
(2011) 09 AHC CK 0326
In the Allahabad High Court
Case No : Civil Revision No. 391 of 2011

Teerath Prakash Jain

APPELLANT

Vs

Smt. Veena Dhawan and Others

RESPONDENT

Date of Decision : 03-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17, Order 18 Rule 17A, Order 41 Rule 27, Order 7 Rule 14
Transfer of Property Act, 1882 — Section 106

Citation : (2011) 09 AHC CK 0326

Hon'ble Judges : Abhinava Upadhyaya, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhinava Upadhyaya, J.—By means of this revision application the applicant has challenged the order of the court below dated 11.8.2011 by which during the stage of final hearing, it allowed the Plaintiffs to prove a document which was in the nature of notice dated 20.12.2006.

2. The applicant-revisionist is a tenant of premises No. 111/A/419, Ashok Nagar, Kanpur Nagar. Admittedly, the Plaintiffs-Respondents are the landlord of the premises and they filed a suit for ejectment and arrears of rent being SCC Suit No. 04 of 2007 before the court below.

3. There is No. dispute between the parties that Act No. 13 of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (in short the Act No. 13 of 1972) is not applicable.

4. In the plaint it was alleged that the notice dated 20.12.2006 has been issued and, therefore, provisions of Section 106 of the Transfer of Property Act, 1882 (in short the T.P.Act) have been complied with. Since the Plaintiffs-Respondents rely upon the said notice, they have entered in list of document supplied and presented to the court along with the plaint in compliance of Order VII Rule 14 of

Code of Civil Procedure, the matter was proceeded with. Written statement etc. were filed in the aforesaid suit and the matter was at the stage of final hearing.

5. During the course of final argument an application was moved that the alleged notice dated 20.12.2006 which is on record and entered in list as document filed along with the plaint has not yet been proved, which is primary evidence and vital for the final decision and proper adjudication of the case and therefore, the Plaintiffs be allowed to prove the same.

6. The tenant-Defendant objected to the same and submitted that at this belated stage such a lacuna cannot be allowed to be filled up by the Plaintiffs and on this count the suit must fail. The objection of the Defendant-revisionist was rejected by the order impugned. Hence, this revision.

7. Learned Counsel for the revisionist-applicant Sri P.K.Sinha, while relying upon a decision of this Court reported in 2011 (2) ARC 828 (Dayaram and Anr. v. Indrawati and Anr.) incidentally passed by myself, has submitted that the lacuna in the proceeding cannot be allowed to be filled at the stage of final hearing of the matter.

8. Paragraph-7 of the aforesaid judgment is quoted herein below:

The court below, while rejecting the application of the Petitioners, has noticed that such plea has not been taken even in the memo of appeal and apparently is an afterthought to fill in lacuna in the pleadings before the trial court. In the trial court the Petitioners had ample opportunity to present their case but the same was not done and the suit was dismissed. Now at the appellate stage the Petitioners want to file these documents, which is not permissible under Order 41 Rule 27 Code of Civil Procedure. The appellate court has also recorded a finding that such a fact is not even mentioned in the memo of appeal and, therefore, the same cannot be relied upon.

9. The facts of the case are different from the case of Dayaram and Anr. (supra), inasmuch as, in that case the suit was decided and final decree was passed and thereafter an appeal was filed and much after filing of the appeal an application was moved to bring on record certain other fresh documents which was not permitted and it was held that the aforesaid documents were always within the knowledge of the Plaintiffs, who could have produced the same before the trial court and if for some reason it could not be produced before the trial court then at least the same should be mentioned in the memo of appeal and when the appeal was filed but even that was not done and at this belated stage by an application the aforesaid document were sought to be brought on record, which has been held to be impermissible.

10. In the present case, the proceedings had not yet concluded but only final arguments were going on and the document in question that is the notice dated 20.12.2006 was already on record and filed in the list of document with the plaint but due to oversight or ill advise of the counsel attending the matter, the

same could not be proved. Therefore, in order to arrive at the correct decision the aforesaid application was allowed to prove the notice.

11. Learned Counsel for the revisionist has placed reliance of Order 18 Rule 17 of the CPC and submits that it is only the court which has the power to recall any witness and put such question to him as the court thinks fit.

12. Order 18 Rule 17 CPC does not in any manner preclude the parties to call for or to produce the evidence during the course of proceedings.

13. Sri Saurabh Srivastava, learned Counsel appearing for the Respondents has placed reliance on a decision of the Hon"ble Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), and submitted that paragraph 13 of the judgment is relevant for consideration which is quoted herein below:

In Salem Advocates Bar Association's case, it has been clarified that on deletion of Order XVIII Rule 17-A which provided for leading of additional evidence, the law existing before the introduction of the amendment, i.e., 1st July, 2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order XVIII Rule 17-A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order XVIII Rule 17-A did not create any new right but only clarified the position. Therefore, deletion of Order XVIII Rule 17-A does not disentitle production of evidence at a later stage. On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just.

14. I have considered the submissions made by the learned Counsel for the parties and have perused the record.

15. In my view, there is No. legal infirmity or any error on the part of the court below in allowing the application of the Plaintiffs to prove the notice dated 20.12.2006 as in the proceedings for ejectment and arrears of rent which are not covered by Act No. 13 of 1972, very limited scope is there to challenge the same.

16. Indisputably, Section 106 of the T.P. Act is applicable and, therefore, the notice dated 20.12.2006 is in the nature of primary evidence and has to be proved for placing reliance on the same. Since the proceedings had not yet concluded and the matter is still going on before the trial court and in view of the decision of the Hon"ble Supreme Court cited above, the court has ample power to permit the parties to produce or prove the evidence for just and proper adjudication of the dispute.

17. In view of the facts and circumstances of the case, there is No. error in the order of the court below.

18. The revision is mis-conceived and it is, accordingly, rejected.