

(2004) 11 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 29987 of 2004

Shanker Lal

APPELLANT

Vs

Jawahar Lal (since deceased) and Others

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 15 Rule 5
Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20, 20(1), 20(2), 20(4), 3

Citation : (2005) 1 ARC 387 : (2005) 3 AWC 2226

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : R.B.D. Mishra and R.K. Jain, for the Appellant; Sant Saran Upadhyay and Sadhna Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition under Article 226 of the Constitution of India filed by the petitioner-tenant, who is aggrieved by the order of the revisional Court, whereby the revisional Court dismissed the revision filed by the petitioner-tenant u/s 25 of the Provincial Small Cause Courts Act and affirmed the decree passed by the trial Court.

2. The brief facts of the present case are that the plaintiff-landlord, respondent in this writ petition filed a suit before the Judge, Small Causes Court, Agra being suit No. 55 of 1997 (Jawahar Lal v. Shanker Lal) for the arrears of rent and ejectment. In short, the plaint case is that the plaintiff is the owner of shop in question and defendant was tenant of the aforesaid shop on a monthly rent of Rs. 250/- per month. The defendant is further liable to pay Rs. 35/- per month towards the water tax. The defendant has not paid the rent since 24th December, 1994 and further that the defendant has sub-let the shop without permission in

writing from the landlord or the District Magistrate in favour of Parmanand and his sons, namely, Gopi Chand, Raj Kumar, Shital Das, Sunder Lal and Kanhaiya Lal. Further ground taken by the landlord is that the defendant without permission in writing has demolished the eastern wall of the shop in question and thereby materially altered the premises sub-let to him, which has diminished the value and utility of the shop and because of the aforesaid material alteration the plaintiff-landlord has suffered a loss of Rs. 15,000/-. A notice for the aforesaid reason has been given by the plaintiff dated 12th January, 1997 and requested the tenant to pay the arrears of rent and vacate the shop in question. The aforesaid notice was served on the tenant on 17th January, 1997, but the tenant has not complied with the direction issued by the aforesaid notice, thus, the suit in question was filed. During the pendency of the aforesaid suit, the plaintiff amended the plaint by adding one ground to the effect that since the defendant had denied the title of the plaintiff, which has not been denied by the plaintiff, therefore this is the additional ground for ejectment against the defendant. The defendant contested the aforesaid suit and admitted that he is the tenant and also admitted that he is tenant at the rate of Rs. 250/- and Rs. 35/- per month. The defendant-tenant denied that he has altered the shop in question, which may be covered by the phrase material alteration. The defendant has further submitted that the eastern wall of the shop in question was fallen down, which has been reconstructed for the purposes of safety and security of the shop in question. The tenant has denied that the shop in question has been sub-let to anybody, including the persons mentioned in the plaint. The defendant-tenant has denied this also that he has denied the title of the plaintiff. In this regard, the defendant submitted that the original tenant was the father of the defendant Kewal Ram and after the death of Kewal Ram, his five sons are carrying on the business in the aforesaid shop as they inherited the tenancy jointly. The defendant has admitted that Parmanand and his three sons and Topan Das and his two sons are carrying on business jointly, along with the defendant in the shop in question, which is a business of joint Hindu Family. The defendant has also admitted the service of the notice and stated that after receive of the notice, he deposited the entire rent by Money Order, which has been refused by the plaintiff-landlord, but the plaintiff has declined to receive the Money Order, therefore, the entire rent, water tax and misc. cost etc. were deposited by the tenant on the first date of hearing in compliance of the provisions of Order XV, Rule 5 of the Code of Civil Procedure. Thus, it is submitted by the petitioner-tenant that he is entitled for the benefit of Section 20 (4) of the U.P. Act No. 13 of 1972, which shall here-in-after referred to as the "Act". The defendant also submitted that the suit is barred by the principle of Estoppel and Acquiescence.

3. On the basis of the pleadings of the parties, the trial Court framed as many as seven issues, which read thus:-

"1. Whether the tenant is defaulted in payment of rent and whether the rent against the tenant is due from 24th December, 1994 as alleged in the plaint?

