(2010) 09 AHC CK 0086

In the Allahabad High Court

Case No : Civil Revision No. 427 of 2006

Sundaram Thru. Dharmendra Singh Verma and Another — APPELLANT

Vs

Smt. Krishna Sharma and Others — RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106

Citation : (2010) 09 AHC CK 0086

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—The above revision has been filed u/s 25 of the Provincial Small Cause Courts Act by the tenants of the property No. 7/1141(old), new number 7/57 situate at Railway Road (Subhash Road, Agra) against the judgment and decree dated 9th of October, 2006 passed by the Special/ Additional District Judge, Aligarh in SCC suit No. 8 of 1998 whereby the suit for ejectment of the defendants tenants and for recovery of arrears of rent amounting to Rs. 13,200/- and damages @ Rs. 2,200/- per month for use and occupation, pendente lite and future has been decreed.

2. The suit giving rise to the above revision was filed on the pleas inter alia that the defendants No. 1 to 4 took the aforesaid accommodation on rent and are in arrears since 1st of April, 1996 @ Rs. 2,200/- per month along with 12.5 per cent house tax amounting to Rs. 154/- and 7% thereof as water tax amounting to Rs. 12.50 per month. The rent is due since November, 1997. The tenancy has been determined by the notice dated 10th of March, 1998 u/s 106 of the Transfer of Property Act. The provisions of the U.P. Act No. 13 of 1972 are not applicable being the monthly rent more than Rs. 2,000/-.

3. The suit was contested on the pleas inter alia that the shop in question was let out on a monthly rent of Rs. 1,500/- and that the defendants are not in arrears of rent. As many as nine points for determination were framed by the trial Court

and the suit as stated herein above has been decreed.

4. In the present revision, the only point urged by the learned Counsel for the defendants tenants is that the finding recorded by the trial Judge that the rate of rent is Rs. 2,200/- per month is vitiated and is not based on evidence on record. To appreciate the said argument, the pleadings of the parties and the evidence in this regard may be considered.

5. The suit was instituted on the pleas inter alia that the defendants have failed to pay the rent @ Rs. 2,200/- per month. In reply, it was pleaded by the present applicants (hereinafter referred to as tenants) that the shop in dispute was allotted on a monthly rent of Rs. 1500/-. The said rent was never enhanced and therefore, the tenants are liable to pay the rent @ Rs. 1500/-. The plaintiff landlady in support of her case has produced evidence documentary and oral. She filed the rent agreement between the parties to show that the shop was initially let out on a monthly rent of Rs. 1500/-. She also filed the counterfoils of the rent receipts marked as documents 96 Ga, 97 Ga and 98 Ga. 96 Ga is a receipt book containing counter foils of 49 rent receipts for the period 8th of July, 1985 to 11th of July, 1989. Paper No. 97 Ga is rent receipt book which contains the counterfoils of rent receipt Nos. 50 to 97 for the period 15th of August, 1989 to 15th of August, 1993 and paper No. 98 Ga is the counterfoils of rent receipt book from receipt Nos. 115 to 148 for the period February, 1995 to November, 1997. These counterfoils contain as per the plaintiff''s showing initials of the defendants tenants in token of the receipt of the rent receipt. The learned trial Judge has examined these rent receipts and reached to the conclusion that initially the shop was let out at Rs. 1500/- per moth which was enhanced to Rs. 2,000/- per month and thereafter, to Rs. 2,200/- per month. The defendants tenants has very conveniently disputed his signatures on these counterfoils. Not only this, he also disputed his signatures on the initial rent note when he took the shop in dispute on rent. The parties produced the report of handwriting experts. The trial Court preferred to give more weight to the report of the handwriting expert produced by the plaintiff landlady. It has taken into consideration the attending facts and circumstances of the case.

6. Sri M.K. Gupta, the learned Counsel for the tenants, submits that the report of his handwriting expert has been wrongly discarded and as a matter of fact, in view of the conflicting reports, the Court should have examined the disputed signature with the admitted signature itself. The submission is that without giving any reason the rejection of the report of the tenants'' handwriting expert is unjustified.

7. I have given careful consideration to the aforesaid submission of the learned Counsel for the tenants. At this juncture, it may be noted that the plaintiff tried to prove her case by filing the counterfoils of rent receipts which are around 131 total counterfoils of rent receipts in number. These counterfoils are for the period 8th of July, 1985 to November, 1997. As against this, the case of the defendants tenants is that these counterfoils are forged documents. The said plea of the

defendants tenants is nothing but a white lie. These counterfoils are spread over for a considerable period of around one decade. It is unimaginable and unthinkable that such a large number of documents will be prepared by a person to establish that the rate of rent is Rs. 2200/- per month which was initially Rs. 1500/- per month. Had the landlady a guilty intention she would have prepared the rent receipt at the uniform rent at Rs. 2200/- per month. These counterfoils of rent receipts were maintained by her in the normal course of business and they inspire more confidence as against the case of the defendants tenants that he used to pay the rent without asking for the rent receipts.

8. At this juncture, it may be noted that the defendants tenants has examined himself as DW/1 who states in his deposition that he is maintaining the account books in the regular course of business and he is paying income tax by filing income tax return and claimed that in the income tax proceedings he has shown the rent of disputed shop at Rs. 1500/-. Significantly, the tenants could not dare to file any document relating to the Income Tax Department in support of the above plea. When the plaintiff filed an application for summoning the relevant record from the Income Tax Department, the application was opposed tooth and nail by the defendants tenants and it was consequently rejected.

