

(2007) 07 UK CK 0056

In the Uttarakhand High Court

Case No : Second Appeal No's. 591 and 592 of 2001

Seth Shyam Lal Bhatia (since deceased), through L.Rs.

APPELLANT

Vs

Hari Chand (since deceased), through L.Rs.
 Hari
Chand (since deceased), through L.Rs. Vs Seth Shyam Lal
Bhatia (since deceased), through L.Rs.

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Uttar Pradesh Reorganisation Act, 2000 — Section 35
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20, 20(2), 29A, 3

Citation : (2008) 1 UC 294

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : V.K. Kohli, assisted by, Jayendra Joshi, for the Appellant; Ramji
Sriwastawa, for the Respondent

Judgement

Prafulla C. Pant, J.—Both these appeals, preferred u/s 100 of the Code of Civil Procedure, 1908, are directed against the common judgment and decree dated 21-02-1987, passed by II Addl. Civil Judge, Dehradun, in Civil Appeal No. 143 of 1980; and Civil Appeal No. 132 of 1980, whereby Civil Appeal No. 132 of 1980 was dismissed, while Civil Appeal No. 143 of 1980 was partly allowed.

2. Heard learned Counsel for the parties and perused the lower court record. Mr. Ramji Srivastava, learned Counsel for the Respondents states that he has no instructions on behalf of the Respondents.

3. The contesting parties filed two suits against each other in respect of same property. Suit No. 68 of 1969 was filed by Seth Shyam Lal Bhatia, in respect of plot in suit with the pleading that the Defendant Hari Chand was his tenant on rent at the rate of Rs. 80/- per month. It is alleged by said Plaintiff that in January 1969, in the absence of Plaintiff, Defendant Hari Chand raised a shed and some other constructions, without permission of the landlord, as such, he

was served with a notice dated 29-01-1969, and his tenancy was terminated on expiry of 30 days of said notice. Hence, the suit for recovery of arrears of rent, mesne profits and for dispossession of the Defendant. In said suit No. 68 of 1969, Defendant Hari Chand alleged that he was let out a tine shed by the Plaintiff. It was further pleaded by him that the answering Defendant had already filed a suit No. 41 of 1969, for specific performance of contract for getting executed the sale deed, to which Seth Shyam Lal Bhatia agreed with the answering Defendant. It is alleged by Hari Chand (Defendant) that he was a licensee and the suit is barred by principle of estoppel and acquiescence. It is also pleaded by the answering Defendant that he is protected u/s 29A of the U.P. Act No. 13 of 1972, from the decree of eviction.

4. In suit No. 41 of 1969, Hari Chand sought specific performance of contract with the allegations that he had a joint business with the opposite party Seth Shyam Lal Bhatia, who shifted his business from Haridwar Road to Gandhi Road in the disputed premises. It is alleged that the parties agreed that on payment of Rs. 8,000/- by Hari Chand, Seth Shyam Lal Bhatia would leave the premises. Said suit was contested by Seth Shyam Lal Bhatia, who filed his written statement with the pleadings that it is admitted to him that there was a partnership between the two from 1959 to 1964. The rest of the contents of the plaint filed by Hari Chand were denied. It is alleged by Seth Shyam Lal Bhatia that Hari Chand was his tenant on rent at the rate of Rs. 80/- per month, over the plot in suit. It is further alleged by him that the Defendant was never permitted to raise permanent construction over the land in suit. It is further alleged that the tenancy of Hari Chand has been terminated.

5. The trial court (Munsif, Dehradun) consolidated both the suits and disposed them of by a common judgment dated 11 -08-1980, whereby suit No. 41 of 1969, filed by Hari Chand was dismissed and suit No. 68 of 1969, filed by Seth Shyam Lal Bhatia was decreed only for arrears of rent at a market rate (at ten per cent of the market value i.e. Rs. 36,000/- of the property). Both the parties, aggrieved by said judgment, filed separate appeals against decree passed in suit No. 68 of 1969. Civil Appeal No 143 of 1980 was filed by Hari Chand, while Civil Appeal No. 132 of 1980 was filed by Seth Shyam Lal Bhatia. The lower appellate court (II Addl. Civil Judge, Dehradun) disposed of both the appeals vide impugned judgment and decree dated 21-02-1987, whereby appeal filed by Seth Shyam Lal Bhatia (No 132 of 1980) was dismissed and appeal filed by Defendant Hari Chand (No. 143 of 1980) was partly allowed, reducing the rate of rent to Rs. 200/-per month. As far as decree passed in suit No. 41 of 1969 is concerned, said decree was challenged by Hari Chand, which was numbered as Civil Appeal No. 144 of 1980, before the lower appellate court. Said appeal was separately decided by the same lower appellate court vide its judgment and order dated 21-02-1987, whereby the said appeal was allowed and suit for specific performance of contract was decreed. Aggrieved by said judgment and decree passed by the lower appellate court in Civil Appeal No. 144 of 1980, Second Appeal No 1374 of 1987 (new No. 591 of 2001) was filed by Seth Shyam Lal

