
(2008) 04 AHC CK 0088
In the Allahabad High Court

Smt. Parwati and Others

APPELLANT

Vs

Gaya Prasad and Others

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 23, 25

Citation : (2008) 04 AHC CK 0088

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioners are the heirs and legal representatives of the sole defendant Panna Lal of SCC Suit No. 1 of 1986 that had been filed by Gaya Prasad and Santosh Kumar, respondent Nos. 1 and 2 in this petition, for eviction and recovery of arrears of rent. Panna Lal contested the suit. During the pendency of the suit Panna Lal died and his heirs and legal representatives were brought on record. The suit was ultimately decreed by the judgment and order dated 19th March, 2007. The plaintiffs were held entitled to arrears of rent at the rate of Rs. 22.50/- w.e.f. December, 1983 and the defendants were directed to give possession of the disputed shop to the plaintiffs within one month. Feeling aggrieved the defendants filed Revision u/s 25 of the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as the "Act"). This Revision has been dismissed by the judgment and order dated 28th February, 2008. This petition has been filed for setting aside the aforesaid orders.

2. In the SCC Suit the following points for determination had been framed.

1. Whether the defendants had been given the disputed shop on rent by the plaintiff w.e.f. December, 1983 on rent of Rs. 150/- per month and if so, its effect.
2. Whether the defendants have not paid any rent to the plaintiff from the date of commencement of the tenancy and if so, its effect.

3. Whether the tenancy had been determined by a valid notice dated 29th October, 2005.

4. Whether the Suit was liable to be dismissed for non-joinder of Smt. Parana Kunwar.

5. Whether the Suit was liable to be returned for presentation before the appropriate Court u/s 23 of the Act.

6. To what relief the plaintiff was entitled to.

3. The Judge Small Cause Courts held that the defendants were the tenant of the plaintiffs w.e.f. December, 1983 at the rate of Rs. 22.50/- per month and that no rent had been paid by the defendants from the date they were inducted as tenant; that the notice dated 29th October, 1985 validly terminated the tenancy; that Smt. Parana Kunwar was not a necessary party and that the plaint was not liable to be returned for presentation before the appropriate Court u/s 23 of the Act. The Suit was, accordingly, decreed. The Revisional Court has confirmed these findings.

4. Learned Counsel for the petitioners contended that there is a dispute pending between the parties relating to the title of the property and against the judgment and decree passed in Original Suit No. 29 of 1986 that had been filed by Panna Lal, a Civil Appeal is pending disposal and till such time as this Civil Appeal is not decided the petitioners cannot be evicted.

5. This contention of the learned Counsel for the petitioners cannot be accepted. The plaintiffs have based their case on the basis of a registered sale deed while the case of the petitioners is on the basis of an agreement to sell. The Courts below have elaborately considered this aspect and have recorded a finding on the basis of appraisal of evidence. No infirmity could be pointed out by the learned Counsel for the petitioners and, therefore, the petition is liable to be dismissed.

6. In the end learned Counsel appearing for the petitioners submitted that four months may be given to the petitioners to handover peaceful possession of the premises to the landlord.

7. Learned Counsel appearing for the landlord submitted that the Court may grant the aforesaid time provided the petitioners give the usual undertaking within three weeks from today before the Court below.

8. The writ petition is, accordingly, dismissed. The petitioners shall not be ejected from the premises in dispute for a period of four months from today provided the petitioners give the following undertaking before the Court below within three weeks from today.

1. That the petitioners shall deposit the amount awarded, in case it has not already been deposited, within a period of one month from today before the Judge Small Cause Courts.

2. That the petitioners shall pay damages at the rate of Rs. 100/- per month we.f. April, 2008 up to the date they handover the possession of the premises to the landlord.
3. That the petitioners shall not induct any other person in the premises.
4. That the petitioners shall handover peaceful possession of the premises to the landlord on or before the expiry of four months.
9. It is made clear that in the event the petitioner fails to give the undertaking within the aforesaid period or fails to comply with any of the terms of the undertaking, then in that case, it will be open to the landlord to get the decree executed.