
(2006) 08 AHC CK 0010
In the Allahabad High Court

Shiv Charan Prasad Gupta and Another	APPELLANT
Vs	
Smt. Krishna Tewari (D.) by L.Rs. and Others	RESPONDENT

Date of Decision : 17-08-2006

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2006) 4 AWC 3781

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—Shri Daya Shanker Tiwari, who died during the pendency of suit and whose heirs are opposite parties in the revision, instituted SCC Suit No. 11 of 1982 for ejectment of defendant Nos. 1 and 2, the tenants who are applicants in the above revision and also for recovery of arrears of rent and damages etc. The said suit has been decreed by the Court below by judgment and order dated 6.10.1983. Feeling aggrieved against the aforesaid judgment and decree, present revision is on behalf of tenants u/s 25 of Provincial Small Cause Courts Act.

2. The suit giving rise to the present revision was filed on the pleas inter alia that the defendants No. 1 and 2 who are father and son took the disputed property namely Kothi No. 22/70 Vijay Nagar Colony, Agra on a monthly rent of Rs. 450 in the beginning of February 1977, their tenancy has been terminated by means of notice which was served on the defendants on 20.11.1981, as they were in arrears of rent for more than four months. In spite of service of notice the defendants failed to vacate the disputed premises and, therefore the suit for recovery of rent and mesne profit amounting to Rs. 16,200, cost of notice at Rs. 300 and future mesne profit @ 600 per month, was instituted. It was further pleaded that the defendants obtained endorsement of no objection on the blank allotment application when, as a matter of fact, they had already entered into contract of tenancy on 1.2.1977.

3. A joint written statement was filed by the defendants on the pleas inter alia that the possession of the disputed accommodation was delivered to the defendant No. 2 alone on 22.2.1977 and the rent was Rs. 50 per month excluding taxes etc. It is not necessary to notice other pleas as they all have been found against the defendant tenants and were not pressed in revision by Sri Prakash Gupta, learned Counsel for the applicants and thus have attained finality and have become matter of history.

4. The only point pressed in the revision on behalf of the defendant-tenants is that the court below has committed illegality in recording finding that the rate of rent was Rs. 450 as alleged by the plaintiffs and not Rs. 50 as alleged by the defendant-tenants.

5. In reply the learned Counsel for the opposite parties submitted that the findings recorded by the court below on the aforesaid issue being finding of fact does not call for any interference from this Court.

6. The trial court had framed issues in the suit and decided all the issues against the defendants-tenants. Issue No. 2 was with regard to the monthly rate of rent. Under this issue it has been found by the trial court that the rate of rent was Rs. 450 per month as pleaded by the plaintiff.

7. Learned Counsel for the applicant tenant in support of his submission has relied upon the allotment application filed by the defendant-tenants for allotment of disputed accommodation in their favour. In the said allotment application form indisputably there is endorsement of "no objection" by the landlord. The argument is that in column No. 15 (f) of the said allotment application, the applicant, i.e., defendants stated that they are willing to pay rent at the same rate at which the erstwhile tenant was paying and it was Rs. 50 per month. On this premise it was argued that the rate of rent in the case in hands was agreed rate of rent amounting to Rs. 50 per month and, as such, the Court below committed illegality in holding that it was Rs. 450 per month. In support of the aforesaid proposition strong reliance has been placed upon a Judgment of this Court in *Tara Chandra Saxena v. Additional District Judge, Moradabad* 1978 ARC 357.

8. Exhibit A2 is the copy of allotment order dated 19.2.1977. In this allotment order of the Rent Control and Eviction Officer, rate of rent has not been mentioned, as also admitted by the learned Counsel for the applicants, during the course of argument. The extent of accommodation covered under the allotment order consisted of five rooms, two verandah and one motor garage and is situated in Mohalla Vijay Nagar Colony, P.S. Hari Panwat, Agra. The Court below has taken into consideration number of facts and circumstances to arrive at a conclusion that the monthly rent was Rs. 450. Besides believing the oral evidence adduced by plaintiff it has come to the conclusion that even from the documents produced by the defendants themselves it is established that the monthly rent was Rs. 450. The Court below has taken a lot of pains to discuss

the documentary evidence as well as oral evidences on this point in great detail.

