
(2012) 08 AHC CK 0121
In the Allahabad High Court
Case No : Writ A. No. 8841 of 1990

Sangam Lal Yadav

APPELLANT

Vs

Brahm Swarup Tiwari (Since Deceased) & Others

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 18, 23, 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 3(j)

Citation : (2012) 08 AHC CK 0121

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard Sri Dhruv Narayan, Senior Advocate, assisted by Sri R.C.Singh, for the petitioner. None has put in appearance on behalf of respondents though names of Sri Alok Ranjan Mishra and Sri R.N.Upadhyaya, Advocates have been shown in the cause list.

2. Firstly, it is contended that there was a serious title dispute between the parties and therefore, by virtue of Section 23 of Provincial Small Cause Courts Act, 1887 (hereinafter referred to as "Act, 1887"), plaint ought to have been returned by Trial Court. In summary proceedings, title dispute could not have been determined. Secondly, it is contended that at no point of time petitioner paid rent to the plaintiffrespondent and hence there existed no relationship of tenant and landlord hence also the impugned orders are liable to be set aside. Reliance is placed on Smt. Sughra Begum Vs. Additional District Judge XIIth, Lucknow and others, 1999(1) ARC 582; Iqbal Ahmad Vs. VIth Addl. District Judge, Varanasi and others, 2000(1) ARC 142; Harnam Singh Vs. District Judge, Lalitpur and others, 2000(2) ARC 515; and Munshi Khan Vs. District Judge, Ghaziabad and others, 2002(2) ARC 393.

3. The facts in brief giving rise to the present dispute are as under:

4. This dispute relates to House No.85, Sohbatibagh, Allahabad City (hereinafter

referred to as "disputed building"). A suit was filed by Brahm Swarup Tiwari (now deceased and substituted by legal heirs) i.e. S.C.C. Suit No.423 of 1980 claiming himself to be owner and landlord of disputed building. He alleged that Late Suraj Bali Tiwari was owner of disputed building. He died on 21st October, 1979. Before his death, a Will was executed in favour of Brahm Swarup Tiwari (respondent no.1 now deceased), on 15.10.1979, by virtue whereof he became owner of disputed building after the death of Suraj Bali Tiwari. It was also alleged that there was no other legal heir of Suraj Bali Tiwari. He (Suraj Bali Tiwari) was the real uncle of plaintiffrespondent no.1 hence also disputed building was succeeded by him.

5. The plaintiff (respondent no.1) alleged that petitioner Sangam Lal Yadav was a tenant in the disputed building and having committed default in payment of rent from May, 1972 despite demand vide notice dated 12.2.1980 whereby his tenancy was also stood terminated. A decree for ejectment and recovery of arrears of rent and damage pendente lite were prayed.

6. The petitionerdefendant contested the suit alleging that plaintiff respondent no.1 had no right to seek ejectment of petitionerdefendant. The petitioner claimed that after the death of late Suraj Bali Tiwari, he himself has become owner of disputed property. He claims to be residing in the disputed house as owner (landlord) alleging that Suraj Bali having no heir, had executed a Will on 22.5.1974 in his favour and after his death, petitionerdefendant has succeeded disputed property in the capacity of owner.

7. The Trial Court vide judgment dated 21st August, 1985 decreed the suit for ejectment and arrears of rent and damages. It has found that entry of petitionerdefendant in the disputed building as a tenant is admitted by him. However, he has subsequently claimed right of retention in the building as owner after the death of Suraj Bali Tiwari. His claim is founded on the wish deed dated 22.5.1974 which is admittedly an unregistered document but the same was not proved before Trial Court in accordance with law. For various reasons also, as discussed in the Trial Court's judgement, it has disbelieved the aforesaid document. The petitioner thereafter came in revision i.e. S.C.R. No.412 of 1985 which came to be heard by Vth Addl. District Judge, Allahabad who has dismissed the same vide judgment dated 16.3.1990.

8. Sri Dhruv Narain, learned Senior Advocate referring to the rival claim set up between the two parties contended that there was a real title dispute between the parties and therefore, small cause suit was not triable by virtue of Section 23 of Provincial Small Cause Court Act, 1887.

9. The argument is based on Section 23 of Act 1887 and it would be useful to have a glance thereof which reads as under:

"23. Return of plaints in suits involving questions of title.(1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or

disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under subsection(1), it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1877, be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction."

10. A bare reading of the provision shows that it gives an option to the Court to return the plaint to be presented to a Court having jurisdiction to determine title but before that it has to be satisfied that right of the plaintiff and the relief claimed by him depend upon the proof or disproof of a title to immoveable property.

11. Section 23 of Act, 1887, therefore, does not oust jurisdiction of Small Cause Court to decide the question of title outright. It has been repeatedly held that question of title cannot be finally decided in a small cause suit, but it can be decided incidentally for the purpose of deciding the main issue, in a case, which otherwise is within the jurisdiction of the Small Cause Court.

