

(2006) 03 AHC CK 0089

In the Allahabad High Court

Case No : C.M.W.P. No. 15029 of 1982 connected with Civil Revision No. 502 of 1984

Smt. Tribeni Bai

APPELLANT

Vs

Munsif and Others

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 116
Hindu Succession Act, 1956 — Section 15, 16
Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Section 30, 30(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202

Citation : (2006) 2 AWC 1673 : (2006) 3 RCR(Civil) 345 : (2006) 2 RCR(Rent) 58

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : S.K. Mehrotra, for the Appellant; Sankatha Rai, S.C., for the Respondent

Judgement

S.U. Khan, J.

1 Both these cases have been filed by the landlady. Writ petition is directed against order, dated 20.9.1982, passed by Munsif, Mirzapur in Misc. Case No. 17 of 1981 u/s 30(2) of U. P. Act No. 13 of 1972 permitting the tenant, Hindustan Aluminium Corporation Limited (HACL) to deposit rent until decision regarding entitlement of the person to receive the rent as landlord. Revision is directed against judgment and decree dated 14.5.1984, passed by J.S.C.C./Vth Additional District Judge, Mirzapur, dismissing the suit for eviction on the ground of default filed by landlady Tribeni Bai against tenant H.A.C.L. being S.C.C. Suit No. 2 of 1983.

2. There is no dispute that in case rent deposited by the tenant u/s 30(2) of the

Act is taken to be validly deposited then tenant would not be liable to eviction on the ground of default.

3. Smt Tribeni Bai let out the accommodation in dispute to HACL through lease deed dated 1.1.1960 at the rate of Rs. 250 per month, which was enhanced to Rs. 375 per month through another deed-dated 16.3.1968. Accommodation in dispute is in the form of a bungalow constructed in a part of agricultural land.

4. Initially the accommodation in dispute as well as some other agricultural property belonged to Sri Mithu Lal Singhanian (M. L. Singhanian) husband of Tribeni Bai. Sri M. L. Singhanian executed usufructuary mortgage deed (mortgage with possession) in favour of Mani Bai his mother-in-law, i.e., mother of Smt. Tribeni Bai on 30.4.1943. Smt. Mani Bai transferred her mortgagee right to her daughter, i.e., Tribeni Bai through registered deed dated 29.4.1946.

5. Sri M. L. Singhanian filed suit before Sub-Divisional Officer (S.D.O.) u/s 202, U.P.Z.A.L.R. Act in the form of Case No. 1 of 1972 for redemption of mortgage. In the said suit he also deposited the mortgage money. Unfortunately the said suit has not been decided for 34 years and is still pending.

6. Respondents No. 3 to 10 in the writ petition Hira Lal Singhanian (H. L. Singhanian) and others claim themselves to be the sons of M.L. Singhanian from another wife, other than Smt. Tribeni Bai. They also claim that Sri M. L. Singhanian executed a Will in their favour on 3.11.1977 (Sri M. L. Singhanian died on 31.12.1977). Smt. Tribeni Bai denied both the facts. She asserted that respondents 3 to 10 in the writ petition were not sons of late M, L. Singhanian from legally wedded wife. She also denied execution of any Will by late M.L. Singhanian in favour of respondents 3 to 10 in the writ petition. However respondents 3 to 10 in the writ petition have been substituted at the place of M.L. Singhanian in the revenue suit (Case No. 1 of 1972) pending before S.D.O.

7. Tenant paid the rent to Smt, Tribeni Bai till May, 1981. However thereafter tenant stopped paying rent to Smt. Tribeni Bai and filed a case u/s 30 of the Act which is subject-matter of the writ petition. In the said case tenant stated, that he had received notice for payment of rent by H.L. Singhanian and others, respondents 3 to 10 in the writ petition. In the said notice H.L. Singhanian and others asserted that in view of pendency of Revenue Case No. 1 of 1972 and in view of the fact that in the said case mortgage money had been deposited by M.L. Singhanian and in view of the fact that M.L. Singhanian had died and had executed a Will in their favour, they were entitled to receive the rent.

