
(1995) 09 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 651 of 1988

Smt. Rukaya Khatoon

APPELLANT

Vs

Addl. District Judge, Gorakhpur and Others

RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Transfer of Property Act, 1882 — Section 109
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(4), 3

Citation : (1995) 09 AHC CK 0016

Hon'ble Judges : R.A. Sharma, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Tarun Varma, for the Appellant; Shashi Nandan, S.C., for the Respondent

Judgement

R.A. Sharma, J.—Petitioner purchased the premises in question of which Respondent No. 3 was the tenant, by registered sale-deed on 11.9.1985. She also purchased the arrears of rent which were due from the tenant for the period before the date of purchase (11.9.1985). Petitioner thereafter filed the suit for ejectment of the tenant from the premises and arrears of rent after terminating his tenancy. The trial court decreed the suit. Being aggrieved by it, the tenant filed a revision which has been allowed by VIII Additional District Judge, Gorakhpur, on 3.10.1988. Being dissatisfied with the judgment of learned Additional Distt. Judge, petitioner has filed this writ petition.

2. A learned single Judge by order dated 24.1.1992, transcribed on the order-sheet, connected this writ petition with Writ Petition No. 10562 of 1983, which has been referred to larger Bench for deciding the point involved therein. This writ petition has accordingly been listed before us along with Writ Petition No. 10562 of 1983.

3. Question formulated by learned single Judge in Writ Petition No. 10562 of 1983 for decision by larger Bench is as to whether the tenant has to deposit that

part of the arrears of rent also which has been decreed by a court in an earlier suit in order to get advantage of Sub-section (4) of Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act). Such a question is, however, not involved in the Instant case. But this writ petition has also been listed along with Writ Petition No. 10562 of 1983. We have heard learned Counsel for parties in this case also. But the arguments have been confined to a legal question, namely, whether transferee of the premises, who has also purchased the arrears of rent from the erstwhile owner for the period before the date of transfer, can demand as a landlord, those arrears from the tenant.

4. A learned single Judge of this Court in *Bachchan Lal v. Ram Asrey* 1960 AU 147, has held that the transferee after purchasing the premises and the arrears of rent cannot recover those arrears, which have accrued before the date of transfer, from the tenant as a landlord although he can recover it as creditor and on the tenant's refusal to pay it, he can file a suit for recovering the same. This decision, however, was overruled by a Division Bench in *R.P. Ghat v. Karam Chand* 1962 AU 82, in which in this connection it was laid down as under:

An assignee or a transferee of the original landlord is also a landlord within the meaning of that term. The Plaintiff in this case having purchased the house as well as the arrears of rent was an assignee of the landlord and was also the landlord within the meaning of Section 3(a) of the Act. When he demanded the arrears of rent and the Defendant failed to pay the whole of the arrears of rent but offered only a portion of it payable subsequent to October, 1952, he did wilful default to make payment. The contention of the learned Counsel for the Appellant that the arrears of rent which were due to the previous landlord were not arrears of rent in the hands of the Plaintiff does not stand to reason. So far as the defaulting tenant is concerned, it was an arrears of rent due against him. Whether that arrears of rent was now payable to the Plaintiff or to his predecessor-in-title is wholly immaterial. Every arrears of rent is also a debt and it is transferable as a debt. But that does not mean that the character of the liability changes because of its having been transferred from one hand to another. The method of transfer cannot change the nature of the liability. If the Plaintiff as a transferee and landlord of the Defendant was entitled to realise this amount, which was an arrears of rent and made a valid demand, the Defendant was bound to pay the same within one month of the notice of demand. If he failed to pay the same, he was certainly a wilful defaulter.

Another Bench in *Bhagwan Singh Vs. Smt. Surjit Kaur*, , has, following the decision of *R.P. Ghai v. Karam Chand* (supra), taken the same view. In *Bhola Nath v. Kishun Lal* 1980 AU 473, learned single Judge has also reiterated the same principle. It is thus settled that purchaser of the premises, who had also purchased the arrears of rent, can make a demand thereof from the tenant and on tenant's failure to pay It, the court will be fully Justified to decree the suit for ejectment, filed by the new landlord.

5. In this connection, reference may also be made to Section 109 of the Transfer of Property Act, which deals with the rights of the transferee. Proviso to this section has laid down, "that the transferee is not entitled to the arrears of rent due before the transfer...". In *R.P. Ghai v. Karam Chand* (supra) this Court has held that:

Section 109 deals with those rights of a transferee which he obtains as a matter of law. It does not prohibit transfer of claim for arrears of rent in favour of the transferee of the property.

Supreme Court in *Girdhari Lal (Dead) by Lrs. Vs. Hukam Singh and Others*, has held that a transferee is not ordinarily entitled to arrears of rent due before the transfer, unless there is a contract to the contrary. Relevant passage from the above decision of Supreme Court is reproduced below:

An objection based upon the proviso to Section 109 of the Transfer of Property Act was, we think rightly, disposed of by the High Court as follows:

The next objection is that under the proviso to Section 109 of the Transfer of Property Act, the transferee is not entitled to arrears of rent due before the transfer. In our opinion, he is ordinarily not so entitled unless there is a contract to the contrary. There was an express contract to the contrary contained in the compromise petition which was incorporated in the compromise decree passed by the Court.

In the instant case also, the petitioner has purchased the right to recover the arrears of rent due before the transfer and there is thus an agreement to the contrary to what has been laid down in Section 109 of the Transfer of Property Act. Provision of Section 109 will, therefore, not come in the way of the petitioner in recovering the arrears of rent due before the date of sale.

6. In this case, the petitioner has purchased both premises in question and the arrears of rent which were due before the date of transfer and she was, therefore, entitled to file the suit for ejectment of the tenant and recovery of the arrears of rent.

7. Learned Counsel for the Respondents has, however, contended that unless the arrears of rent due before the transfer are purchased by the same sale-deed by which premises was purchased, or by a separate deed executed on the same date, the purchaser can neither demand as landlord the arrears of rent due before the sale nor can he/she file a suit for eviction on the ground of its nonpayment. This contention cannot be accepted. What is relevant is the purchase of the arrears of rent by the new landlord from the erstwhile landlord. Whether such a purchase has been made by the same sale-deed by which the property was purchased or by another deed of the same date or subsequent date, is not relevant. In *Bhagwan Singh v. Surjit Kaur* (supra), the premises in question was purchased on 17.1.1967 and few days thereafter, i.e., on 25.3.1967, the transferee purchased the right to recover the arrears of rent from

the tenant. The Division Bench held that as new landlord has purchased the right to recover the arrears of rent due before the sale, he is entitled to recover those arrears as a landlord.

8. For the reasons given above, we hold that a transferee, who has purchased the premises as well as the arrears of rent due before the transfer, is entitled as a landlord to make a demand from the tenant to pay those arrears and on the latter's failure to make such payment, the former (transferee) is entitled to eject the tenant for non-payment of arrears of rent.

9. Let this petition be listed along with Writ Petition No. 10562 of 1983 before the learned single Judge for deciding the other questions involved in the case.