9. The landlady has given an explanation as to why the tenant agreed upon subsequently to enhance the rent. She has come out with the case that she permitted certain alterations in the disputed shop to the tenants and it was also permitted to put shutter on the shop. The said theory for enhancement of rent is plausible and has been accepted by the trial Court. To counter the said theory the tenants have come out with the case that no such alteration took place during the subsistence of the present tenancy but it took place earlier. Earlier, the shop in question was under the tenancy of the husband of the plaintiff. She purchased the shop from the erstwhile owner and landlord. In support of the case that alterations had taken place earlier, reliance was placed upon a letter dated 29th of January, 1985 supposed to have been given by the erstwhile tenant namely Suresh Chandra Sharma, husband of the plaintiff landlady to the erstwhile owner seeking permission to install shutter at his own expenses and to lower down the floor of the shop. In the said letter, there is endorsement of the erstwhile land owner Sri Raj Mittal to the effect that after going through the letter he has no objection. The said letter does not inspire any confidence. A query was put to the learned Counsel as to how the tenant has got the custody of that letter and who has proved it. The letter, according to the own showing of the tenants, was addressed to the erstwhile owner and in normal circumstance it should be in the custody of the erstwhile owner or in the custody of the present owner. The learned Counsel for the tenants could not give any reply nor he could show as to whether the said letter has been proved or not. When he was confronted by the Court as indicated above, he gave up the argument and did not pursue it further. This is also a circumstance which adversely reflects on the integrity and conduct of the tenants.

10. Emphasis was laid on a decision of the Apex Court in the case of Ishwari Prasad Mishra Vs. Mohammad Isa, on the point that the evidence given by the handwriting experts can never be conclusive. It is after all opinion evidence. There cannot be any two opinions about the said proposition of law. In the case on hand, it is not correct to say that the trial Judge has decided the case on the basis of the opinions of handwriting experts. It has taken into consideration the entire facts and circumstances of the case and also kept in view the fact that the case of the tenants is of total denial not supported by any documentary evidence while on the other hand, the plaintiff landlady has produced voluminous documentary evidence besides oral evidence in support of her case. The trial Judge has appreciated the available material on record and reached to the conclusion that the rate of rent was Rs. 2200/- per month, is a finding which cannot be said to be perverse or vitiated.

11. It was also argued that the pleading of the landlady is defective in as much as it is not pleaded in the plaint that initially the shop in dispute was let out on a monthly rent of Rs. 1500/-. Be that as it may, it is an acknowledged legal position that the pleadings are construed liberally. They should not be read in a pedantic manner to find out a fault therewith. In reply, the landlord has placed reliance upon a judgment of the Apex Court in a rent control matter in Mundri Lal v. Smt. Sushila Rani and Anr. (2008) SCR 92, a case under the Rent Control Act. Paragraph 29 from the said report is quoted below:

29. It is true that respondent could have made more elaborate pleadings; but we have noticed hereinbefore that no grievance was made in regard thereto. The parties knew the stand taken by the other. The issue involved in the suit was a simple one namely whether the construction was an old one or a new one. Even in the revision application, no such question was raised as it appears from the impugned judgment of the High Court. Such a ground was taken before us for the first time. There is also nothing to show that the appellant has been prejudiced in any manner whatsoever. It is a well settled principle of law that when parties have gone into trial knowing fully well the issue involved, inadequate pleading, if any, may not be sufficient to set aside the judgment.

12. In the present case also, the parties knew that they are on issue about rate of rent and led the evidence accordingly. At any rate, the issue was as to what was the rate of rent in November, 1997 since when the defendants tenants were in arrears of according to the plaintiff landlady. At that relevant point of time, the plaintiff has pleaded that the rate of rent was Rs. 2200/- per month. This was material fact which was required to be stated in the plaint and has been stated. What was the earlier rate of rent was not a material fact to be pleaded. The plaintiff landlady has successfully pleaded and proved that at the material point of time the rate of rent was Rs. 2200/- per month and as such, the provisions of the U.P. Act No. 13 of 1972 are not applicable.

13. No other point was pressed.

14. Viewed as above, I find that the finding recorded by the trial Judge on the question of rate of rent and arrears of rent is essentially a finding of fact and he has recorded a well considered finding. The view taken by the trial Judge is perfectly justified by the evidence on record and calls for no interference in view of the restricted jurisdiction of the revisional Court u/s 25 of the Provincial Small Cause Courts Act. The revision lacks merit and is, therefore, dismissed.

15. Before parting with the case, it may be noted that the tenants have been granted absolute stay order on 6th of November, 2006 staying his eviction in pursuance of the decree passed by the Court below. In view of the judgment of the Apex Court in the case of Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd., , it is provided that the defendant applicant shall pay the damages for the period November, 2006 onwards up to December, 2010 @ Rs. 4,000/- per month which will be inclusive of all the things.

16. Time to vacate the shop in dispute is granted up to 31st of December, 2010 subject to the following conditions:

1. Applicants/tenants are required to deposit the entire decretal amount and arrears of rent along with the damages as indicated above for the period up to December 2010 within a period of one month from today before the trial Court, after adjusting the amount, if any already deposited; and

2. The applicants shall file an undertaking on affidavit before the trial Court that they will vacate the disputed accommodation on or before 31.12.2010 and shall hand over its peaceful vacant possession to the plaintiffs.

3. In case of non compliance of either of the conditions as stipulated above, the time granted by this Court shall stand vacated.

17. If the applicants fail to vacate the disputed accommodation within the period as stipulated above, they shall be liable to pay the damages for the period January 2011 onwards @ Rs. 8,000/- per month till the date of actual delivery of possession.

