
(2006) 02 AHC CK 0208

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6693 of 1988

Smt. Hiramani and Others

APPELLANT

Vs

The VII Addl. District Judge

RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340
Provincial Small Cause Courts Act, 1887 — Section 23

Citation : (2006) 2 AWC 1810

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Shashi Nandan, Premendra Kumar and C.B. Yadav, for the Appellant;
Usha Kiran and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—This is landlords writ petition arising out of suit for eviction and recovery of rent filed by original landlord Nand Kishore against tenant respondent No. 2 Bashir Ahmad alias Bashir Miyan in the form of S.C.J.C. Suit No. 180 of 1983 on the file of J.S.C.C. Gorakhpur. Nand Kishore died during pendency of the suit and was survived by the petitioners. In the plaint of the suit it was stated that Nand Kishore was owner landlord of the property in dispute in which defendant Bashir Ahmad was tenant on his behalf. It was also mentioned in the plaint that tenant was defaulter in payment of rent, hence he was liable to eviction, as he had neither paid the rent nor vacated the premises in dispute in spite of notice of termination of tenancy and demand of rent. The defendant pleaded that he had purchased the house in dispute from the father of the plaintiff, hence there was no relationship of landlord and tenant in between him and the plaintiff and the plaint should be returned for presentation before regular civil court u/s 23 of Provincial Small Causes Court Act. The trial court thoroughly disbelieved the version of the tenant. Initially in the written statement tenant pleaded that he had purchased the house in dispute from Shiv Nath, father of Nand Kishore for Rs. 98/- through unregistered sale deed dated 20.5.1951. Copy

of the alleged unregistered sale deed was also filed. Thereafter plaintiff filed a replication and stated that he himself had purchased the house in dispute through registered sale deed dated 17.10.1924 for Rs. 1,000/-. The tenant thereafter took a somersault and filed additional written statement stating therein that after execution of unregistered sale deed by his father, Nand Kishore also executed an unregistered deed acknowledging the said transaction and the said deed by Nand Kishore dated 11.7.1952 was itself a sale deed. The alleged deed by Nand Kishore was shown to have been executed on 11.7.1962 after about 11 years from the alienated sale deed by father of Nand Kishore. Trial court rightly held that the stand taken by the defendant was utterly dishonest and false. When father of Nand Kishore was not the owner, there was no occasion for him to execute the sale deed. Similarly, if sale deed had been executed by the father of Nand Kishore then there was no need for Nand Kishore to execute the sale deed after 11 years. Property purchased for Rs. 1000/- in 1924 could not be sold for Rs. 98/- either in the year 1962 or in the year 1951. In case any deed had been executed by Nand Kishore, then defendant could have mentioned the said fact in his written statement as originally filed. The trial court further held that the two documents filed by the tenant were forged and anti-dated. The trial court further held that even in the year 1951 and 1962 immovable property in Uttar Pradesh of less than 1007-rupees could be transferred either by a registered instrument or by delivery of possession, hence unregistered sale deed was inadmissible in evidence and it could not effect a valid transfer. Landlord had also filed counter foils of the rent receipts signed by the defendant. Trial Court found the said counter foils to be proved. Even in the Nagar Palika records name of Nand Kishore plaintiff was entered as owner. Nagar Mahapalika had also given some notices to Nand Kishore, which were also taken by the trial court in to consideration. Tenant had filed some receipts of payment of house tax. House tax may very well be paid by the occupant or tenant also. It does not prove ownership. Trial court ultimately through judgement and decree dated 14.7.1987 decreed the suit for eviction and recovery of arrears of rent. Trial court also issued notice to the tenant u/s 340 Cr.P.C.

2. Against the said judgement and decree tenant-respondent No. 2 filed civil revision No. 202 of 1987. Revision was heard and decided by with A.D.J. Gorakhpur. Revisional Court held that question of title had been raised by the tenant hence J.S.C.C. had no jurisdiction to decide the said question. The Revisional Court further held that trial court should have returned the plaint for filing before the Regular civil court as the question of title was involved and tenant had filed documentary evidence in support of his case. Ultimately, through judgement and order dated 17.32.1988 Revisional Court allowed the revision, set aside the judgement and decree passed by the trial court dated 14.7.1987 and remanded the matter to the trial court for returning the plaint for filing before competent Court. Through this writ petition landlord has challenged the said judgement and order passed by the Revisional Court.

3. In my opinion, judgement and order passed by the Revisional Court is

completely without jurisdiction and utterly erroneous in law. There is no such requirement of law that the moment the tenant asserts his ownership, plaint of suit for eviction filed before J.S.C.C. Shall be returned for presentation before regular civil court. The trial court had rightly found that tenant was utterly dishonest and the case taken up by him was wholly untenable. Revisional Court did not verse any of the findings of the trial court. The findings of the trial court were based on correct appraisal of evidence. Apart from being findings of fact, those findings were perfectly valid and based upon correct appraisal of evidence. Absolutely no question of title let alone complicated question of title was involved. Revisional Court utterly misconstrued Section 23 of Provincial Small Causes Court Act.

4. Accordingly, the writ petition is allowed with Rs. 25,000/- as cost. Judgement and order passed by the Revisional Court is set aside, judgement and decree passed by the trial court is restored with the modification that proceedings u/s 340 Cr.P.C. need not be taken as the matter has become quite old.