Bhatia before the Allahabad High Court on 07-05-1987, while against the judgment and decree passed in Civil Appeal No. 132 of 1980 and Civil Appeal No. 143 of 1980, said Appellant filed separate Second Appeal No. 1358 of 1987 (new No. 592 of 2001) before the Allahabad High Court on the very day i.e. 07-05-1987. The Second Appeal No. 1358 of 1987 (new No. 592 of 2001), was admitted by the Allahabad High Court, on following substantial question of law:

Whether, the courts below were justified in granting relief to the Respondent u/s 29-A of the U.P. Act No. 13 of 1972 ?

Another Second Appeal No. 1374 of 1987 (new No. 591 of 2001) was also admitted on the same day by the same High Court and it was connected with the Second Appeal No. 1358 of 1987, without formulating any substantial question of law. However, on following substantial question of law, Second Appeal No. 1374 of 1987 (new No. 591 of 2001) is argued before this Court:

Whether, the lower appellate court has committed manifest error of law in decreeing the suit for specific performance of contract in respect of a land regarding which there is no pleading that any document was executed by the parties ?

6. After the creation of State of Uttarakhand, both these Appeals have been received by transfer from the Allahabad High Court to this Court, u/s 35 of the U.P. Reorganization Act, 2000, for their disposal.

Answer to substantial question of law formulated in Second Appeal No. 1358 of 1987 (new No. 592 of 2001):

7. Section 29A of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, (hereinafter referred as the U.P. Act No. 13 of 1972) is reproduced below:

29-A. Protection against eviction to certain classes of tenants of land on which building exists.-(1) For the purposes of this section, the expression "tenant" and "landlord" shall have the meanings respectively assigned to them in Clauses (a) and (j) of Section 3 with the substitution of the word "land" for the word "buildings".

(2) This section applies only to land let out, either before or after the commencement of this section, where the tenant, with the landlord's consent has erected any permanent structure and incurred expenses in execution thereof.

(3) Subject to the provisions hereinafter contained in this section, the provisions of Section 20 shall apply in relation to any land referred to in Sub-section (2) as they apply in relation to any building.

(4) The tenant of any land to which this section applies, shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties, and in the absence of agreement, the rent determined in accordance with Sub-section (5).

(5) The District Magistrate shall on the application of the landlord or the tenant determine the annual rent payable in respect of such land at the rate of ten per cent annum of the prevailing market value of the land, and such rent shall be payable, except as provided in Sub-section (6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later.

(6) (a) In any suit or appeal or other proceeding pending immediately before the date of commencement of this section, no decree for eviction of a tenant from any land to which this section applies, shall be passed or executed except on one or more of the grounds mentioned in Sub-section (2) of Section 20, provided the tenant, within a period of three months from the commencement of this section by an application to the Court, unconditionally offers to pay to the landlord, the enhanced rent of the land for the entire period in suit and onwards at the rate of ten per cent per annum of the prevailing market value of the land together with costs of the suit (including costs of any appeal or of any execution or other proceedings).

(b) In every such case, the enhanced rent shall, notwithstanding anything contained in Sub-section (5), be determined by the Court seized of the case at any stage.

(c) Upon payment against a receipt duly signed by the Plaintiff or decree holder or his counsel or deposit in court of such enhanced rent with costs as aforesaid being made by the tenant within such time as the Court may fix in this behalf, the Court shall dismiss the suit, or, as the case may be, discharge the decree for eviction, and the tenancy thereafter, shall continue annually on the basis of rent so enhanced.

(d) If the tenant fails to pay the said amount within the time so fixed (including any extended time, if any, that the Court may fix or for sufficient cause allow) the Court shall proceed further in the case as if the foregoing provisions of this section were not in force.

(7) The provision of this section shall have effect, notwithstanding anything to the contrary contained in any contract or instrument or in any other law for the time being in force.

Explanation.- For the purposes of Sub-section (6) where a case has been decided against a tenant by one court and the limitation for an appeal therefrom has not expired on the date immediately before the commencement of this section, this section shall apply as it applies to pending proceedings, and the tenant may apply to that Court for a review of the judgment in accordance with the provisions of this section.