2. Whether the plaintiff is entitled for the benefit of Section 20 (4) of the U.P. Act No. 13 of 1972?
3. Whether the tenant has sub-let the shop in question, if so, its effect?
4. Whether the suit is barred by the provisions of Estoppel and Acquiescence?
5. Whether the defendant has changed the shop in question by material alteration, if so its effect?
6. Whether the defendant has denied the title of the landlord, if so its effect?
7. To what relief, if any?"

4. The trial Court has found on issue Nos. 1 and 2, which has been discussed together that the tenant has defaulted in payment of rent and the rent with effect from 24th December, 1994 is due against the petitioner-tenant and further since the tenant has denied the title of the landlord-respondent, therefore, he is not entitled for the benefit of Section 20 (4) of the Act. Thus, issue Nos. 1 and 2 were decided against the tenant-petitioner. Issue Nos. 3 and 4 were also decided by the trial Court against the petitioner-tenant. Issue Nos. 5 has been decided by the trial Court in favour of the tenant-petitioner and against the landlord. Issue No. 6 has been decided against the tenant and in favour of the landlord. Thus on the basis of the findings arrived at on the issues, the trial Court decreed the suit for ejectment and recovery for a sum of Rs. 8,021/- and mean profit at the rate of Rs. 285/- per month.

5. Aggrieved thereby, the petitioner-defendant preferred a revision u/s 25 of the Provincial Small Cause Courts Act before the revisional Court. The aforesaid revision has been dismissed by the revisional Court after affirming the findings arrived at by the trial Court, thus, this writ petition.

6. Shri Ravi Kiran Jain, learned Senior Counsel appearing on behalf of the petitioner-tenant submitted that the notice served on the petitioner-tenant was not in accordance with the provisions of Sub-section (2) of Section 20 of the Act, thus the suit filed by the landlord-respondent was not maintainable and the same was liable to be dismissed on this ground alone. He further submitted that according to the provisions of Section 20 (1) (2) of the Act, since the notice does not contemplate as to which of the ground enumerated under Sub-section (2) of Section 20 of the Act have been violated by the petitioner-tenant, therefore, the notice is not in accordance with law and since the notice is the condition precedent for instituting a suit as contemplated under Sub-section (1) of Section 20 of the Act, therefore, the said notice served on the tenant cannot be said to be a valid notice and therefore, the suit was liable to be dismissed on this ground. This ground was no doubt not raised either before the trial Court or before the revisional Court, but since this is a pure question of law, I am considering this question raised by learned Counsel appearing on behalf of the petitioner-tenant. Apart from the aforesaid contention, Shri Ravi Kiran Jain has further submitted that the protection available to a tenant of termination of

tenancy by a notice as contemplated u/s 106 of the Transfer of Property Act is also available to the tenant, whose relationship is covered with the provisions of the Act. This argument of Shri Jain deserves to be rejected on the ground that a notice u/s 106 of the Transfer of Property Act is not the condition precedent for filing the suit of eviction of the tenant of a premises, which is covered with the provisions of the U.P. Act No. 13 of 1972. A decision of reported in V. Dhanapal Chettiar Vs. Yesodai Ammal, , which is a judgment of the Constitutional Bench of the apex Court answers the aforesaid question in Paragraph 19, which is reproduced below:-

"19. For the reasons stated above, we hold that the High Court was right in its view that no notice to quit was necessary u/s 106 of the Transfer of Property Act in order to enable the Landlady- respondent to get an order of eviction against the tenant-appellant....."

7. In view of the decision of the Constitutional Bench, referred to above, the contention of Shri Jain that a notice u/s 106 of the Transfer of Property Act is must before filing of the suit, deserves to be rejected and is hereby rejected. Shri Jain then submitted that in the cases, which are covered with the provision of U.P. Act No. 13 of 1972, like the present case where a notice terminating the tenancy is sine qua non. A notice as contemplated under Sub-section (1) to Section 20, referred to above the Act, because a suit can be instituted as contemplated u/s 20 (1) of the Act only on the grounds enumerated under Sub-section (2) of Section 20 of the Act. According to Shri Jain, the tenant is protected from the eviction on the mere desire of the landlord by the Statute and is restricted only on the grounds available under Sub-section (2) of Section 20 of the Act. Shri Jain submitted that in view of the aforesaid protection, it is necessary that the notice contemplated under Sub-section (1) of Section 20 of the Act must contain the ground or grounds on which the suit is proposed to be filed, whereas in the present case the notice terminating the tenancy is a simple termination notice without specifying the ground, particularly any of the specific ground under Sub-section (2) of Section 20 of the Act. Section 20 (2) of the U.P. Act No. 13 of 1972 is reproduced below:-

