

(1988) 03 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2287 of 1987

Smt. Satya Sharma

APPELLANT

Vs

S.K. Sen and Others

RESPONDENT

Date of Decision : 25-03-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Evidence Act, 1872 — Section 116
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(1), 30, 30(1), 34
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972
— Rule 15(2)

Citation : (1988) 2 AWC 1443

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Advocate : Rama Nand, for the Appellant; Dhruva Narain, for the Respondent

Final Decision : Allowed

Judgement

Palok Basu, J.—This writ petition has been filed by the Petitioner-landlady against an order dated 12-1-1987 passed by the First Additional District Judge, Allahabad whereby an amendment application filed by the tenant-opposite party No. 1 was allowed.

2. The facts lie in a narrow compass and may be stated briefly so as to appreciate the points requiring decision in this petition.

3. There is a house bearing No. 104 Bai ka Bagh, Allahabad. Admittedly, the Petitioner was a tenant in the first floor of the said house while the opposite party No. 1 was a tenant in the ground floor. According to the Petitioner's case, the entire house was purchased by her from one Sri Asit Kumar Mukerji, the erstwhile landlord, by a registered sale deed on 19-4-1983 for a sum of Rs. 45,000/-. A notice disclosing the said purchase and also intimating that the said house is needed for the personal use and occupation of the Petitioner was issued

on behalf of her to the opposite party No. 1 on 16-12-1983 which was replied by him on 31-12-1983. The tenant made an application u/s 30(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act) for depositing the rent in the court. Ultimately on 14-3-1986 the Petitioner filed an application u/s 21 of the Act for release of the house on various grounds showing personal need and necessity which was allowed by the Prescribed Authority by his judgment and order dated 23-9-1986. The tenant preferred an appeal No. 440 of 1986 against the order of the prescribed authority which is still pending disposal.

4. The said appeal was dismissed *ex parte* on 4-11-86 a restoration application by the tenant was allowed in due course and the appeal was fixed for hearing on 1-1-1987 before the First Additional District Judge, Allahabad, on which date an amendment application was moved by the tenant. Objections were filed by the Petitioner on 5-1-1987 and arguments in part were heard on 9-1-1987. The tenant had sought time till 9-1-1987 for filing rejoinder affidavit but the same was not done. The court had informed the parties that the case will be listed on 13-1-1987 when orders will be delivered. The Petitioner, however, says that the judgment and order was already passed on 12-1-1987, i.e. a day before the date fixed whereby the amendment application of the tenant was allowed. Sufficient material has not been brought on record to indicate that even though 13-1-1987 was fixed as the date of the judgment it was pronounced by the First Additional District Judge on 12-1-1987. Moreover, the learned Counsel for the Petitioner also did not lay much emphasis on the said point, Therefore, this Court chooses to proceed on the basis that the hearing and delivery of orders in the amendment application have been done in accordance with law and thus the respective contentions on merits may now be taken up.

5. It will be relevant to make a reference to the reason for making the amendment sought to be incorporated in the written statement filed by the tenant opposite party before the Prescribed Authority. A look at paragraph 1 and 2 pools out the reasons for making the amendment application which may be usefully quoted here.

Paragraph 1. "That at the preparation of case for arguments, it becomes known that the necessary plea of non joinder of necessary party escaped from being taken accidentally."

Paragraph 2. "That since the matter goes to the root and invalidates the application for release it is necessary to carry out the necessary amendment in the W.S.

Some clauses of paragraph 10 of the application may also be quoted usefully which contains the amendments which are important from the tenants' point of view:

(c) After paragraph No. 41, following paragraphs may be allowed to be written.

41-A. That the building in question was taken on rent from late Smt. S. Mukerjee and Sri Harihar Mukerjee in the year 1959. Both of aforesaid persons died more than 10 years ago leaving three sons and six daughters being the heirs, become co-owners and co-landlords of the building in question.

41-B. That since other heirs of the owners landlord were living outstation Sri Asit Kumar Mukerjee used to realise rent for and on behalf of entire body of landlords.

41-C. That the alleged sale deed dated 18-4-1963 having been executed by Sri Asit Kumar Mukerjee, it is good and transfers only the share and interest of Sri Asit Kumar Mukerjee and the present applicant and landlady is the transferee of the share of Asit Kumar Mukerjee only. The other co owners and co landlords i.e. the other heirs of Smt. S. Mukerjee and Harihar Mukerjee continues to be as such. They also left... as sons and...as daughters and heirs.

41-D. Not relevant hence not quoted.

41-F...The application for release is liable to be rejected on the grounds mentioned above and for want of notice as required by proviso to Section 21(1) (a) of U.P. Act 13 of 1972.

