
(2016) 12 AHC CK 0121
In the Allahabad High Court
Case No : Civil Revision No. 508 of 1998

Subhash Chand

APPELLANT

Vs

Smt. Baikunthi Devi

RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2

Citation : (2017) 1 ARC 47

Hon'ble Judges : Sudhir Agarwal, J.

Bench : Single Bench

Advocate : Madan Mohan and Pramod Kumar Jain, Advocates, for the Revisionist; Santosh Kumar, Advocate, for the Opposite Parties

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—; Heard Sri P.K. Jain, learned Senior Advocate assisted by Sri Madan Mohan, learned counsel for revisionist. None appeared on behalf of respondents though the name of Sri Ramendra Asthana, Advocate has been shown as counsel for respondents.

2. This is tenant's revision under Section 25 of Provincial Small Causes Courts Act, 1887 (hereinafter referred to as the "Act, 1887"). Plaintiff-respondent instituted Suit No. 27 of 1984 which has been decreed by judgment and decree dated 07.10.1998 passed by Sri K.K. Yadav, Xth Additional District Judge, Agra.

3. There was a dispute raised between parties, whether disputed premises is building or not. Issue no. 2 was framed to this effect and reads as under:

"2. Kya Vivadit Sampatti Building Ki Paribhasha Me Nahi Aati Hai? Yadi Han To Iska Prabhav?

4. This issue has been answered by holding that disputed premises is a building but having said so Court below thereafter has said that U.P. Urban Buildings

(Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Act, 1972") is not applicable to building in dispute. No reason has been given as to why Act, 1972 is not applicable particularly in view of the fact that building in dispute was let out in 1972 and unless specific provision shown, otherwise presumption is that all buildings as defined under Act, 1972 are within the purview of Act, 1972. On this aspect, I do not find that Court below has considered matter at all except of writing just one line that provisions of Act, 1972 are not applicable.

5. Exemption to which Act, 1972 is not applicable is described in Section 2 of Act, 1972 and having held that disputed premises is a building, it was incumbent upon Court below to discuss as to why Act, 1972 was not applicable to building in dispute.

6. In view thereof judgment and decree of eviction dated 07.10.1998 passed by Court below is set aside. Matter is remanded to Court below to examine, whether Act, 1972 is applicable on building in question or not and if it is applicable then whether plaintiff is entitled for any relief and if not what is the consequence.

7. The revision is partly allowed to the extent as above.