
(2004) 03 AHC CK 0129
In the Allahabad High Court
Case No : Writ Petition No. 4 of 2004

Smt. Munni

APPELLANT

Vs

Smt. Zareena Begum and Others

RESPONDENT

Date of Decision : 11-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97
Transfer of Property Act, 1882 — Section 106

Citation : AIR 2004 All 246 : (2004) 3 AWC 2563 : (2005) 3 CivCC 811 : (2005) 3 RCR(Civil) 447 : (2005) 2 RCR(Rent) 133

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : J.P. Mathur and Diwakar Srivastava, for the Appellant; Umair Ahmed Khan, CSC, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—This is a writ petition for issuing a writ in the nature of certiorari to quash the impugned orders dated 14-11-2003 and 9-1-2004 as contained in Annexure Nos. 13 and 15 to the writ petition and for issuing a direction to the opposite party No. 3, Judge, Small Causes, Lucknow to decide the application under Order 21, Rule 97, C.P.C. in accordance with law.

2. Opposite party No. 1 Smt. Zareena Begum filed a suit of the disputed premises for arrears of rent and eviction against Raju as legal heir and representative of the initial tenant Laltoo who died in the year 1980. The suit was registered as S.C.C. Suit No. 123 of 1996. During the pendency of the suit, the petitioner claiming herself to be the tenant after the death of her husband Laltoo moved an application for impleadment under Order 1, Rule 10, C.P.C. This application was rejected by the Judge, Small Causes and a revision preferred by her against this rejection order was also dismissed by the revisional Court. After the suit was decreed the petitioner resisted the execution of the decree and filed objection under Order 21, Rule 97, C.P.C. This objection under Order 21, Rule 97,

C.P.C. has been rejected by the Judge, Small Causes, Lucknow vide order dated 14-11-2003 as contained in Annexure No. 13. The petitioner filed a revision against this order which was registered as S.C.C. Revision No. 5 of 2004 and this revision has been dismissed on 9-1-2004 by the Additional District Judge, Court No. 8, Lucknow. It is against these two orders; this writ petition has been filed.

3. Both the parties have filed the counter-affidavit and rejoinder-affidavit.

4. I have heard the learned counsel for the parties at admission stage after exchange of the affidavits with the consent of both the parties.

5. There are certain admitted facts. Smt. Zareena Begum filed a suit for eviction from the property in suit i.e. Dhanni roof shop situated at Mohalla Mirzaganj, Malihabad, Lucknow after giving the boundaries of the shop in suit in the plaint against Raju with the allegations that he was the tenant since after the death of his father late Shri Laltoo in 1980. The shop was rented for commercial purpose but since January, 1996, defendant Raju started residing in the disputed premises without permission illegally. The opposite party No. 1 filed a copy of the rent-note executed by Late Laltoo, the father of the defendant and Raju. The petitioner is the wife of Laltoo and mother of Raju. She has remarried. Raju was ten years old at the time of death of his father Laltoo. The suit was filed in the year 1996 only against Raju and the application for impleadment by the petitioner was rejected. There are certain facts which have not been disclosed in the petition but are not denied in the rejoinder-affidavit. These facts are :

The petitioner had applied for impleadment in the S.C.C. suit. The impleadment application was rejected. Thereafter, she filed Civil Revision No. 39/1999 against the order passed in the impleadment application and that revision was also dismissed. The petitioner filed a Suit No. 973/2001 after the SCC Suit No. 193/1996 filed by the opposite party No. 1 against Raju was decreed. This Suit No. 973/2001 was filed by the petitioner after impleading the name of Raju, as defendant No. 1 for cancellation of the decree passed in S.C.C. Suit No. 193 of 1996 and the said suit is still pending. Another fact not disclosed in the petition is that the petitioner has filed Suit No. 47 of 1997 against the opposite party No. 1 for permanent injunction and the said suit has been dismissed by the Addl. Civil Judge (Junior Division), Lucknow on 6-10-2003. There are certain findings of fact recorded by the two Courts below. These findings of fact are that the disputed premises was initially let out to late Laltoo and after the death of Laltoo, the tenancy was devolved on the petitioner being the wife and Raju, son of Laltoo. The petitioner-Smt. Munni and Raju, the defendant No. 1 of Suit No. 193/1996 were joint tenants. The tenancy of Raju being the joint tenant was determined by a notice u/s 106 of Transfer of Property Act and the suit was decreed against Raju in the capacity of the joint tenant of the disputed premises and the petitioner being another joint tenant had full knowledge of the decree and she has been contesting the decree in one proceeding or the other. She has lost the case of her impleadment finally. Her suit for injunction was dismissed on the regular suit in the regular Court. Her suit for cancellation of the decree which is

