

(1998) 09 AHC CK 0063
In the Allahabad High Court
Case No : C.M.W.P. No. 11754 of 1982

Triloki Nath Pandey

APPELLANT

Vs

IIIrd Addl. District and Sessions Judge, Bareilly and others

RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Transfer of Property Act, 1882 — Section 106
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20(1), 3

Citation : (1999) 1 AWC 815

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Navin Sinha, for the Appellant; S.C., Madhur Prakash and K.S. Shukla, for the Respondent

Judgement

J. C. Gupta, J.—This is landlord's petition.

2. The dispute relates to premises bearing No. 499/364 situate at Sahukara, Bareilly. The petitioner filed suit for ejectment alleging that initially building in question was taken on rent by respondent No. 5 for running a school under the name of respondent No. 3 for imparting basic education and by virtue of U. P. Basic Education Act of 1972 the management, supervision and control of the said school stood transferred and vested in respondent No. 4 who became the tenant of the petitioner and started paying rent at the rate of Rs. 100 per month. It was further pleaded that as the building in question was covered by the definition of "Public Building" within the meaning of Section 3(o) of the Act. the provisions of U. P. Act No. XIII of 1972 were not applicable and the tenancy of the defendant was terminated by a combined notice u/s 106 of the Transfer of Property Act and Section 80 of the CPC dated 26.11.1980 which was served upon the respondent on 1.12.1980 and 4.12.1980.

3. The suit was contested by the defendants. The trial court decreed the plaintiffs

suit for eviction and for recovery of Rs. 700 as rent and mesne profits only against defendant No. 2. The revision filed by U. P. Board of Basic Education has, however, been allowed by the impugned judgment dated 2.8.1982 of respondent No. I and the judgment of the trial court has been set aside and the plaintiffs suit for ejectment and for recovery of mesne profits has been dismissed solely on the ground that the notice served upon the defendants was not a valid notice inasmuch as there could not be a combined notice both u/s 106 of the Transfer of Property Act and u/s 80, C.P.C. Aggrieved by this judgment the land lord-petitioner has filed this writ petition.

4. Learned counsel for the parties have been heard and record has also been perused.

5. It is riot disputed from the respondent's side that on the date when the suit was filed, the building in question was exempted from the operation of the U. P. Act No. XIII of 1972 inasmuch as the amendment made by Act No. XVII of 1985 came into force with effect from 18.5.83 and as per the decision of the Apex Court in State of U. P. and another v. M. Z. Khalid 1988 (1) ARC 1 was not applicable to pending cases. The plaintiff-petitioner was thus entitled to institute suit for eviction under the provision of the Transfer of Property Act and thus the instant suit was not barred under the provisions of Section 20 (1) of the U. P. Act No. XIII of 1972.

6. The only question that requires consideration is whether the suit has rightly been dismissed by the revisional court on the basis that a combined notice u/s 106 of Transfer of Property Act and Section 80, C.P.C. was not contemplated in law? it would be seen that the revisional court while coming to the said conclusion based its judgment on the decision of a single Judge of this Court in the case of Union of India v. Chandra Kishore Agarwal 1981 (3) ARC 319. The aforesaid decision has, however, been over-ruled by a Division Bench of Lucknow Bench of this Court in the case of Union of India v. Khalid Abdullah and others 1990 (1) ARC 423 and it was held therein :

"Tenancy is terminated by a notice u/s 106 of the Transfer of Property Act. But no suit can be filed as against the Central Government or State Government till before expiration of two months after service of notice. The suit for ejectment after termination of tenancy is not to be filed immediately after the expiry of the period of notice. The bundle of facts which make cause of action for filing a suit do find place in the notice which is also a notice u/s 106 of the Transfer of Property Act. The additional claim in it or uncertainty in the period of service would not invalidate it. The tenancy will stand terminated after expiry of period of notice, but the suit is to be filed after two months. Neither the notice would be invalid nor suit on such a ground entails dismissal."

7. In the present case also, the notice whose copy has been annexed as Annexure-5 to the writ petition clearly indicated that tenancy of the defendant was determined in accordance with the provisions of Section 106 of the Transfer

of Property Act and the tenant was asked to deliver vacant possession of the property in question on the expiry of period of one month from the date of service of notice. The notice in a separate paragraph further recited that suit for recovery of rent and ejectment shall be filed after the expiry of statutory period of notice prescribed u/s 80, C.P.C. The notice clearly mentioned that the same was being given u/s 106 of the Transfer of Property Act as well as u/s 80. C.P.C. It is an undisputed fact that suit was actually filed after expiry of statutory period of two months from the date of service of notice, therefore, no prejudice could be said to have been caused to the defendants in any manner whatsoever and the notice in question was perfectly legal and valid. Since Act No. XIII of 1972 was not applicable, the decree passed by the trial court was in accordance with law and needed no Interference by the revisional court. The order of the revisional court is thus liable to be set aside.

8. For the reasons stated above, the writ petition is allowed and the judgment and order of the revisional court dated 2.8.1982. Annexure-4 to the writ petition, is quashed and that of the trial court is restored. In the circumstances, the parties shall bear their own costs. The defendants are, however, allowed six month's time to vacate the premises in question subject to their depositing the entire decretal amount upto date in the execution court by 30.10.1998, failing which it shall be open for the landlord-petitioner to get the decree of eviction executed forthwith.