
(1998) 12 AHC CK 0075
In the Allahabad High Court
Case No : C.M.W.P. No. 39986 of 1998

Smt. Amita Arya and others	Vs	APPELLANT
Additional District Judge XIth, Allahabad and others		RESPONDENT

Date of Decision : 02-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)

Citation : (1999) 2 AWC 1306

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : K.M. Asthana, for the Appellant; S.C. and Atul Dayal, for the Respondent

Final Decision : Allowed

Judgement

J.C. Gupta, J.—Heard Sri Ravi Kiran Jain assisted by Sri K.M. Asthana. Advocate for the petitioners and Sri K.M. Dayal for the landlord-respondent No. 3.

2. Sri K.M. Dayal states that he does not propose to file any counter-affidavit.

3. With the consent of parties' counsel and in the circumstances of the case, this writ petition is disposed of finally at the admission stage itself.

4. This is tenant's writ petition challenging the orders dated 23.1.1998 passed by respondent No. 2 and the order dated 16.11.1998 passed by respondent No. 1 whereby the landlord's suit for eviction of the petitioners has been decreed. The dispute relates to a portion of House No. 1/9-E Hastings Road, Allahabad which is admittedly under the tenancy of the petitioners and of which respondent No. 3 is the landlord. The landlord filed suit for eviction of the petitioners from the aforesaid premises on the ground that the petitioners have raised illegal and unauthorised constructions in the tenanted premises without the permission of

the landlord and thereby made themselves liable for eviction under clause (c) of Section 20 (2) of U. P. Act No. XIII of 1972, as the constructions so raised have diminished the value of the tenanted accommodation and have also disfigured the same. According to the landlord's case, the constructions were raised in the open land existing towards North West of the tenanted house. The tenancy of the petitioners was terminated by means of notice served upon the petitioners under the provision of Section 106 of the Transfer of Property Act.

5. The suit was contested by the petitioners, *infer alia*, on the grounds that the petitioners have not raised any new constructions in the tenanted accommodation and they have been in occupation as tenant in five rooms, Store, two Verandah. Shed, Latrine, Bathroom. Kitchen, Court-yard and open space and all the constructions were old and were in existence since the inception of the tenancy. According to them the plain tiff-landlord in collusion with the officers of the Allahabad Development Authority got demolished a portion of the house under tenancy of the petitioners. With regard to raising of boundary-wall the case of the petitioners was that it was so done with the permission of the landlord. The petitioners also denied that the tenanted accommodation in any way has been disfigured or its utility has been diminished.

6. Parties adduced evidence before the Judge. Small Cause Court. The trial court decreed the petitioners suit holding that from the oral and documentary evidence, it is proved that some new constructions were raised and part of which were demolished by the Allahabad Development Authority. The trial court repelled the petitioners' contention that no construction has been raised in the tenanted premises. While upholding the said finding of the trial court, provisional court further held that suit in question was not barred under the provision of Order II, Rule 2. C.P.C. It also rejected the petitioners' contention that no cause of action for bringing the suit for eviction survived as the so called constructions had already been demolished by the Development Authority prior to the date of service of notice. Affirming the decree of the trial court, the revision filed by the petitioners has been dismissed by the impugned order.

7. Learned counsel for the petitioners vehemently argued that in order to attract clause (c) of subsection (2) of Section 20 of the Act, it is necessary for the landlord to prove the following facts :

(i) that the tenant has without the permission in writing of the landlord made or permitted to be made any construction or structural alteration in the building under tenancy, and

(ii) that the construction or structural alteration so made was of such a nature as was likely to diminish the value of the tenanted building or its utility or to disfigure it.

8. It is well settled law that in order to attract the provision of clause (c) of Section 20 (2) of the Act, it is not necessary that all the three contingencies, namely, diminution in value or utility or disfiguration of the tenanted building

must co-exist together. The requirement of Section 20 (2) (c) of the Act will be fulfilled if the case is brought under any of three categories mentioned above.