12. Section 23 of Act, 1887 has been construed by a three judge judgment of Apex Court in Budhu Mal Vs. Mahabir Prasad and Ors., AIR 1988 SC 1772 and the Court said:

"It is true that Section 23 does not make it obligatory on the court of small causes to invariably return the plaint once a question of title is raised by the tenant. It is also true that in a suit instituted by the landlord against his tenant on the basis of contract of tenancy, a question of title could also incidentally be gone into and that any finding recorded by a Judge, Small Causes in this behalf could not be res judicata in a suit based on title. In cannot, however, be gainsaid that in enacting Section 23 the Legislature must have had in contemplation some cases in which the discretion to return the plaint ought to be exercised in order to do complete justice between the parties. On the facts of the instant cases we feel that these are such cases in which in order to do complete justice between the parties the plaints ought to have been returned for presentation to a court having jurisdiction to determine the title."

13. The Court has further said that, if the suit cannot be construed to be one between landlord and tenant, that would not be cognizable by Court of Small Causes.

14. Again in Shamim Akhtar Vs. Iqbal Ahmed, AIR 2001 SC 1 the Apex Court said that the Small Cause Court is entitled to decide the question of title only incidentally and for the purposes of a suit in between alleged landlord and alleged tenant but such decision is subject to the decision of the regular Civil

Court.

15. To the same effect is the decision of this Court in Sheel Chand Vs. IInd A.D.J., Jhansi, 2006 (1) ARC 359.

16. In the authority cited by the petitioner also there is echo of the same view, consistent with what I have referred to above. In Harnam Singh (supra) in para 4 the Court said, "It is well settled in law that if any suit filed on the basis of relationship of landlord and tenant, question of title incidentally arises, the Judge, Small Cause Court should decide the said question."

17. Similarly in Iqbal Ahmad (supra) in para 5 of the judgment the Court said:

"A bare perusal of Section 23 of the Small Causes Court Act makes it clear that in order to attract the same, the Court has to come to the conclusion that the relief claimed by the plaintiff in the suit depends upon proof or disproof of title to the immovable property involved, which such Court cannot finally adjudicate because the proceedings before the Small Cause Court are of summary nature and for determining the question of title an elaborate enquiry is required which has to be left to be held by a competent Court having jurisdiction for determining the said question. It will not be a correct proposition of law to say that the Court Small Causes has no jurisdiction at all to go into the question of title, therefore, whenever the title of the plaintiff is disputed the Judge Small Causes Court is bound to return suit for presentation before the proper Court. It has also the power to go into such question incidently for determining the real issue before it. For this view support may be had from the decision rendered in writ petition No.22390 of 1991 Rakesh Kumar v. Vith Addl. District Judge, decided on 7.4.1998 (reported in 1998 (2) ARC 178)."

18. The above authorities clearly show that a mere dispute of title raised would not oust the jurisdiction of Small Cause Court in proceeding to decide a suit filed before it and it is not bound to return the plaint on such dispute. Section 23 clearly says only when the Court comes to the conclusion that it cannot decide the right of the plaintiff and relief claimed by him since that would depend upon the proof or disproof of a title to immovable property, it may return the plaint and not otherwise.

19. In the present case, petitioner was a tenant in the disputed building. The plaintiff/respondent claimed that he being the sole legal heir of erstwhile owner Suraj Bali Tiwari, succeeded the disputed building as owner. The petitioner sought to stake his claim as owner of property on the basis of a "wish deed" said to have been executed in 1974 but the same he could not prove. On this aspect Trial Court has discussed the matter at great length and having gone through the entire judgment, this Court finds no infirmity therein.

20. In this view of the matter it cannot be said that suit in question was not maintainable before the Court below and the plaint ought to have been returned.

21. Now coming to the second aspect of the matter. The mere fact that the

petitioner did not pay rent to the plaintiffrespondent does not mean that plaintiffrespondent was not landlord. The definition of "landlord" in Section 3(j) clearly shows that "a person to whom rent is payable". Once the property in dispute is succeeded by the plaintiffrespondent, the rent was payable to him since entry of the petitioner was admittedly as a tenant in the premises in dispute and during life time of Suraj Bali Tiwari, erstwhile owner, he has not disputed his liability for payment of rent to him. In the circumstances, none of the submissions advanced having force.

22. I do not find any manifest error in the impugned judgment warranting interference. The scope of judicial review under Article 227 is very limited and narrow as discussed in detail by this Court in Civil Misc. Writ Petition No.11365 of 1998 (Jalil Ahmad Vs. 16th Addl. District Judge, Kanpur Nagar & Ors.), decided on 30.7.2012. There is nothing which may justify judicial review of order impugned in this writ petition in the light of exposition of law, as discussed in the above judgment.

23. In view of the above, I do not find any reason to interfere with the impugned order. Dismissed.

24. Interim order, if any, stands vacated.