

(2012) 05 AHC CK 0323
In the Allahabad High Court
Case No : First Appeal No. 169 of 2012

S.S. Dixit	Vs	APPELLANT
Smt. Saroj Bhargava and another		RESPONDENT

Date of Decision : 22-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 103, Order 21 Rule 97

Citation : (2012) 5 AWC 5114

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : Mohammad Hisham Qadeer and M.A. Qadeer, for the Appellant; Atul Srivastava and M.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned counsel for the appellant and learned counsel for the respondent No. 1. This first appeal is directed against order dated 1.3.2012 passed by A.D.J. Court No. 17. Agra in Misc. Case No. 77 of 2010, which had been initiated by the appellant by filing application under Order XXI, Rule 97, C.P.C. By virtue of Order XXI. Rule 103, such orders have the same force and are subject to the same conditions as to an appeal as if it were a decree hence this appeal.

2. Respondent No. 1, Smt. Saroj Bhargava instituted S.C.C. Suit No. 90 of 2008 against respondent No. 2, Vijay Upadhyay asserting therein that respondent No. 2 was her tenant in the property in dispute. The suit was decreed which decree was maintained by the High Court as well as Supreme Court. The application giving rise to this appeal was filed by the applicant-appellant in Execution Case No. 2 of 2010, Saroj Bhargava v. Vijay Upadhyay, which had been initiated by respondent No. 1 for execution of decree passed in S.C.C. Suit No. 90 of 2008.

3. The case of the applicant was that Sri Anand Swaroop Kapoor, the owner of the property in dispute gave the same to him on rent at the rate of Rs. 200 per

month w.e.f. 1.7.1975. It was further pleaded that under the rent note/lease deed. Anand Swaroop Kapoor permitted the applicant to sublet the tenanted accommodation, hence the applicant sublet a part of the accommodation consisting of three rooms, two bathrooms, a drawing room and a godown and a compound on the ground floor to respondent No. 2, Vijay Upadhyay on 1.1.2003 and that Vijay Upadhyay colluded with respondent No. 1 hence respondent No. 1 was able to obtain decree of eviction against Vijay Upadhyay, respondent No. 2.

4. Respondent No. 1 pleaded that in the year 1984. Sri Anand Swaroop Kapoor sold the property in dispute to the respondent No. 1 and her husband through registered sale deed and prior to that they were tenants of the same, that applicant was never tenant of Anand Swaroop Kapoor, that receipts and agreement of lease purporting on behalf of Anand Swaroop filed by the applicant were forged. It was further asserted that respondent No. 2 was not the tenant of the appellant-applicant, and that applicant and respondent No. 2 were in collusion. Sale deed dated 17.4.1984 executed by Anand Swaroop Kapoor in favour of respondent No. 1 and her husband was filed. Other documents like electricity bill, receipt of payment of the rent, photo identity cards, passport, death certificate of Sudhir Kumar Bhargava, husband of respondent No. 1 showing his residence in the house in dispute were also filed.

5. The decree in S.C.C. Suit No. 90 of 2008 was challenged in the High Court as well as in the Supreme Court and the matter was decided in favour of respondent No. 2 by all the courts after thorough contest by respondent No. 2. From the perusal of the said judgments it cannot be inferred that there was any collusion. Respondent No. 2 contested the said proceedings tooth and nail. Neither any quarter was asked for nor given. The applicant could not show that he was inducted as tenant by Anand Swaroop. It is impossible that in case respondent No. 2 had not been tenant of respondent No. 1 but of the applicant then in the eviction suit filed against him by respondent No. 1 he would not have objected to the suit in that regard. By raising the said plea and proving that, he could very well save his eviction or at least delay his eviction.

6. The applicant asserted that he sublet the ground floor accommodation to respondent No. 3 for Rs. 3,000 per month. In case applicant had been tenant of Anand Swaroop Kapoor since 1975 then in the sale deed of 1984, Anand Swaroop Kapoor would have mentioned the said fact. The applicant in his cross-examination admitted that since 1966 till 1998 he was an employee of Western Regional Institute, Bhopal and he had been allotted Government quarter. He admitted that he had ration card having address of the house in dispute but he could not file that. The reason for this stand that he cannot file the Ration Card was not given by him. He admitted that he had photo identity card issued by Election Commissioner, however he had not brought that on record. He also admitted that he had taken electricity connection showing his residence of the house in dispute but documents pertaining to the same were also not filed. In his cross-examination he could not even say that whose houses were there towards

east or west of the house in dispute.

7. Accordingly, I fully agree with the view taken by the court below. It is fully justified by evidence and absence of evidence on record. Applicant had fraudulently been put forward by respondent No. 2, Time has come when in such matters criminal proceedings must be directed to be instituted as observed by the Supreme Court in Maria Margarida Sequeria Fernandes and Others Vs. Erasmo Jack de Sequeria (Dead) through L. Rs., however in the instant case I am not issuing any such direction. Several authorities cited by learned counsel for both the parties which are either not relevant or support the view which I have taken.

Appeal is, therefore, dismissed with Rs. 50,000 as cost.