

(1988) 04 AHC CK 0025
In the Allahabad High Court
Case No : Civil Misc. Writ No. 7487 of 1984

Shyam Lal Chhibbar

APPELLANT

Vs

Special Judge (E.C. Act)/Additional District Judge and Others

RESPONDENT

Date of Decision : 22-04-1988

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2), 25

Citation : (1988) 2 AWC 969

Hon'ble Judges : S.D. Agarwala, J

Bench : Single Bench

Advocate : R.K. Saxena, for the Appellant; R.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

S.D. Agarwala, J.—This is a petition under Article 226 of the Constitution of India.

2. Dilip Singh Vaishya, Respondent No. 3, is the landlord of premises No. 108/4, P. Road, Kanpur. Shyam Lal Chhibbar, the Petitioner, is the tenant.

3. A suit No. 400 of 1981 was instituted by the landlord for recovery of arrears of rent and ejectment. The basis of the suit was that the tenant had denied the title of the landlord in an earlier suit No. 676 of 1973 filed by the landlord against the Petitioner tenant and, consequently, he was liable for eviction u/s 20(2)(f) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act). The suit was contested by the Petitioner specifically alleging that he did not deny the title of the landlord.

4. The trial court by its judgment dated 22nd November, 1983, dismissed the suit holding that there was no denial of title by the Petitioner tenant. Aggrieved by the said decision, a revision was filed u/s 25 of the Provincial Small Causes Court Act. The revisional Court by its judgment dated 9th May, 1984, reversed the judgment of the Judge, Small Causes Court, allowed the revision and decreed the

suit. Aggrieved, the Petitioner has challenged the order dated 9th May, 1984, by means of the present petition.

5. I have heard the learned Counsel for the parties.

6. Learned Counsel for the Petitioner has contended that the Petitioner had never denied the title of the landlord Respondent No. 3 in Suit No. 676 of 1973. The view, to the contrary, taken by the revisional court, is erroneous and, as such, the decree for ejectment is liable to be set aside.

7. In order to examine the statement made on behalf of the Petitioner, it is necessary to refer to certain paragraphs of the written statement of the Petitioner filed in Suit No. 676 of 1973 on the basis of which it is alleged that he had denied the title of the landlord. The three relevant paragraphs are paragraph Nos. 1, 11 & 13, which are quoted below:

1. That the contents of paragraph one of the plaint are not admitted. It is incorrect to allege that the Defendant was the Plaintiff's tenant. The Defendant is still a tenant of the commercial-cum-residential accommodation at a monthly rental of Rs. 145/-.

11. That the Defendant is the tenant of the commercial-cum-residential accommodation in the premises No. 108/4, P. Road, Kanpur at a monthly rental of Rs. 145/- for a considerable time and now the Plaintiff is estopped from denying the truth because the Plaintiff himself has all along been treating the Defendant as a tenant of the said commercial-cum-residential accommodation as one accommodation in the premises No. 108/4, P. Road, Kanpur at a monthly rental of Rs. 145/- which fact has well been acknowledged and pleaded by the Plaintiff previously.

13. That the Plaintiff himself is not the only owner of the premises in suit and is, therefore, not legally competent to file the present; suit and to seek any relief whatsoever alone without the consent and without joining all other co-owners of the said premises. The suit is, therefore, bad and is liable to be rejected with costs on this ground alone.

8. In order to appreciate the effect of these paragraphs in the written statement, it is necessary to quote paragraph 1 of the plaint of Suit No. 676 of 1973. It runs as under:

1. That the Defendant was Plaintiff's tenant of a shop on the ground floor of his premises No. 108/4, P. Road, Kanpur (fully described at the foot of the plaint) at a monthly rent of Rs. 45/-. His month of tenancy used to begin on the first day of every English Calendar month and end on the last day of the same.

9. In paragraph 1 of the plaint, it was stated by the landlord that the Petitioner is a tenant of a shop on the ground floor of premises No. 108/4, P. Road, Kanpur. In paragraph 1 of the written statement, it was admitted by the tenant that he is, no doubt, a tenant of the accommodation on a monthly rent of Rs. 145/-, but the

premises was commercial-cum-residential. It was further alleged that it is incorrect to allege that the Defendant was the Plaintiff's tenant. This position is explained in paragraph 11 of the written statement, quoted above. From paragraph 11, it is apparently clear that the tenant admitted that he was the tenant of Respondent No. 3, the landlord. He, however, further alleged that the accommodation was a commercial-cum-residential accommodation. In the circumstances, from a reading of paragraphs 1 and 11 of the written statement and paragraph 1 of the plaint, the only inference, in my opinion, which can be drawn, is that the Petitioner did not deny the title of the landlord, but only explained the fact that it was not a pure commercial accommodation, but it was a commercial-cum-residential accommodation. From these paragraphs, it cannot be said that the Petitioner denied the title of the landlord.

10. In paragraph 13 of the written statement, quoted above, the only averment made is that the landlord Respondent No. 3 is not the only owner, but there are other co-owners who should have been made parties to the suit. There is a distinction between an owner and a landlord. In paragraph 13, the Petitioner only spoke of other co-owners being impleaded in the suit, but he did not say that there are other landlords. It is, therefore, clear that in so far as paragraph 13 is concerned, it nowhere denies the title of the Respondent landlord. In view of the above, I am of the opinion that the view taken by the revisional court is manifestly erroneous. The Judge, Small Causes Court, rightly held that there was no denial of title by the tenant.

11. The ground on which the eviction has been sought in the present case is Section 20(2)(f) of the Act, which is as under:

20 (2)(f) that the tenant has renounced his character as such or denied the title of the landlord, and the latter has not waived his right of reentry or condoned the conduct of the tenant.

12. In the instant case, the tenant has not renounced his character as such. He clearly admitted that he is the tenant as such. He admits Respondent No. 3 to be the landlord, but he only states that there are other co-owners of the property, who should have been made parties to the suit. In the circumstances, the case cannot possibly fall u/s 20(2)(f) of the Act.

13. Learned Counsel for the Respondent has relied upon a Division Bench decision of this Court in Hashmat Husain Vs. Saghir Ahmad and Others, . In that case, the tenant had set up a title of the property in a third person. He clearly denied the title of the owner who gave the property to him on rent. This case is clearly distinguishable and the principles laid down in this case do not apply to the facts of the present case.

14. In the result, the petition is allowed. The order dated 9th May, 1984, is set aside and that of the Judge, Small Causes Court dated 22nd November, 1983, is restored. Parties are directed to bear their own costs.