8. Plain reading of the aforesaid Section, for its application, requires that the tenant with the consent of the landlord must have erected a permanent structure and incurred expenses in execution thereof. From the pleading of the Defendant

Hah Chand in suit No. 68 of 1969, it is clear that he has stated that a tin shed was already erected over the plot in suit, as such, it cannot be said that the same was constructed at the expense of Defendant Hari Chand. Therefore, there is no question of applicability of Section 29-A of the aforementioned Act. Apart from this, what has been pleaded by the Defendant in his written statement in suit No. 68 of 1969 is that he was a licensee, as such, otherwise also, it was not a case where the Respondent could have taken shelter of Section 29-A of the U.P. Act No. 13 of 1972. Therefore, this Court is of the view that both the courts below have erred in law in giving the tenant benefit of Section 29-A of the aforesaid Act. This opinion is supported by the view expressed by the Allahabad High Court in *Sushil Chand v. Chotey Singh* and Anr. 1996 (1) Allahabad Rent Cases 393 and *Smt. Riaz Begum v. Adarsh Kumar Jauhari* 1985 (2) ARC 89.

9. Accordingly, the substantial question of law in Second Appeal No. 592 of 2001 (old No. 1358 of 1987) stands answered in favour of the Appellants, and this Court holds that both below have erred in law in refusing to decree the suit No. 68 of 1969, filed by the Plaintiff Seth Shyam Lal Bhatia for eviction of the Defendant/Respondent.

Answer to substantial question of law formulated in Second Appeal No. 1374 of 1987 (new No. 591 of 2001):

10. In the suit No. 41 of 1969, which was filed by Hari Chand, the burden was on said party to prove that Seth Shyam Lal Bhatia entered into agreement with it to execute a sale deed in respect of the plot in suit. From the pleadings of said suit, it is clear that there is no mention of any agreement or deed executed by Seth Shyam Lal Bhatia, in favour of Hari Chand to transfer the land. The trial court while appreciating the evidence adduced by the party opined that what to say of the deed, even the witness before whom Seth Shyam Lal Bhatia alleged to have promised to transfer the land, was not produced in support of the case of the Plaintiff of said suit. Nay, not only this, in the oral evidence adduced before the trial court in suit No. 41 of 1969, which was a leading case out of the two connected suits, Hari Chand (Plaintiff of suit No. 41 of 1969) admitted having paid Rs. 80/- per month as rent. In such a circumstance, the trial court rightly believed case of Seth Shyam Lal Bhatia that landlord Seth Shyam Lal Bhatia had not agreed upon to execute sale deed in favour of Hari Chand. It is strange that there is no evidence of payment of consideration of Rs. 8,000/- on record, to prove the case of Plaintiff of suit No. 41 of 1969. A strange story of payment of consideration has been believed by the lower appellate court that the amount of Rs. 80/- per month, paid by Hari Chand to Seth Shyam Lal Bhatia, is the consideration amount of agreement for execution of sale, which in fact, was found to be the rent paid by him. What makes the impugned judgment passed by the lower appellate court in Civil Appeal No. 144 of 1980, totally erroneous in law is that the same court in the connection Civil Appeal No. 143 of 1980, treated Hari Chand as tenant on payment of Rs. 80/- per month, as rent.

11. In the circumstances, this Court has no hesitation in holding that the lower

appellate court has committed manifest error of law in decreeing the suit No. 41 of 1969 for specific performance of contract in respect of an alleged agreement of which there is no document executed by the opposite party, nor was any proof of payment of any consideration.

12. Accordingly, the substantial question of law in Second Appeal No. 591 of 2001 (old No. 1374 of 1987), stands answered.

13. For the reasons as discussed above, both the second appeals viz. Second Appeal No. 591 of 2001 (old No. 1374 of 1987) and Second Appeal No. 592 of 2001 (old No. 1358 of 1987) deserve to be allowed. Both the appeals are allowed. The impugned judgment and orders passed by II Additional Civil Judge, Dehradun in Civil Appeal Nos. 132 of 1980, Civil Appeal No. 143 of 1980 and Civil Appeal No. 144 of 1980, are hereby set aside. The judgment and decree dismissing the suit No. 41 of 1969, passed by the trial court, is restored. Suit No. 68 of 1969, filed by the Plaintiff/Appellant, is decreed against the Defendant/Respondents, as prayed in the plaint of said suit. No orders as to the cost of the appeals.