6. Even in the affidavit which was filed in support of the said amendment application by the tenant (vide Annexure 12 to the writ petition) no other reason has been stated except that due to non joinder of other heirs of Late Harihar Mukerjee the release application was barred by Rule 15(2) of the Rules framed under the Act.

7. In support of the writ petition I have heard in detail Sri Ramanand, the learned Counsel for the Petitioner and then Sri Dhruv Narain, the learned Counsel for the tenant who has tried to justify the impugned order.

8. The learned Counsel for the tenant justifies the impugned order on the ground that there are some receipts and municipal records of the years 1955, 1961, 1962 and 1963 which indicate that Asit Kumar Mukerjee was not the sole landlord. These documents were examined by the counsel while preparing the case and, therefore, on his suggestion the amendment application was moved so that those matters may also be gone into at the time of hearing of the appeal in order to do justice. Reliance has been placed on Annexure Ca-I which purports to be a letter from:Shri Harihar Mukerjee dated 1-7-1972 whereby Asit Kumar Mukerjee was "authorised henceforth" to realise rent from the tenant, The grounds of attack of the landlord are;

(1) That once a notice was issued to the tenant as contemplated by law intimating to him that the Petitioner has purchased the entire house from the erstwhile landlord, and, the tenant all along deposited the rent in court declaring the Petitioner as his landlord, the tenant is precluded or estopped from contending that the Petitioner is not the landlord.

(2) Admittedly the sale deed by Sri Asit Kumur Mukerjee was executed which

was duly registered. No other relation of Asit Kumar Mukerjee has come forward to challenge the said sale deed which describes Asit Kumar Mukerjee himself as the sole landlord transferring all rights absolutely to the Petitioner and this information was duly conveyed by a registered notice to the tenant which was suitably replied (vide annexures 1 and 2 to the writ petition). In the reply notice unequivocal averments are contained wherein Asit Kumar Mukerjee has been described as the sole owner and landlord of the house. It may be relevant to quote two paragraphs from the said reply notice.

(8) That it was only on 1-10-1983 that my client's landlord and owner Sri A.K. Mukerjee sent him a written instruction to arrange payment of the rent and taxes of the portion in my client's occupation to your client w.e.f. 1-10-1983 without giving any other details.

(9) That acting upon the said written instruction of Sri Mukerjee my client in good faith, in his presence, paid the rent of Rs. 55/- plus 7/- water charges for the month of October, 1983 to your client the same day for which, she promised to send to my client the due receipt afterwards, but she has so far not done so far reasons best known to her. She has also not furnished to my client so far any proof of her title, if any, in respect of the house, to satisfy him.

(3) The question of non compliance of Rule 15(2) simply does not arise because the Petitioner is the sole landlord and it is wholly unnecessary to trace the predecessor landlord's pedigree.

9. Before advertng to the aforesaid questions I find that the learned Judge has not considered the scope of Order 6, Rule 17 CPC if there is already enough material on the record which indicates complete and conscious pleadings on the part of the Defendant tenant as to the factual position of ownership/landlordship, there is no scope left to allow an amendment in the pleadings of the tenant. Therefore, it has become necessary for me only to refer to a few circumstances which positively indicate the tenant's relationship vis-a-vis the Petitioner Landlord.

10. After service of the notice (Annexure I) the sale by erstwhile landlord of the entire house to the Petitioner stood firmly disclosed to the tenant. In the reply notice (Annexure II) the factum of sale or lack of authority to sell on the part of the erstwhile landlord was never questioned. Over and above all this, the deposit of rent made u/s 30(1) of the Act indicated that the tenant admits having paid rent to the then landlord A.K. Mukerjee and that the said deposit was towards payment to the landlady Smt. Satya Sharma i.e. the Petitioner. Once this relationship stands admitted neither there was need for any justification to go behind it and try to find out as to whether Asit Kumar Mukerjee, the erstwhile landlord, was the absolute owner of the house or not. Assuming for the sake of argument that a few receipts "of rent in remote past were issued by or on behalf of some other relatives of Asit Kumar Mukerjee, the relevant consideration for purposes of this case will be that relation, if any, came to be established between

the Petitioner and the opposite party. A direct authority on the point may be found in the case of Smt. Janki Devi v. Third Additional District Judge, Allahabad, reported in 1978 ARC 350. Hon. Mr. Justice C. Section P. Singh has held that where a tenant describes someone as the owner while making a deposit u/s 30 of the Act such tenant is estopped to raise a plea contrary to the said admission. With great respect I adopt the views of the illustrious Judge and have no hesitation in holding that once the opposite party had described the Petitioner as the landlord and Shri Asit Kumar Mukerjee as the then landlord, no further question as to allowing the amendment application regarding the so called existence of co-landlords arises. The other cases relied upon by the learned Counsel for the Petitioner are as follows:

(1) Mathura Prasad's:--1981 Rent Cases 492. It was held by Hon. Mr. Justice T.S. Misra (as his lordship then was) that an admission of a tenant even in the reply notice accepting a particular person as a landlord will amount to an admission estopping the tenant from changing the said stand.

