
(2010) 08 AHC CK 0269

In the Allahabad High Court

Case No : Rent Control Petition No. 104 of 2010

Roop Rani Awasthi

APPELLANT

Vs

Judge, Small Causes/District Judge, Unnao and another

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Citation : (2010) 08 AHC CK 0269

Hon'ble Judges : Anil Kumar, J

Final Decision : Dismissed

Judgement

Anil Kumar,J.

1. Heard Sri Ajay Kumar Singh, learned counsel for the petitioner and Sri C.B.Pandey, learned Standing Counsel on behalf of the respondent No. 1.

2. Factual matrix in respect to the controversy which is involved in the present case, in brief as submitted by the learned counsel for the petitioner are that the respondent No. 2 (Smt. Prem Kumari) filed a suit (SCC Suit No. 1 of 2010) in the court of Civil Judge, Small Causes/District, Lucknow. In the said suit, the petitioner before this Court is defendant, and on his behalf an application for local inspection has been moved numbered as paper No. 23/6 to which the respondent No. 2 filed his objections (paper No. 25c).

3. On 9.7.2010 when the matter was taken up by the respondent No. 1 for disposal of the matter in question neither the counsel for the defendant/respondent or the defendant was present to press the application nor there was any application on behalf of the counsel or the defendant/defendant for adjournment of the case.

4. In view of the abovesaid facts, the court below had proceeded to dispose of the application moved by the petitioner for issuance of the commission and the objections filed against the said application the respondent No. 2.

5. After hearing the counsel for the respondent No. 2 on merit and going through

the material on record the court below had recorded a finding that the application for commission has been moved with a mala fide with unwarranted intention only with oblique motive and purpose to linger the SCC Suit and was also held by the court below that the issuance of commission not at all for determination whether the provisions of U.P. Act XIII of 1972 are applicable in the process of disposal or not as the said controversy will be decided on the basis of the pleading and material on record. Further the pleas that the premises in question was constructed in the year 1976 or in the year 1994, and the alteration in the premises, made by the petitioner, as alleged by the opposite party No. 2, in her plaint therefore on 21.5.2010 will also be subject to evidence led in this regard by the parties. On the said ground the application was rejected and the matter was fixed for hearing on 30.7.2010. Aggrieved by the said order, the present writ petition has been filed.

6. Sri Ajay Kumar Singh, learned counsel for the petitioner while assailing the said impugned order submits that the same has been passed by respondent No. 1 in exercise of the authority and jurisdiction which is not vested in him. So, the same is arbitrary in nature and liable to be set aside.

7. He further submits that while rejecting the application for issuance of commission the court below has not taken into consideration the fact that the same is necessary in order to determine whether the partition wall has been demolished or not. Another limb of argument raised by Sri Ajay Kumar Singh, learned counsel for the petitioner is to the effect that the issue of the commission is necessary in order to determine whether the U.P. Act No. XIII of 1972 is applicable or not.

8. I have heard the learned counsel who are present today and perused the record.

9. So far as the facts are to the effect that a SCC Suit was filed by the O.P. No. 2 against the petitioner and an application for issuance of the commission was moved on behalf of the petitioner was moved therein and the same was taken up for disposal on 9.7.2010 and on the said date neither the petitioner who was respondent in the said suit or his counsel was present nor an application for adjournment was given, as such in those circumstances, the court below had proceeded to hear the matter in question and after hearing the plaintiff/respondent No. 2, the same was rejected in view of the reasoning given in the impugned order dated 9.7.2010.

10. One of the argument advanced by the learned counsel for the petitioner that the issuance of commission is necessary to adjudicate the fact whether the provisions of U.P. Act XIII of 1972 is applicable or not the said plea can be decided on the basis of the pleading and material on record and for the same the issuance of commission is not at all necessary. So the finding recorded in this regard by the court below while rejecting the application in question on the said plea is perfectly valid, accordingly argument as submitted by the learned counsel

in this regard is misconceived, got no force and rejected.

11. Next argument advanced by the learned counsel for the petitioner that in the present case, the issuance of commission is necessary in order to determine whether the wall has been demolished or not is also misconceived as the same is also subject to evidence led by the parties.

12. It is well settled proposition of law that when an application for local inspection is moved in a case, then the court concerned has a discretion to issue the same or not keeping the facts of the case and the evidence led by the parties and whether the same is necessary to arrive at a just conclusion either way or where the Court feels that there is some ambiguity in the evidence which can be clarified by making inspection and upto what extent the same is necessary for disposal of the controversy involved in the case .

13. Thus, it is not mandatory on the part of the Court to allow each and every application which is moved for local inspection and the same cannot be claimed as a matter of right by the parties. Further, while allowing or rejecting the same, the court should also take into consideration the motive and reasons behind moving the same coupled with the factors, e.g. for what purpose it has been moved.

14. In the case of Ranbir Singh Sheoran Vs. VIth Additional District Judge, Muzaffar Nagar and others, 1997(2) JCLR 860 (All), this Court has held as under:

"The local inspection by Court is made only in those cases where on the evidence led by the parties Court is not able to arrive at a just conclusion either way or where the Court feels that there is some ambiguity in the evidence which can be clarified by making inspection. Local inspection by the Court cannot be claimed as of right by any party. Such inspections are made to appreciate the evidence already on record and Court is not expected to visit the site for collecting evidence."

15. In the case of Son Pal Vs. Vth Additional District Judge, Aligarh and others, 1999(2) Allahabad Rent Cases, 596, this Court has held as under:

"Whether or not a local inspection or commission is necessary for a just decision of case can only be decided after the Court hears the argument and it is for the Court, thereafter, to decide whether to go for local inspection or to issue commission. Instead of addressing arguments, it appears that the petitioner is causing unwarranted delay in disposal of the appeal."

16. In view of the abovesaid facts, I do not find any illegality or infirmity in the order which is under challenge in the present case. Accordingly, the present writ petition lacks merit and the same is dismissed.

No order as to costs.