
(2004) 09 AHC CK 0137

In the Allahabad High Court

Case No : C.M.W.P. No's. 2620 and 2625 of 1983

Smt. Vidyawati Chhabra and Others

APPELLANT

Vs

XIth A.D.J. and Others

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(2)

Citation : (2005) 1 AWC 192

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

Bench : Single Bench

Advocate : K.L. Grover, R.N. Gupta, T.P. Asthana and Ramesh Singh, for the Appellant; S.C. Verma, A.N. Singh, D.P. Bahadur and D.V. Jaiswal and S.K. Singh, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.U. Khan, J.—The first writ petition has been filed by defendants IInd set, widow, sons and daughters of alleged joint tenant Trilok Nath Chhabra and the second writ petition has been filed by Haveli Ram, the tenant.

2. These writ petitions arise out of suit for eviction filed by landlord-respondent Sundar Lal Bhatia (since deceased and survived by legal representatives) in the form of SCC Suit No. 354 of 1979. In the plaint of the suit it was stated that Haveli Ram was tenant of two shops on behalf of the landlord on monthly rent of Rs. 80 and that one of the two shops had been sub-let by him to Som Nath and Gulshan Kumar who were proprietors/partners of M/s. Vijai Rickshaw Company without the consent of the landlord and District Magistrate. In the plaint the solitary defendant tenant was described as "Haveli Ram adult son of not known proprietor M/s. Nanak Rickshaw Stores 110/182, Ram Krishna Nagar, Kanpur." In the suit an application was filed by Smt. Vidyawati Chhabra and her sons and daughters including Som Nath Chhabra and Gulshan Kumar Chhabra petitioners of first writ petition stating therein that Late Triloki Nath Chhabra, husband of

Smt. Vidyawati Chhabra was partner in M/s. Nanak Rickshaw Stores which was a partnership firm hence they were also necessary parties to the suit. The impleadment application was allowed. The newly impleaded defendants filed written statement. In Para 1 of the written statement it was pleaded that Haveli Ram and Late Triloki Nath Chhabra were joint tenants of the two shops along with a room at the back of one of the shops at monthly rent of Rs. 110 and they were carrying on business under the name and style of M/s. Nanak Rickshaw Stores which was a registered partnership firm and had commenced business on 1.4.1956. It was further pleaded that the said firm was dissolved on 25.11.1969 and by virtue of the dissolution deed one shop fell in the share of Shri Triloki Nath and the other shop with the back room fell in the share of Haveli Ram and that later on Haveli Ram surrendered the back room to the landlord and thereafter he also started paying rent of Rs. 40 per month.

3. The tenancy was started in the year 1952. Learned counsel for the petitioner has argued that the firm was in existence since 1952 and shops were taken on rent by the firm and it started its business therefrom just after commencement of tenancy even though, the said firm was initially unregistered and it was registered later on, i.e., on 1.4.1956. However, this argument is not in consonance with the written statement of the impleaded defendants in the suit. In para 1 of the written statement it was stated that:

"M/s. Nanak Rickshaw Stores was a registered partnership firm which had commenced business on 1.4.1956."

4. In one of the notices given by landlord, Haveli Ram was described as partner of M/s. Nanak Rickshaw Stores. Learned counsel for the petitioner has strongly argued that this amounted to admission of landlord to the effect that partnership firm was there. It is the case of the landlord that Haveli Ram was carrying on business under the name and style of M/s. Nanak Rickshaw Stores and he was proprietor of the said business. If in one notice instead of proprietor word partner was mentioned it could not amount to admission. Prior to the said notice lot of litigation had taken place in between landlord and tenant in the form of an earlier suit and applications by Haveli Ram u/s 7 (c) of old U.P.R.C. Act, 1947. In none of those cases landlord stated or admitted that M/s. Nanak Rickshaw Stores was partnership firm and Haveli Ram was only partner of the said firm. The description of Haveli Ram as partner of the firm in the aforesaid notice can be taken to be nothing but a slip. The trial court/Additional Judge Small Causes Court, Kanpur in its judgment-dated 13.4.1982 discussed all the evidence and attending circumstances. The trial court found that it was a clear-cut case of subletting and decreed the suit for eviction.

5. Even if it is assumed that the partnership firm started doing business from the shops in dispute in 1956 then the only thing which may be said is that the partnership firm became owner of the business. It cannot be said that partnership firm became tenant of the shops also. (Vide S. Laxmi Chand v. Nathu Mal Chand 1965 ALJ 1000). There is nothing on record to show that landlord

consented for transfer of tenancy to partnership firm.

