filed execution application. In the execution case the Presiding Officer of the Executing Court executed the sale-deed in favour of Rameshwar Swaroop on behalf of Ram Lal Bakshi on 13.8.1978.

5. Thereafter another execution application was filed for taking possession of the house in dispute. In the said application, objections u/s 47 CPC were filed by Ram Lal Bakshi (or his legal representatives). The objections were rejected on 4.7.1992 by Munsif City, Meerut. Annexure-4 to the writ petition is copy of the order of Munsif City, Meerut which does not contain number of the case however in para 8 of the writ petition it is mentioned that the objections were registered as Misc. Case No. 15 of 1986 and were filed in Misc. Case No. 10 of 1985. Against order dated 4.7.1992 legal representatives of Ram Lal Bakshi filed Civil Revision No. 245 of 1992. VIIIth Additional District Judge, Meerut through judgment and order dated 20.1.1997 dismissed the revision hence this writ petition.

6. In my opinion, as under the agreement itself it was stipulated that after execution of the sale-deed, Ram Lal Bakshi would again become tenant or his tenancy would be revived hence in execution of the decree for specific performance he or his legal representatives could not be evicted. Whether the sale-deed was executed voluntarily or by the Court after decree for specific performance will not make any difference. However, revisional Court held that after execution of the sale-deed a fresh tenancy would have come into existence which was prohibited by UP. Urban Building Regulation of Letting and Eviction Act, 1972 (U.P. Act No. 13 of 1972) hence such lease agreement was void. For this proposition reliance was placed upon Full Bench authority of this Court reported in Nutan Kumar v. II Additional District Judge 1993 (2) ARC 204 . The said Full Bench authority was overruled by Supreme Court in Nutan Kumar and Others Vs. IInd Additional District Judge and Others,

7. Accordingly, both the impugned orders are set aside. Application filed by contesting respondents for taking possession is rejected and it is made clear that after execution of the sale-deed Shri Ram Lal Bakshi or his legal representatives again became tenant(s).

8. However, rent of Rs. 16/- per month for a house situate in Meerut Cantt. is at present rather ridiculous. On the suggestion of the Court Sri. N.C. Rajvanshi, learned Senior Counsel appearing for the petitioners has agreed for payment of rent at the rate of Rs. 1000/- per month from June, 2011 onwards inclusive of all taxes (house tax, water tax etc.). No further amount over and above Rs. 1000/- per month shall be payable.

Writ petition is accordingly allowed with the above directions.