(2) Kanhaiya Lal's:--reported in ARC 1987 61. It has been held by Hon. Mr. Justice B.N. Sapru that where a tenant had admitted the Plaintiff as the sole owner and landlord in the original written statement an amendment seeking to take a plea about the existence of co-owners or co landlords should not be permitted.

(3) Mangat Ram's:--1986 ARC 355 Hon. Mr. Justice N.D. Ojha (as his Lordship then was) has held where a tenant admitted the Plaintiff as landlord subsequently a tenant was precluded from raising a plea that the Plaintiff was not the landlord. Plea of estoppel as envisaged by Section 116 of the Indian Evidence Act was attracted.

11. The aforesaid cases leave no room for doubt that where the tenant has admitted and accepted one as the landlord owner he cannot be permitted to change his stand subsequently.

12. Sri Dhruv Narain, learned Counsel for the tenant, has placed reliance on the document filed as Annexure CA-1 which purports to be the letter written by Harihar Mukerjee (the late father of Asit Kumar Mukerjee). It may be relevant to quote its contents:

Dear Sri S.K. Sen,

Please note that hence forth from the month of July 1972, my son Asit Kumar Mukerjee is authorised to collect the house rent and sign in the receipt Harihar Mookerjee.

1-7-72.

In the rejoinder affidavit the Petitioner has also filed a similar letter bearing the same date written to her (when she also was a tenant) the language and writing of which is identical. Both these letters were of 1972 and are not at all relevant

in order to determine the question of ownership/landlordship as between the Petitioner and the tenant after she had purchased it from the erstwhile owner Sri Asit Kumar Mukerjee (the son of the Late Sri Harihar Mukerjee) describing himself to be the sole owner. It may be mentioned here that it has been stated during the course of arguments as also in the pleadings and documents that Asit Kumar Mukerjee being in the Railways was quite often posted out of Allahabad and on his behalf some receipt may have been issued by his relatives. It has been further argued that some receipts which were produced alongwith the amendment application before the learned appellate court were not proved in accordance with Section 34 of the Act. However, these questions need not be gone into for tire purposes of decision of this writ petition for the simple reason that had the tenant genuinely relied upon those receipts as having been issued by the landlord they would have been brought on record as such and the case of the tenant opposite party would have been entirely different and contrary to what he has pleaded in his written statement before the Prescribed Authority as an answer to the Petitioner's application u/s 21 of the Act.

13. Another argument of the tenant's counsel was that the plea that the Petitioner was not the landlord exists because in the pleadings the tenant has not referred to either Asit Kumar Mukerjee or the Petitioner as the "sole landlord" or "sole owner," I am afraid this is stretching the argument to the breaking point. Neither in the proceedings in the court below nor in the writ petition has it been stated as to what property was being possessed by the erstwhile landlord or his family. Similarly, it is also not known whether and on what basis Asit Kumar Mukherjee was treated as the landlord of the house in question and such an enquiry will be foreign to the controversy in the present proceedings in the court below and in the present petition. May be that this house went to Asit Kumar Mukherjee while some other may have gone to other heirs. I may not be misunderstood as attempting to grope in the dark but in order to repel the far fetched argument of Mr. Dhruv Narain I had to travel thus far, but no further. In this connection Mr. Narain relied upon the caws of Kotu Das reported in 7 Calcutta Weekly Notes p. 596 and two decisions of the Supreme Court, viz. Srinivas Ram Kumar Vs. Mahabir Prasad and Others, and Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, while the controversy in Ketu Das's case was entirely different the Supreme Court also dealing with the question of inconsistent alternative pleas in the first case while in the second case the Supreme Court held that the amendment of the plaint allowed in the given facts of the said case by the trial court should not have been interfered with in revision by the High Court. All the three cases stand distinguished.

14. The last aspect which needs to be touched is that the Rule 15(2) has not been complied with. This point does not survive because of the discussion made above as there was no co-landlord, hence the question of mentioning them did not arise. In view of the facts and circumstances stated above I am of the view that the amendment application made by the tenant was neither bonafide nor justifiable on facts and in law and ought to have been dismissed by the appellate

judge. Therefore, the impugned order dated 12-1-1987 passed by the Third Additional District Judge, Allahabad (Annexure XVI) is quashed and the amendment application (Annexure XII) marked as 13-A by the Judge, is dismissed and, the petition stands allowed.

15. In view of the facts and circumstances of the case I am not passing any order as to costs. In the end I want to caution the court below that none of the observations of this judgment will be construed to affect the rights of the parties as to the merits of the matter pending disposal, which shall be decided in accordance with law without any reference whatsoever to those observations.