"20. Bar of suit for eviction of tenant except on specified grounds.--

"(1) Save as provided in Sub-section (2), no suit shall be instituted for the eviction of a tenant from a building, notwithstanding the determination of his tenancy by efflux of time or on the expiration of a notice to quit or in any other manner:

Provided that nothing in this sub-section shall bar a suit for the eviction of a tenant on the determination of his tenancy by efflux of time where the tenancy for a fixed term was entered into by or in pursuance of a compromise or adjustment arrived at with reference to a suit, appeal, revision or execution proceeding, which is either recorded in Court or otherwise reduced to writing and signed by the tenant.

(2) A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely:

(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand:

Provided that in relation to a tenant who is a member of the armed forces of the Union and in whose favour the prescribed authority under the Indian Soldiers (Litigation) Act, 1925 (Act No. IV of 1925), has issued a certificate that he is serving under special conditions within the meaning of Section 3 of the Act or where he has died by enemy action while so serving, then in relation to his heirs, the words "four months" in this clause shall be deemed to have been substituted by the words "one year";

(b) that the tenant has wilfully caused or permitted to be caused substantial damage to the building;

(c) that the tenant has without the permission in writing of the landlord made or permitted to be made any such construction or structural alteration in the building as is likely to diminish its value or utility or to disfigure it;

(d) that the tenant has without the consent in writing of the landlord used it for a purpose other than the purpose for which he was admitted to the tenancy of the building or otherwise done any act which is inconsistent with such use, or has been convicted under any law for the time being in force of an offence of using the building or allowing it to be used for illegal or immoral purposes;

(e) that the tenant has sub-let, in contravention of the provisions of Section 25, or as the case may be, of the old Act the whole or any part of the building;

(f) that the tenant has renounced his character as such or denied the title of the landlord, and the landlord has not waived his right of re-entry or condoned the conduct of the tenant;

(g) that the tenant was allowed to occupy the building as part of his contract of employment under the landlord, and his employment has ceased."

8. A bare reading of Sub-section (1) and (2) of Section 20 of the Act clearly demonstrates that if the relationship has to be regulated by the Statute, namely, Act No. 13 of 1972, it can come to an end only in accordance with the provision prescribed under the Statute, namely, Section 20 of the Act. A bare reading of Section 20 of the Act aforesaid demonstrates that it does not talk of a notice of termination of tenancy specifying the ground or grounds to be served by the landlord on the tenant. In the absence of any such statutory provision and in the light of the proposition that the tenancy is regulated by the Act No. 13 of 1972, this contention of Shri Jain also deserves to be rejected and is hereby rejected. Shri Jain thereafter submitted that the findings arrived at by the trial Court and affirmed by the revisional Court on the other issues suffer from error of law. He

further contended that the findings arrived at by the trial Court and affirmed by the Revisional Court demonstrates that these findings deserve to be quashed in exercise of jurisdiction under Article 226 of the Constitution of India. I am afraid that this contention of learned Counsel for the petitioner cannot be accepted, particularly in view of the laid down by the Apex Court reported in *Surya Dev Rai Vs. Ram Chander Rai and Others*, , particularly, Paragraph 38 (8), which is reproduced below, this is not a fit case to be interfered with by this Court, as this Court cannot sit in appeal over the findings arrived at by the trial Court and affirmed by the revisional Court in exercise of power under Article 226 of the Constitution of India:-

"38. Such like matters frequently arise before the High Courts. We sum up our conclusion in a nut shell, even at the risk of repetition and state the same as hereunder:

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

9. In view of the above discussions, since all the arguments advanced on behalf of learned Counsel appearing on behalf of the petitioner deserves to be rejected and are hereby rejected. This writ petition has therefore, no force and is accordingly dismissed. The interim order, if any, stands vacated. However, the parties shall bear their own costs.