
(1983) 07 AHC CK 0032

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 8511 of 1981

The U.P. Education Board and Another

APPELLANT

Vs

Kamleshwar Shahi and Others

RESPONDENT

Date of Decision : 26-07-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Municipalities Act, 1916 — Section 326

Citation : (1983) 07 AHC CK 0032

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : V.B. Upadhaya, for the Appellant; G.N. Verma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—U.P. Education Board and Basic Shiksha Adhikari have invoked extra-ordinary jurisdiction of this Court under Article 226 of Constitution of India against order passed by Prescribed Authority and Revising Authority decreeing the suit of opposite party for arrears of rent and ejectment. The finding that Petitioners were in arrears and did not deposit the same, even in Court, after service of notice for ejectment, has not been challenged. Yet they seek quashing of order in equity jurisdiction on technicalities which have absolutely no merit.

2. Learned Standing Counsel urged that the suit filed by opposite party could not have been decreed as no relationship of landlord and tenant existed between them. According to him the premises were let out by Salig Ram Shahi and he having died the opposite parties could succeed only if they satisfied the Petitioner that they were his heirs. They claimed that it was incumbent on opposite parties to produce succession certificate to satisfy that they were owners and unless that was done they were not bound to pay the rent to them. The argument, to say the least, is wholly misconceived. It was no doubt raised in the written statement

but neither any issue was framed nor it was pressed before the Prescribed or Revising Authority. The question whether the opposite parties were landlord or not is a question of fact which should not only have been raised but pressed before the Prescribed Authority and in case he did not record any finding then it should have been raised in revision. It cannot be permitted to be raised for the first time in writ petition. Even this much is not stated that the point was argued before Revising Authority. Apart from it a copy of the notice is on record. From a perusal of it is clear that the notice was given u/s 106 of the Transfer of Property Act read with Section 20 of the U.P. Act XIII of 1972 and Section 326 of U.P. Municipalities Act by Kamleshwar Shahi son of Sri. Gauri Shanker, Smt. Pyari Devi and Smt. Girja Devi widows of Salig Ram Shahi. In paragraph 7 of the counter-affidavit it has been alleged that the suit was filed by two ladies. The Petitioner from the notice must have come to know that they are the widows of Salig Ram Shahi and heirs under law. No other claimant had come forward. Devolution under law was automatic. On death of Salig Ram Shahi, his widows succeeded to his property. It was not dependant on succession certificate. Not only this Annexure 4 is a letter dated 30-8-1975 sent by Education Officer, Nagar Palika, Gorakhpur to Kamleshwar Shahi stating therein that they have received letter sent by opposite party along with proof that they were heirs of deceased Salig Ram Shahi. But it was not accepted as it was not accompanied by succession certificate. Indeed the claim of Education Officer of Nagar Palika, Gorakhpur was amazing. Under what law he expected opposite parties not only to establish that they were the heirs of deceased landlord but they were required to produce succession certificate to enable I them to pay the rent is not clear. It was not a case of mistake but deliberate attempt to harass the ladies. It cannot be believed that these Officers were not aware that in absence of any other the widow succeeded to the estate of their husband. Atleast there is no provision in Act XIII of 1972 of Transfer of Property Act. Reliance has been placed in Mahboob Ullah Vs. Jwala Prasad Kajriwal and Another, . In this decision the dispute was that one Mangal Ram was owner of property who transferred it in favour of Jwala Prasad and Sundar Lal. It appears Bankey Behari, who was father of these persons and members of Joint Hindu Family filed a suit in which the controversy arose whether he could be treated as landlord and it was held by this Court that as transfer has been made in favour of Jwala Prasad and Sundar Lal, it were they who could be treated as landlords and not Bankey Behari. And rightly. In lifetime of transferee the father could not claim to have become landlord because he was Karta of the Joint Hindu Family.

3. Having failed in his valiant effort to get the order set aside by this Court on this ground the learned Standing Counsel urged another technical ground namely, that suit was bad for failure on the part of opposite party to serve notice u/s 80 CPC on Petitioners. This plea was repelled by both the authorities. Learned Counsel urged that Basic Shiksha Adhikari having been impleaded as a party and he being a public officer within the meaning of U.P. Act XIII of 1972 this suit could not have been filed against him without complying with the

provisions of law. He has, however, failed to show that under Basic Shiksha Act, the Basic Siksha Adhikari has any, duty in respect of occupying any premises as a tenant. The occupation of the premises or even payment of rent could not be deemed to be in discharge of his official duties on Basic Shiksha Adhikari. In (1934) 66 MLJ 506 (Privy Council) , it was held by Privy Council that in a suit against a Public Officer it is only where the Plaintiff complains of some act purporting to have been done by him in his official capacity that a notice is enjoined."

4. Before disposing of this petition it is necessary to observe that the Petitioners have not acted fairly and justly. It is strange that they have been fighting like an ordinary litigant. They not only took up frivolous plea that opposite parties are not entitled to rent of the premises because they have failed to produce succession certificate but continued with this plea even in this Court. They even did not deposit the rent in Court.

5. In the result this petition fails and is dismissed. Petitioners shall pay the costs of this petition which is assessed at Rs. 1000/-.

6. Learned Counsel for Petitioner prays that sometime may be granted to vacate the premises. There is no equity in favour of Petitioners. But unfortunately the building is being used as a Primary School. The Session has started. Eviction at this stage shall work hardship. The Petitioner, is, therefore, permitted to make alternative arrangements and in any case vacate the premises at the end of Session i.e. May, 1984. This indulgence is being granted on undertaking of learned Standing Counsel on behalf of Petitioner that they shall pay the rent for this period and vacate the premises latest by 31st May, 1984.