6. Against the judgment and decree passed by the trial court two revisions were filed. One by Haveli Ram and the other by Vidyawati Chhabra and others (alleged subtenants) being S.C.C. Revision Nos. 159 of 1982 and 155 of 1982. XIth Addl. District Judge, Kanpur again discussed the entire evidence and the other material on record and dismissed the revisions by judgment and order dated 16.2.1983 hence these writ petitions.

7. There is absolutely no conflict of interest in between Haveli Ram on the one hand and Smt. Vidyawati Chhabra and other on the other hand. They contested the proceedings through out on the same defence. Both the writ petitions on behalf of the petitioners have been argued in unison like one writ petition. There is no allegation on behalf of Smt. Vidyawati Chhabra and others that Haveli Ram in any manner acted against their interests.

8. In view of this perfect unity of Interest between the two sets of defendants the allegation made and defence taken by Haveli Ram in his written statement assumes great significance and defendants IInd set, i.e., Smt. Vidyawati Chhabra and others cannot avoid the consequence and implication of the pleas taken by Haveli Ram in his written statement. Copy of written statement of Haveli Ram is Annexure-8 to the first writ petition. In para 1 of the written statement, para 1 of the plaint was unconditionally admitted. In para 1 of the plaint it was stated that the accommodation in dispute "Consisting of 2 shops in front was in tenancy of the defendant No. 1 on a monthly rent of Rs. 80." Para 8 of the written statement is quoted below:

"8. That the defendant has not sublet the impugned corner shop to Sarvsri Som Nath and Gulshan as falsely alleged by the plaintiff. In fact, they are carrying on business along with the defendant since long."

9. Haveli Ram in his written statement nowhere has stated that Trilok Nath Chhabra was either joint tenant along with Haveli Ram or he was partner In Firm M/s. Nanak Rickshaw Stores. In view of this clear stand taken by Haveli Ram, there was absolutely no scope for the defendants IInd set to plead and give evidence to the effect that Trilok Nath Chhabra was joint tenant with Haveli Ram and since the start of the tenancy the firm consisting of Haveli Ram and Trilok Nath Chhabra as partners was tenant of the accommodation in dispute.

10. Learned counsel for the petitioner has cited several authorities regarding tenancy in favour of firm. The star authority being Brij Bala Jain v. Amar Jeet Kaur and Ors. 1996 (2) ARC 474. The said authority is based upon its peculiar facts and in that authority the matter was remanded to R.C. and E.O. to decide as to when partnership actually came into existence. In the instant case there is no proper pleading that partnership firm consisting Haveli Ram and Trilok Nath Chhabra as partners was tenant since the start of tenancy or Haveli Ram and Trilok Nath Chhabra were joint tenants of the premises in dispute.

11. It is correct that before passing of U.P. Act No. 13 of 1972 it was not prohibited for a tenant to induct a partner in his business carried out from the tenanted accommodation. However, as held by aforesaid 1965 ALJ 1000 Division Bench authority of this Court such partnership did not create any interest of the partners other than the main tenant in tenancy.

12. In view of this after dissolution of the partnership the partners of the dissolved firm apart from the main tenant, did not have any right to occupy the tenanted premises in dispute or any part thereof. In the instant case, it is admitted by the petitioners that partnership was dissolved in 1969 and by virtue of the dissolution deed one shop fell in the share of Trilok Nath Chhabra and he exclusively occupied the same. This assertion clearly amounts to admission of sub-tenancy. In the aforesaid authority of Smt. Brij Bala Jain neither there was any allegation that at the time of start of tenancy partnership was in existence nor there was any allegation that later on partnership was dissolved. In the said authority partnership was executed on 18.10.1972 with a provision that it was effective from 1.6.1972. The dispute was whether it came into existence on 1.6.1972 or 18.10.1972. The said authority therefore does not have any bearing on the facts of the instant case. The other authorities cited by the learned counsel for the petitioners relate to distribution of partnership property amongst the partners after its dissolution. The said authorities are also not applicable to the facts of the instant case as inducting a partner after start of tenancy does not create any interest of the partner in the tenancy of the accommodation hence after dissolution no share in the tenancy can be given to a such partner.

13. Accordingly, there is no merit in the writ petitions and they are dismissed.

14. However, petitioners of both the writ petitions are granted time till 31.5.2005 to vacate provided that within one month from today they deposit the entire decretal amount due till 31.3.2005 after adjusting the amount already deposited for immediate payment to the landlord and further within the same period of one month from today all of them file undertaking before the J.S.C.C./ trial court to the effect that they will willingly vacate and hand over the possession of the accommodation in dispute to the landlord on or before 31.3.2005.