

(2000) 03 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15049 of 1983

Ratan Kumar and Others

APPELLANT

Vs

IIIrd Addl. District Judge, Allahabad and Others

RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1)(a)

Citation : (2000) 03 AHC CK 0076

Hon'ble Judges : S.N.Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the prescribed authority dated 2361981 rejecting the application filed by the petitioners for release of the disputed accommodation and the order of the appellate authority dated 11 81983 affirming the said order in appeal.

2. The petitioners filed application under Section 21(l)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act) against respondent No. 3 with the allegations that he is their tenant of the premises in dispute. They alleged that Basdev Prasad, their grandfather, was owner of the property. A partition took place on 1101962 between the members of the family and the disputed house No. 74 Mohtasimganj fell into his share. Basdev Prasad and his wife executed a registered Will in favour of the petitioners on 1991972. Basdev Prasad died in the year 1972 and his wife died on 2511978. The release application was filed on 151978. They urged that they needed the disputed house for residential purpose as in their family there were nine members and the accommodation with them in house No. 85 Zero Road consists of one room, one verandah and other common amenities.

3. Respondent No. 3 contested the application and alleged that after tindeath of Basdev Prasad, his son Lalji became owner of the properly and the petitioners were not landlords as they did not inherit the property. They denied that the

need of the landlord was bona fide and genuine. The prescribed authority recorded finding that the petitioners are landlords of the disputed premises. The need is bona fide but on a comparative hardship it was found that if respondent No. 3 was evicted he would suffer greater hardship. The application was dismissed on this ground by the prescribed authority on 23.6.1981. The petitioners preferred an appeal against the said order. Respondent No. 3 also filed crossobjection. The appellate authority, respondent No. 1, held that the need of the petitioners for the disputed premises was bona fide and genuine and they would suffer a greater hardship in case the application is rejected. The appeal was, however, dismissed on 11.8.1983 on the ground that the petitioners failed to prove that they were landlords of the disputed premises.

4. It was never denied that originally Basdev Prasad and his wife Tijjo were owners of the property and after their death their son Lalji could have inherited the property. The case of the petitioners was that Basdev Prasad and Tijjo had bequeathed the property in dispute by registered Will on 19th September, 1962. They had filed photostat copy of the Will before the prescribed authority. This was relied upon by the prescribed authority. Shambhoo Nath was one of the attesting witnesses of the Will. The petitioners filed his affidavit before the prescribed authority wherein he stated that the Will was executed by Basdev Prasad and Tijjo in his presence. He has also annexed the copy of the Will with this affidavit. The appellate authority did not accept this affidavit because the respondents had objected to it. Lalji, father of the petitioners, had filed an affidavit before the prescribed authority stating that he was neither owner nor landlord of the building in dispute and did not claim and demand rent from the respondent No. 3. There was no dispute from the natural heir that the Will was not executed. The appellate authority was not justified in not taking into consideration the affidavit filed by Shambhoo Nath keeping in view the fact that Lalji himself had filed affidavit stating that he does not claim the ownership of the property.

5. Tijjo Devi died on 25.11.1978. The petitioners had also filed a rent receipt dated 9th February, 1978 showing that the petitioners were owners of the property. Even otherwise the person who succeeds the property will succeed to the rights of the erstwhile owner and landlord. The appellate authority has already recorded a finding that the need of the petitioners is bona fide and genuine and they would suffer a greater hardship in case their application is rejected.

6. In view of the above the writ petition is allowed. The order dated 11.8.1983 passed by the appellate authority is hereby quashed and respondent No. 1 is directed to pass appropriate order in accordance with law within two months from the date of production of a certified copy of this order. Petition allowed.