
(2001) 07 AHC CK 0099
In the Allahabad High Court
Case No : Civil Revision No.537 of 1985

Sayed Bilayatui Hasan (deceased by L.Rs.) and others	APPELLANT
Vs	
Mohammad Inam Khan and others	RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 30(2)

Citation : (2001) 07 AHC CK 0099

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

Final Decision : Dismissed

Judgement

1. This revision under Section 25 of Provincial Small Cause Courts Act has been directed against the judgment and decree dated 12885, passed by Sri N.K. Mehrotra, the then Learned II Addl. District and Sessions Judge, Varanasi in suit No.23 of 1974, decreeing the suit for ejectment of the applicants and for recovery of arrears of rent at the rate of Rs. 35/ per month from 13971 to the date of suit with pendente lite and future mesne profits at the rate of Rs. 70/ per month. The opposite party No.1 (hereinafter called the plaintiff) filed the suit, giving rise to this revision for ejectment of the applicants, (hereinafter called the defendants) and for arrears of rent and damages on the ground that the plaintiff was sole owner and landlord of premises in question and deceased/defendant, Himayatul Hasan was his tenant at the rate of Rs. 35/ per month. The defendants fell in arrears of rent since 1958 and except for the payment of Rs. 500/ he did not pay any arrears of rent despite of service of notice of demand. The defendants also sublet two rooms to other persons. Accordingly, the plaintiff terminated the tenancy of the defendant by notice dated 271974, which was served on him, but he neither paid the rent nor vacated the premises in question, hence the suit.

2. The deceased defendant, Himayatul Hasan died before filing written statement

and his legal representatives defendant No.1/1 to 1/4 were substituted. They filed written statement and contested the suit on the grounds that the plaintiff was not sole owner landlord of the premises in question and after, the death of the father of the plaintiff the premises in question was inherited by the plaintiff, his sisters and mother. Therefore, the notice on behalf of the plaintiff alone was not maintainable and the plaintiff alone was also not entitled to bring the suit.

3. The trial Court once dismissed the suit with costs vide its judgment and decree dated 2031980, holding that the plaintiff was not sole owner/landlord and notice on his behalf as well as the suit filed by him alone were not maintainable.

4. Aggrieved with the above judgment and decree the plaintiff filed Civil Revision No.38 of 1980 before this Court. This Court allowed the said revision on 2211982, set aside the judgment and decree of the Court below and remanded the case to the Court below for recording a finding on the point whether the plaintiff was the sole landlord and was accepted as such at any point of time or anybody of the landlord, allowed him to deal with the property as such. It was further observed by this Court that so far as other questions of fact are concerned they shall not be reopened as findings of such questions are findings of fact based on appraisal of evidence and cannot be assailed in the revision application.

5. After remand of the case the trial Court decided the case afresh and held that the defendant committed default in making payment of rent. That subletting in favour of Mohd. Umar, if any, was with the consent of the landlords and it is not actionable either under the U.P. Act 3 of 1947 or U.P. Act No.13 of 1972. It further held that the plaintiff alone is owner and landlord of the property in suit and no body else. Therefore, the suit was not bad for nonjoinder of necessary party. The suit was legally maintainable by the plaintiff alone and the notice is also valid and it has legally determined the tenancy of the original tenant. The suit was cognizable by Small Cause Court and plaintiff was entitled to the reliefs sought. With these findings he decreed the suit for ejectment of defendant and for arrears of rent and damages as mentioned above.

6. Aggrieved with the above judgment and decree now the defendants have come up in this revision.

7. I have heard learned counsel for; the parties and have perused the record.

8. As mentioned above by the judgment and decree dated 2031980, the trial Court had held that suit by the plaintiff alone was not maintainable and notice of demand and ejectment by plaintiff alone was illegal. Invalid and the suit was bad of nonjoinder of remaining coowners and colandlords of the disputed house. The subletting, if any, was with the consent of landlord and therefore not actionable and that rent prior to 12th September, 1971 was barred by time and cannot be realised through Court, therefore, it was clear that all the amounts of the rent which the landlords can realise through Court stood deposited in Court under S.30 of U.P. Act No.13 of 1972.