9. The defendants themselves filed rent receipt Exhts. A7 to A9. These receipts are dated 15.4.1979, 2.8.1979 and 19.6.1980. The receipt dated 15.4.1979 is for the period February, 1977 to March, 1978 for a sum of Rs. 1400. In the said receipt it is also described that only part payment of rent is being made and received. Similarly on the back of receipt No. Exht-A9 rent is for the period February, 1976 to 1980 and the rate of rent has been mentioned at Rs. 450 per month plus taxes. These receipts were in the custody of the defendants and were produced by them. Faced with this situation the defendants have come up with an explanation which has not been rightly accepted by the trial court that instead of "advance payment" the landlord has wrongly written as "part payment". The said explanation obviously is an afterthought and is not at all convincing. Besides rent receipts, which clinches the issue, the trial court has also preferred to believe oral testimony of Sri Daya Shanker Tiwari, landlord who was alive at that time. He has categorically stated that the disputed accommodation was let out on monthly rent of Rs. 450. Besides the statement of Daya Shanker, P.W. 1, one Sri M.P. Sarabhai, advocate was also examined, who stated on oath that he was interested to take disputed accommodation on rent, after its vacation by the erstwhile tenant for the purposes of his cousin on the monthly rent of Rs. 450, but in the meantime it was let out to the defendant-tenants.

10. It has also come on record that the disputed premises was in occupation of one Raghubir Singh as tenant since the year 1953 on monthly rent of Rs. 50, who, as a result of compromise vacated it in 1977 and it was let out to the present defendant-applicants. A judicial notice of the fact can be taken that there has been price escalation since 1953 and it does not appeal to reasons to let out five rooms accommodation with car garage on the same rent in the year 1977 as it was let out in the year 1953.

11. The trial court being a fact finding court has preferred not to accept oral deposition of the defendants on the question of rate of rent. It is not permissible for this Court to re-appreciate evidence on record and reach to a different conclusion. Even otherwise, on a threadbare analysis of evidence of the respective parties, learned Counsel for the applicant could not point out any fault committed by the Court in the process of appreciation of evidence on record. The court below has also noted number of contradictions in between the statement of D.W. 1 and D.W. 2 who are father and son and has come to the conclusion that their statement contradicts each other and cannot be relied upon.

12. No attempt was made by the learned Counsel for the applicant to challenge the conclusions drawn by the trial court on the basis of rent receipts, oral deposition of the parties and the attending facts and circumstances of the case.

13. The whole gamut of his argument is that in view of endorsement of "no objection" by the plaintiff in the allotment application form, the other evidence on record should not be taken note of. In other words they should be ignored

and finding holding that the rate of rent was Rs. 50 per month exclusive of taxes should be recorded by the Court. In this regard the pleadings of the parties and evidence has to be looked into. The plaintiff has categorically come out with the case that on settlement of rate of rent with the defendant-tenants possession of the disputed property was delivered to the defendants-tenants even before the allotment order could be made. He made endorsement in good faith on blank form of allotment application. The tenant thereafter became dishonest and filled in monthly rent at Rs. 50. The case of the plaintiff is that the defendant had not come in occupation of the disputed accommodation in pursuance of the allotment order, but rather in pursuance of contract of tenancy which had come into existence prior to filing of the allotment application. The trial court has examined the case from this angle also and has come to the conclusion that the defendant tenant had come into possession before filing of the compromise in the suit against erstwhile tenant. It may be stated that the plaintiffs entered into compromise with erstwhile tenant in December, 1976. But it was filed in the Court on 22.2.1977 and order was passed on 25.2.1977. The trial court has accepted the version of the plaintiff, that the disputed accommodation was let out even prior to the allotment order and the said version also finds corroboration from the statement of D.W. 2, who has stated in his cross-examination that he got Kothi repaired on 22.2.1977. The trial court has disbelieved oral deposition of the defendants and has come to the conclusion that the version of the plaintiff that application for allotment etc. was given after delivery of possession and the settlement of tenancy further stands proved from the fact that even defendant No. 2 has admitted that he had taken possession from Jitendra Singh and thereafter he has taken it on rent. Therefore, in view of the agreement between the defendants and the plaintiff regarding tenancy including rate of rent no importance can be attached to the endorsement of "no objection" on the allotment application, so far as it relates to the question of determination of rate of rent is concerned. The plaintiff has explained the circumstances under which he made the endorsement.

14. In view of the above discussion it is established beyond doubt that the defendants agreed to pay rent at Rs. 450 per month and came in possession of the disputed accommodation even before its allotment. As already noted that in the allotment order Exht. A2 the rate of rent has not been mentioned. The trial court has found that the plaintiff landlord made endorsement of "no objection" on the allotment application when it was blank. No attempt was made by the learned Counsel for the defendants tenants to persuade this Court to take a different view of the matter.

