
(2006) 05 AHC CK 0248
In the Allahabad High Court
Case No : C.M.W.P. No. 42703 of 2002

Smt. Shahnaz

APPELLANT

Vs

Judge Small Causes Court and Others

RESPONDENT

Date of Decision : 04-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 2(1)

Citation : (2006) 3 AWC 3036

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : S.M.N.A. Abedi, for the Appellant; A.A. Khan, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—This writ petition by the petitioner-tenant under Article 226 of the Constitution of India challenge the orders passed by the Judge Small Causes Court dated 21.11.2000, whereby the suit filed by the respondent, namely Small Causes Suit No. 113 of 1999 has been decreed for the arrears of rent, damages, eviction of the petitioner and the order passed by the revisional court dated 6.9.2002, whereby the revisional court dismissed the revision filed by the petitioner-tenant u/s 25 of the Provincial Small Cause Courts Act.

2. The brief facts are that the respondent-landlord filed suit in question being Suit No. 117 of 2000, Waqf Masjid v. Smt. Shahnaz, on the ground that defendant-petitioner is the tenant at the rate of Rs. 8 of House No. 38/41, Mohalla Katla, Meerut City and the plaintiff-respondent is the owner and landlord of the said premises. It is further submitted that the plaintiff is a waqf registered with the Sunni Central Board, Lucknow at No. 527/357, that the plaintiffs case is that since the house in question is owned by a waqf , therefore, the provisions of U.P. Act No. 13 of 1972 are not applicable to the premises in dispute. The

plaintiff served a notice u/s 106 of Transfer of Property Act dated 29.5.1999, which was served on respondent on 3.6.1999 to the effect that after expiry of aforesaid period of notice the petitioner should vacate the premises in question and also pay arrears of rent. In spite of period granted by the notice has expired the defendant has neither paid the rent nor vacated the premises. On the contrary has given a reply to the notice on baseless ground. Thus, the suit.

3. Before the trial court the plaintiff and defendant exchanged their pleadings and adduced their evidence. The trial court on the basis of pleadings of the parties has framed points for decision in the case. Firstly, whether the provisions of U.P. Act No. 13 of 1972 (In short "the Act") after the amendment of Section 2(1)(bbb) provides that the provisions of the Act would not apply to the premises in dispute because the premises is owned by a waqf-alal-aulad, secondly whether the notice terminating the tenancy has been duly served on the defendant or not and thirdly, the defendant is in arrears of rent or not. The trial court found that after the amendment of Section 2(1) of U.P. Act No. 13 of 1972 in the year 1994 whereby provision (bbb) has been introduced which provides exemption from the operation of "the Act" to the building owned by public charitable trust. To the aforesaid case of the plaintiff the defendant's case was that since the building is pre 1994 construction to which the provisions of U.P. Act No. 13 of 1972 were applicable. The amended provision of Section 2 of the Act will not be attracted unless specifically given retrospective effect to the provisions of the amending Act. Amending Act has not been given retrospective effect, therefore, the premises cannot be said to be exempted from the provisions of U.P. Act No. 13 of 1972. The trial court decided the aforesaid point against the defendant and held that since the suit has been filed after 1994 and at the time of filing of the suit the amending Act was in force it will apply to the accommodation in dispute and, therefore, the building in dispute is exempted from the operation of "the Act". On the question of notice the trial court recorded a finding that notice u/s 106 was duly served on the defendant but the defendant has not complied the notice and the suit was filed. The trial court also recorded a finding against the defendant on the question of defendant being in default. Thus, the trial court decreed the suit on all counts and directed the defendant to give possession of the accommodation in dispute to the plaintiff within sixty days falling which it will be open to the plaintiff to get the decree executed.

4. Aggrieved by the order passed by the trial court the defendant preferred a revision u/s 25 of Provincial Small Cause Courts Act being S.C.C. Revision No. 313 of 2000. The revisional court agreed with the trial court on the question of building being exempted from the operation of provisions of "the Act" and also on the question of service of notice and defendant being in arrears of rent. Thus, the revisional court dismissed the revision and affirmed the findings arrived at by the trial court.

5. Before the trial court as well as before the revisional court learned Counsel for the defendant has argued that from the long drawn history of the litigation

between the parties it is clear that the landlord was all out to get the defendant evicted from the accommodation in dispute. Therefore, the present suit was filed mala fide and this should be the main consideration for the dismissal of the suit which has been overlooked by the trial court as well as the revisional court in the teeth of long drawn litigation between the parties and the findings recorded by the trial court and affirmed by the revisional court is per se perverse. It is, therefore, submitted by the learned Counsel for the petitioner before this Court also that the trial court as well as the revisional court has committed error apparent on the face of record in decreeing the suit and directing eviction of the petitioner.

6. In view of what has been stated I do not agree with the submissions made by the learned Counsel for the petitioner-tenant, particularly when this Court has laid down law in the case of Syed Ahmad Ali and Ors. v. Shafiq Ahmad 1997 (1) ARC 17. Learned single Judge of this Court has held as under:

The decision of Supreme Court in Paripati Chandra Shekher Rao 1995 SCFBR 311 (SC), is clear and unambiguous. The legal position is crystal clear. No vested right had accrued to the tenant in occupation. The landlord has a normal right to evict the tenant under the general law and the protection is given to the tenant by the Rent Legislation. The protection provided to the tenant, when taken away, the suit deserves to be decreed.

7. In the facts and circumstances of the present case the protection that is claimed by the petitioner-tenant is no more available to the petitioner after the Act has been amended in the year 1994. Thus, in my opinion, the courts below have not committed any error in decreeing the suit and it cannot be said that the findings of the courts below are either perverse or suffer from any error much less an error apparent on the face of record.

8. In this view of the matter this writ petition deserves to be dismissed and is hereby dismissed. Interim order, if any, stands vacated.