9. In the present case, the landlord came with the case that the constructions raised by the tenant without his permission have diminished the utility of the tenanted premises and have also disfigured it. However, as rightly pointed out by the learned counsel for the petitioner, neither the trial court nor the revisional court has recorded any categorical finding that the constructions alleged to have been raised by the tenant have in fact diminished the utility of the tenanted building or have disfigured the same. The revisional court very conveniently avoided to answer this question by observing that merely because the trial court has not used the specific words as are contained in clause (c), the finding does not stand vitiated, but it failed to notice that whether in a particular case the constructions raised by the tenant have really diminished the utility of the tenanted building or disfigured the same is a mixed question of law and fact. There may be some constructions which may not fall under any of the categories mentioned in clause (c), and this vital and crucial question can be answered only after assessment of the evidence in the light of nature and kind of the construction. No finding has been recorded as to what particular constructions have been raised by the tenant in the present case and what was their kind and nature and for what purpose they were raised and in what way they have affected the utility of the tenanted building and/or how far and in what manner they have changed, defaced or changed the figure or appearance of the building. These are all questions of fact to be answered on appraisal of evidence. In the absence of specific findings, clause (c) could not be applied to in a mechanical manner. The impugned orders on this ground alone are not sustain able.

10. There is yet another difficulty in upholding the impugned judgments. The defence of the petitioners was that no constructions had ever been raised in any portion of the tenanted premises. This defence plea has been rejected by both the Courts below merely on the ground that the tenant himself in his written statement has admitted that open space formed part of the tenanted accommodation. Both the Courts below have, however, totally overlooked to take into consideration the evidence of the plaintiff. The learned counsel for the petitioners invited the attention of the Court to a portion of statement of the plaintiff wherein he stated that illegal constructions were raised in the open space of kitchen garden which was not part and parcel of the tenanted premises. Sri Dayal, however, argued that some of the illegal constructions were raised in the kitchen garden while others in the open space of the tenanted premises and, therefore, the aforesaid statement of the plaintiff has to be read in the light of this situation. Be that as it may, the fact remains that both the Courts below proceeded to decide the relevant issue simply on the basis of the admission of the defendant made in the pleadings without noticing that the said admission was only in respect of the open space and not kitchen garden and it was the specific case of the tenant that no construction of any kind whatsoever had been raised in the said open space. What type of constructions, if any, were in fact

made in that open space and whether the constructions which were demolished by the Development Authority existed on the site of that open space, no finding in this regard is to be found to have been recorded by the Courts below. There can be no dispute that the word "building" as used in sub-clause Act also includes land if it is also part of the tenancy but before applying the clause, it was incumbent upon the Courts below to have thoroughly and critically examined the evidence and material placed on record and recorded a categorical finding about the-nature and kind of constructions which the tenant had in fact raised in the open space which formed part of the tenancy. What would be the effect of the above noted statement of the plaintiff could be examined only on appraisal of the evidence on record, which was the function of the trial court and not of this Court. This Court, therefore, finds that the impugned orders are vitiated in law as manifestly erroneous.

11. Learned counsel for the petitioners also argued that the suit was barred under the provisions of Order II, Rule 2, C.P.C. on account of pendency of Civil Suit on regular side filed by the petitioners for a decree of eviction restraining the tenant from raising further constructions in the tenanted accommodation over the site on which the constructions had been demolished by the Development Authority. Sri K.M. Dayal invited the attention of the Court to Order II, Rule 4, C.P.C. and argued that no two cause of action can be joined in a suit for the recovery of immovable property and further argued that the cause of action for suit for injunction was separate and distinct from the cause of action for the suit for eviction under the provisions of U. P. Act No. XIII of 1972. Since the case is being remanded for a fresh decision, the above controversy is left open to be decided by the Courts below.

12. For the foregoing reasons and discussions, this writ petition is allowed and the impugned judgments dated 23.1.1998 and 16.11.1998 are set aside and the case is sent back to the trial court for a fresh decision in accordance with law and in the light of observations made above. Since the matter has become old, the trial court shall make every endeavour to decide the suit expeditiously, preferably within a period of two months from the date of production of certified copy of this order. After when the suit is decided, revision filed, if any, shall also be decided on priority basis.

In the circumstances, parties are directed to bear their own costs.