9. The suit out of which this revision arose was a suit by the landlord for ejectment of tenant after determination of tenancy. Therefore, the question of title or ownership of the plaintiff was foreign to this suit and only question which is relevant for the purpose of this revision is whether the relationship of the landlord and tenant existed between the parties. The revision was allowed by this Court and the trial Court was directed to record a finding on the point whether the plaintiff was sole landlord and was accepted as such at any point of time or the body of the landlords allowed him to deal with the property as such. The landlord as defined in S.3(j) of U.P. Act No.13 of 1972 in relation to a residential building means the person to whom the rent is payable. The trial Court, on the basis of the evidence of the parties has recorded findings of fact that the plaintiff alone is owner and landlord of the property and nobody else. It has also taken into consideration the statement of Habib P.W.1, who admitted that he had no documentary evidence of payment of rent to anybody else, except the plaintiff and he admitted that he had not paid rent to any of the daughters of Ikram Khan. He also recorded a finding of fact that two sisters of the plaintiff cannot be said to be colandlords as there was no evidence to show that they had ever realised rent from the defendants. He also concluded that there was no evidence that any rent has been realised by Shakeela Begam or any other heir of Ikram Khan, except the plaintiff. The above findings of fact are based on evidence on record and

cannot be interfered with in this revision. As such the plaintiff alone was the landlord and he was realising rent and notice on his behalf for demand of rent and ejectment was valid.

10. It has now to be considered whether the defendant committed default in payment of rent.

11. It may be pointed out at the very outset that this Court in Civil Revision No.238 of 1980 has directed vide order dated 22182 to record a finding as to who is landlord and further observed that so far as other questions of fact are concerned they shall not be reopened as the findings of such questions are findings of fact, based on appraisal of evidence and cannot be assailed in this revision/application. Thereafter review application No.2 of 1982 was moved by the plaintiff. This Court passed the following order on the above review application.

"This application for review on the ground that two more contentions are raised on behalf of applicant be considered. The revision application has been allowed on one ground and the case has been remanded. So far as other questions are concerned, it was not considered necessary for taking into consideration for the purpose of this revision application. It is for the applicant to urge this question before the trial Court and no observation in, this behalf is made."

12. Therefore, the applicant was permitted to urge other questions that is the question of default in payment of rent (as mentioned in the affidavit

accompanying the review application, paper No.167C2 of the record of the trial Court).

13. The trial Court before remand of the case by this Court has held on issue No.2 which was on the point of default in payment of rent that the defendant has not paid rent since 1958..... The defendant had come out with the case that the rent was paid by him to Smt. Shakeela Begam, step mother of the plaintiff and has paid much amount towards taxes of the house and has paid rent from June, 1971 onward by depositing in the Court under Section 30 of U.P. Act No.13 of 1972. The rent prior to 1291971 was barred by time and cannot be realised through Court, therefore, it is clear that the amount of rent which the landlord can realise through Court has been deposited in the Court.

14. After remand the trial Court considered this point again and held that Shakeela Begam was not colandlord and by depositing the rent under Section 30 (2) of U.P. Act No.13 of 1972 on the ground that there was bona fide dispute as to who was landlord, the plaintiff or Smt. Shakeela Begum, the defendant cannot save themselves from being held defaulters in payment of rent. The deposit under Section 30 (2) of the Act was also permitted at the risk of the defendant, without prejudice to the right of the parties.

15. As already held above the trial Court has recorded a finding of fact that Smt. Shakeela Begam was not landlady and plaintiff alone was landlord and the above findings of fact cannot be interfered with in this revision. In view of this it can safely be held that there was no bona fide dispute regarding landlordship and therefore deposit of rent on this ground was not bona fide and valid. Therefore the above deposit cannot be treated payment of rent to landlord in pursuance of notice of demand.

16. The trial Court has also recorded a finding of fact that there was no evidence on record to show that after service of notice the rent demanded through it was either paid or tendered and, therefore, the defendants committed default in payment of rent.

17. In view of what has been discussed above, I find no force in the revision. The revision is accordingly dismissed with costs.

Revision dismissed.