15. Now coming to the decision in Tara Chandra Saxena (supra) relied upon by the defendants tenants, it may be noted that in that case the point in issue was entirely different. The Court was called upon to decide a controversy with regard to the maintainability of application for determination of standard rent, as in the allotment application definite rate of rent was mentioned. In U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 "standard rent" is defined in

Section 3(k) of the Act. The power to determine standard rent has been given u/s 9 in respect of which neither there is any reasonable annual rent nor any agreed rent etc. between the parties. This decision does not lay down that the landlord and tenant cannot enter into agreement different to the one as mentioned in the allotment application. Assuming for a moment that Rs. 50 per month was the agreed rent, as mentioned in the allotment application but the said agreement was never acted upon by the parties, inasmuch as on the basis of material on record it has been found that the defendants tenants agreed to pay Rs. 450 per month as rent. Form B prescribed under U.P. Urban Building (Regulations of Letting, Rent and Eviction) Rules, 1972 is the proforma of allotment order. Relevant portion of the said Form B is reproduced below:

The allottee is required to pay or offer to the landlord a sum of Rs...(in words) as one month's, six month's presumptive rent in accordance with Sub-section (9) of Section 16 of the said Act.

16. Indisputably the said column regarding payment of presumptive rent has been left blank and this would vitiate the allotment order.

17. In view of the above discussion there is no merit in the revision. It is concluded by finding of fact and the court below has not committed any illegality or irregularity in appreciating the evidence of the parties.

18. In the end learned Counsel for the appellant submitted that some reasonable time may be granted to vacate the disputed premises. The extent of accommodation has already been noted above.

19. The present revision was filed in the year 1983 and almost 23 years are going to expire and the defendants-tenants continued to enjoy the disputed accommodation on a sum of Rs. 450 per month on the strength of ex pane stay order dated 19.12.1983. It would not be out of place to notice the judgment of Supreme Court in Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., wherein it has been held that the power to grant stay flows from the jurisdiction conferred on higher Court and the higher Court while staying dispossession or eviction decree may impose such terms and conditions as it thinks fit and reasonable. It has noted that the landlord-tenant litigation constitutes major portion of total litigations pending in Courts. The litigation goes on for unreasonable length of time and the tenant in possession of the premises does not miss any opportunity of filing appeal or revision so long as he can thereby afford to perpetuate the life of litigation and continue in occupation of the premises. In the present case also the revision was dismissed in default but was restored subsequently on the clear understanding that the revision would have to be argued finally. This Court while granting stay order did not fix damages at higher rate. Now the question arises how to compensate the plaintiff landlord who has been deprived of to reap the fruits of the decree. He has been prevented for all these 23 years to take possession and enjoy the disputed property in the manner he liked. That too on a fixed amount that was fixed in the

year 1977. The value of real estate and rent rates have sky rocketed since that date.

20. It is also duty of the Court to see that unfair advantage gained by a party on account of interim order in his favour, the advantage is liable to be neutralised. A successful party should be reasonably compensated for the loss suffered by it due to continuance of interim order during the pendency of the proceedings. The tenant continued in occupation of one Kothi which consists of five rooms, two verandah, one motor garage during 23 years. The said Kothi is situate in a posh locality of Agra and at a very modest estimate will certainly fetch more than Rs. 5,000 per month. The damages, therefore, for its use and occupation till the delivery of actual possession is fixed at the rate of Rs. 5,000 per month from the date. The applicants tenant will be liable to pay damages at the rate of Rs. 5,000 accordingly from this date to the landlord.

21. Looking to the facts and circumstances of the case time to vacate the disputed premises up to 31.12.2006 is granted subject to fulfilment of the following conditions:

(1) The defendants-tenants shall deposit or pay by bank draft rent/damages for the period August, 2006 to December, 2006 in advance within one month @ Rs. 5,000 per month, i.e., the applicant shall deposit Rs. 25,000 before the trial court on or before 15.9.2006.

(2) In addition of the above they shall clear all arrears of rent/damages for the period up to July, 2006 and damages and costs of litigation etc. within the aforesaid period.

(3) They shall also file undertaking that they will handover actual, physical, peaceful possession of the disputed accommodation without causing any damage to it on or before 31.12.2006 to the opposite parties landlord. The said undertaking shall be filed on or before 15.9.2006 before the trial court.

(4) The applicant shall deposit within the aforesaid period a sum of Rs. 5,000 towards cost of the present revision.

22. In default of compliance of any of the conditions stipulated above, the time granted by this Court shall be vacated. It shall be open to the plaintiff landlords to put the decree in execution forthwith and defendant tenants would also be liable to pay damages for the unauthorized use of premises in question @ Rs. 5,000 per month from the date of this judgment to the date of actual delivery of possession.

23. Before parting with the case it may be noted that the learned Counsel for the opposite party vehemently submits that the property in dispute is in posh locality of Agra and as a matter of fact the defendants-tenants are not residing therein and they have sub-letted to other persons, and made profits. Be that as it, no observation by this Court is required on the above argument.

24. In the result the revision is dismissed with costs of Rs. 5,000 as also for recovery of mesne profits at the rate of Rs. 5,000 per month as indicated above.