

(2009) 03 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39977 of 1999

Sita Jaiswal Trust, Deoria Through its President and another	APPELLANT
Vs	
Vth.Addl.District Judge, Deoria and others	RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 30(2)

Citation : (2009) 03 AHC CK 0117

Hon'ble Judges : Prakash Krishna, J

Final Decision : Allowed

Judgement

Prakash Krishna, J.—By means of the present petition, the petitioners have sought the quashing of the orders dated 9.12.1994 passed in Misc. Cases registered under section 30 (2) of U.P. Act No. 13 of 1972 on the application of respondents No. 6 to 14 as also the order passed in Civil Revision Nos. 30 to 34 of 1995 and 36 to 39 of 1995 which were preferred by the petitioners before the Court below. The facts of the case may be noticed in brief.

2. One Sita Ram Jaiswal was the owner of the property in question. The respondent No. 3 (Raghubar Dayal) claimed that he is the adopted son of Sita Ram Jaiswal. Sita Ram Jaiswal instituted Suit No. 130 of 1988 against Raghubar Dayal restraining him claiming himself as his adopted son. Another Suit No. 237 of 1987 was filed by Raghubar Dayal against Sita Ram Jaiswal for declaration that he may be declared as adopted son of Sita Ram Jaiswal. During the pendency of these suits, Sita Ram Jaiswal expired. An application for substitution of his heirs were filed in both the suits. In Suit No. 130 of 1988, the application filed by Raghubar Dayal for his substitution was allowed and the suit was declared abated by the Trial Court holding that he is the adopted son of deceased Sita Ram Jaiswal. The Suit No. 237 of 1987 filed by Raghubar Dayal was withdrawn after the death of Sita Ram Jaiswal.

3. Feeling aggrieved against the order passed in Suit No. 830 of 1980 holding

that Raghubar Dayal is the adopted son, a revision No. 493 of 1994 was preferred in this Court by Anand Kumar Jaiswal who is claiming himself as owner and landlord of the premises in question on the basis of alleged Will executed by deceased Sita Ram Jaiswal. The said revision was allowed in part by the judgment dated 19.12.1994. This Court set aside the declaration given by the Trial Judge in favour of Raghubar Dayal that he is the sole heir of Sita Ram Jaiswal deceased.

4. There were nine tenants in the property in question. They started depositing the rent under section 30 (2) of U.P. Act No. 13 of 1972 as there was a dispute between the parties as to who is the landlord of the premises in question. Raghubar Dayal applied for the withdrawal of the rent so deposited by the tenants which was objected by the present petitioners on the ground that Sita Ram Jaiswal has created a trust in the name of his wife Sita Jaiswal Trust and the rent should be paid to the said trust. The said objections were not found favour with the authority concerned. Consequently, Raghubar Dayal was permitted to withdraw the rent by the impugned orders. The orders permitting Raghubar Dayal to withdraw the rent was challenged by filing revisions No. 30 to 34 of 1995 and revisions No. 36 to 39 of 1995 by the petitioners before the Court below. The said revisions having been dismissed, the present writ petition has been filed.

5. The contention of the learned Counsel for the petitioners is that a title dispute being Suit No. 36 of 1991 is already pending between the parties before the Civil Court. The said fact was not disputed by the learned Counsel appearing for the respondents.

6. This Court while entertaining the writ petition, passed the following order dated 21.9.1989 on the stay application:

"Learned Counsel for the petitioners prays for and is allowed to delete Respondent Nos. 6 to 14, as they are tenants and depositing rent under section 30 of the Act. There is no contest with them.

Admit.

Issue notice.

Petitioners may furnish requisites in the Registry within one week from today for service on Respondent Nos. 4 and 5. In case requisites are deposits within stipulated time, Registry shall despatch, another one week thereafter, notices indicating stay application will be listed on 29.11.1999 for further orders.

Respondent No. 3 is represented by Shri N.K. Pandey and Sri S.N. Singh, Advocates. Respondent No. 3 may file counter within three weeks. Petitioners may file rejoinder affidavit within three weeks of the receipt of the counter affidavit.

Meanwhile the operation of the impugned judgment and order dated 9.12.1994

(Annexure 5 to the Writ Petition) affirmed by Revisional Court vide judgment and order dated 20.7.1999 (Annexure 9 to the Writ Petition) passed by Respondent No. I/Vth Additional District Judge, Deoria shall remain stayed. None of the parties to the writ petition shall withdraw the amount deposited under section 30 of the Act, U.P. Act No. XIII of 1972."

7. The stay order was modified subsequently by the following order dated 8.2.2000:

"Heard learned Counsel for the parties.

The question involved is as to who is entitled to withdraw the amount deposited under section 30 of U.P. Act No. XIII of 1972. The matter is also pending on the regular side in the Court.

It is alleged that the tenants have deposited amount of Rs. 2, 50, 000/and some of the amount has been withdrawn by the respondents. The Court will invest the amount, which is still in deposit, in F.D.R. of a Nationalized Bank for a period of one year till further orders of the Court and if this Court or any Competent Court does not pass any order, the period of F.D.R. may again be extended for a period of one year.

The application is accordingly disposed of.

The party who succeeds in the case, will be entitled to withdraw the amount with interest which may accrue on such deposit."

8. In pursuance of the aforesaid order, rents are in deposit with the authority concerned and are being invested in the fixed deposit.

9. Evidently a title suit is pending between the parties and the rent is being deposited in the Court under section 30 of the Act No. 13 of 1972. The question of title cannot be adjudicated upon in proceeding under section 30 of the U.P. Act, being summary nature.

10. Taking into consideration, the fact that already a title suit is pending between the parties, it is appropriate that none of the parties be permitted to withdraw the rent so deposited by the tenants till the decision of the said title suit.

11. The learned Counsel for the petitioner also pointed out that the attention of the Court below was invited towards the judgment of this Court delivered in the revision referred to above whereby this Court allowed the revision in part by setting aside the order of the Civil Judge holding that Raghubar Dayal is the adopted son. But the judgment of this Court dated 19.12.1994 was not properly appreciated by the learned District Judge. A bare perusal of the impugned order would show that in paragraph 3 of the judgment, the learned District Judge noticed the judgment delivered in Civil Revision No. 493 of 1994 but overlooked the operative portion of the order of the High Court. Thus the impugned order passed by the learned District Judge is vitiated and cannot be allowed to stand.

12. The sum and substance of the above discussions is that none of the parties be permitted to withdraw the rent so deposited by the tenants till the disposal of the title suit pending between the parties.

13. The learned Counsel for the respondents points out that the present petitioners are delaying the hearing of the said suit. Be that as it may, since sufficient time has already been lapsed, it is appropriate for the Trial Court to decide the said suit expeditiously preferably within a period of six months. If necessary, the hearing may take place on day to day basis.

14. With the aforesaid directions, the writ petition succeeds and is allowed. The impugned orders are hereby set aside. No order as to costs.