8. It may also be mentioned that during pendency of these cases, Smt. Tribeni Bai died on 24.12.1990. Mahesh Singhanian filed substitution application basing his case upon a Will alleged to have been executed by Smt. Tribeni Bai in his favour. The execution of said Will has been denied by respondents 3 to 10 in the writ petition. They have also applied for recall of the order allowing the substitution application of Mahesh Singhanian. According to them no Will was executed by Tribeni Bai in favour of Mahesh Singhanian and they have inherited

the rights of Tribeni Bai in the property in dispute as they are the heirs of husband of Tribeni Bai. In this regard reference has been made to Sections 15 and 16 of Hindu Succession Act. In revenue suit (1 of 1972) also Tribeni Bai objected to the substitution of respondents 3 to 10 of the writ petition at the place of M. L. Singhania who was plaintiff in the said suit. An order of substitution passed in a case after the death of a party does not amount to a final decision to the effect that substituted party is the heir of the deceased party and such decision does not operate as res Judicata and can be reagitated upon in separate suit vide Suraj Mani and Another Vs. Kishori Lal, and 174 and Ram Kalap Vs. Banshi Dhar and Others,

9. In my opinion even if it is assumed for the sake of argument that either Will executed by M.L. Singhania in favour of respondents 3 to 10 in the writ petition is valid or respondents 3 to 10 are heirs of M.L. Singhania, they cannot assert and claim better right than M.L. Singhania. Suit had been filed by M. L. Singhania in the year 1972. Until his death in 1977 he did not claim his right as landlord in respect of the property in dispute. Even after his death till 1981 respondents 3 to 10 in the writ petition did not claim any right in the property in dispute. Mere filing of suit for redemption of mortgage and deposit of mortgage money in the suit does not confer absolute title upon the mortgagor. Mortgagor recovers his absolute title only when mortgage is redeemed under decree of the court if suit for redemption of mortgage has been filed. Accordingly, I hold that until passing of decree of redemption of mortgage in favour of respondents 3 to 10 in Suit No. 1 of 1972 respondents 3 to 10 in the writ petition have got no right to receive rent from the tenant.

10. However u/s 30(2) of the Act, tenant is entitled to deposit the rent if a bona fide doubt regarding the person who is entitled to receive the rent in respect of the tenanted accommodation has arisen in the mind of the tenant.

11. Section 30(2) of the Act is quoted below:

Where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any building, the tenant may likewise deposit the rent stating the circumstances under which such deposit is made and may, until such doubt has been removed or such dispute has been settled by the decision of any competent court or by settlement between the parties, continue to deposit the rent that may subsequently become due in respect of such building.

12. Notice given by respondents 3 to 10 was sufficient to create such doubt in the mind of the tenant. Moreover application u/s 30(2) of the Act had been allowed by Munsif hence no fault can be found with the tenant in depositing the rent u/s 30(2) of the Act. Depositing the rent u/s 30 (2) of the Act does not amount to denial of title and in such situation Section 116 of Evidence Act which prohibits the tenant to deny that landlord at the beginning of tenancy had the title to the tenanted property is not attracted.

13. Accordingly I hold that the suit was rightly dismissed as tenant was not defaulter and he had rightly deposited the amount u/s 30(2) of the Act.

14. However in view of the fact that mortgage has not yet been redeemed Tribeni Bai till her life time and his successor after her death are entitled to receive the rent.

15. Accordingly it is directed that the rent deposited by the tenant till date u/s 30(2) of the Act shall be permitted to be withdrawn by Mahesh Singhania who has been substituted at the place of Tribeni Bai on the basis of Will. From today onwards tenant shall pay rent to Mahesh Singhania until a contrary order is passed by some competent court. Apart from Revenue Suit (Case No. 1 of 1972) respondents 3 to 10 are at liberty to file regular suit in respect of their claim of inheritance of rights of Tribeni Bai in the property in dispute questioning therein the validity of Will alleged to have been executed by Tribeni Bai in favour of Mahesh Singhania.

16. I have held in Smt. Khursheeda Begum and Others Vs. Additional District Judge and Others, and H.M. Kichlu v. A.D.J. 2004 (2) ARC 652 that while granting relief to the tenant against eviction in respect of a building covered by Rent Control Act or while maintaining the said relief already granted by the courts below, writ court is empowered to enhance the rent to a reasonable extent.

17. Similarly while hearing revision u/s 25, Provincial Small Causes Courts Act, High Court may exercise powers under Article 227 of the Constitution of India and pass such order.

18. Building in dispute is a bungalow, rent of Rs. 375 per month is highly inadequate.

19. Accordingly it is directed that with effect from April, 2006 onwards, tenant shall pay rent at the rate of Rs. 2,000 per month inclusive of all taxes etc. No further amount shall be paid by the tenant.

20. Civil Revision is therefore dismissed and writ petition is disposed of.