being resisted by her is still pending. The two Courts below have not accepted the contention of the petitioner that she was the tenant in her own right during the life time of Laltoo. The rent receipts relied on by the petitioner are forged receipts. The petitioner had filed Misc. Case No. 253/1996 in the Court of the Civil Judge (Hawali), Lucknow u/s 30(1) of U.P. Act NO. 13 of 1972 for depositing the rent alleging refusal by the opposite party No. 1. The case of the petitioner is that she was permitted to deposit the rent in the Misc. Case vide order dated 28-8-1998 (Annexure No. 11 to the writ petition) and wherein the opposite party No. 1 attorned the petitioner as sole tenant. This fact is wrong after seeing Annexure No. 4 annexed to the counter-affidavit of the opposite party No. 1. The Annexure No. 4 is the objection filed by the landlady in Misc. Case No. 253 of 1993. The case of the opposite party No. 1 in that Misc. case is that initially Laltoo, the husband of the petitioner was tenant who died in the year 1990, Laltoo left behind the petitioner and son Raju, Raju was ten years old at the time of death of his father. After the death, of Laltoo, the petitioner-Smt. Munni remarried and she was making the payment of rent as natural guardian of Raju who was minor. After attaining the majority, Raju became the tenant and started making payment of rent and the petitioner had no concern with the tenancy after remarriage. This objection was filed on 4-2-1995 in Misc. Case No. 253 of 1993. Application u/s 30(1) of U.P. Act No. 13 of 1972 was allowed on 23-8-1995 at the risk of the petitioner without recording any finding that the petitioner was tenant in her own right. The finding of the revisional Court that the petitioner has been joint tenant is in accordance with law. In Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others, it has been held by three-Judges' Bench of Supreme Court that after the death of the original tenant all heirs will be joint tenants. In H.C. Pandey Vs. G.C. Paul, it was held that the heirs of original tenant succeed to tenancy as joint tenants and service of notice u/s 106 of Transfer of Property Act on one of the joint tenants who acted on behalf of others was sufficient. In Smt. Usha Rani v. Prescribed Authority, Roorkee 1998 (34) ALR 202 : (1999 All LJ 1492) it was held by this Court that there is presumption that a joint tenant represents the interest of all other joint tenants and suit for ejectment filed against some of heirs without impleading all heirs is maintainable. It has been laid down in this case after referring certain judgments of Supreme Court that the law is well settled that after the death of original tenant, his heirs/legal representatives become only Joint tenants and not tenant in common.

6. The learned counsel for the petitioner has referred a decision of this Court in Budh Sen v. Sheel Chandra Agrawal 1997 All Cas 384 to show that the heirs of deceased-tenant are the tenants-in-common but this contention is misconceived in view of the Supreme Court decision referred to above. Once it is found that the finding of the revisional Court that the petitioner was one of the joint tenants, and the suit was decreed against another joint tenant and the decree of eviction passed in SCC Suit No. 193/1996 is binding on the petitioner is found in accordance with law, the objection of the petitioner to resist the decree passed in

S.C.C. Suit No. 193/1996 has been rightly rejected by the two Courts below.

7. I find that the revisional Court has accepted the contention of the petitioner that the objection under Order 21, Rule 97, C.P.C. can be filed by a person who is in possession and who is resisting the execution of the decree but the revisional Court has decided the objection on merit by recording the aforesaid findings. It is wrong to say that the revisional Court could not decide the contentions raised in the objection under Order 21, Rule 97, C.P.C. by the petitioner.

8. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, it has been held that certiorari is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified and thereby occasioning failure of justice.

9. I further find that this writ petition can be dismissed merely on the ground that the petitioner has not come with clean hands and she has concealed a number of material facts about the pending litigations and the suit and revision touching the same subject-matter have already been disposed of.

10. In this case I do not find that the revisional Court has acted without jurisdiction or in excess of its jurisdiction or has acted in flagrant disregard of law or in violation of principle of natural justice.

11. In view of the above, the writ petition is dismissed.