

(1992) 05 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 10034 of 1981 and 12231 of 1985

Triveni Sahai and Another

APPELLANT

Vs

Ist Addl. District Judge and Others

RESPONDENT

Date of Decision : 22-05-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Provincial Small Cause Courts Act, 1887 — Section 25
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12, 20(4), 21, 21(1)

Citation : (1992) 3 AWC 1453

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : R.N. Bhalla, for the Appellant;

Final Decision : Disposed Of

Judgement

R.R. K. Trivedi, J.—In both the aforesaid writ petitions subject matter of dispute is a shop in town Kurawali, tahsil and district Mainpuri and the parties in both the writ petitions are also common. Hence both petitions are being decided by a common judgment.

2. Writ petition No. 10034 of 1981 was admitted for hearing by order dated 13th August, 1981. Writ Petition No. 12231 of 1985 however has not yet been admitted but the opposite parties put in appearance at the time of admission. In this writ petition, counter and rejoinder affidavits have been exchanged and in view of the order dated 15th October, 1985 passed by this Court, it appears necessary that both the petitions may be decided finally for which the learned Counsel for the parties are also agreed.

3. Some undisputed facts which are common in both the writ petitions may be stated first One Lala Lakhpatt Rai was owner landlord of the shop in dispute and Rameshwar Dayal was tenant of the shop in dispute on rent of Rs. 25/- per

month Lala Lakhpai Rai died leaving behind him one son Om Prakash and a daughter Smt. Vimladevi. It appears that for property left by Lala Lakhpai Rai Smt. Vimladevi executed sale deed in favour of Triveni Sahai and Ram Autar on 9th July, 1974 including shop in dispute, through her Attorney Jag Mohan Lal Bhatnagar, whereas Om Prakash, on the other hand, executed another sale deed for the same property in favour of Phool Chandra Verma. As both son and daughter of Lakhpai Rai had executed two separate sale deeds though they were entitled for only half share in the property left by Lala Lakhpai Rai, Suit No 107 of 1975 was filed in the court of Civil Judge, Mainpuri. This suit was decreed on 20-5-1978 on the basis of the compromise according to which the shop in dispute fell in share of Triveni Sahai and Ram Autar.

4. Tenant Rameshwar Dayal also died leaving behind him his widow Respondent No. 3 Smt. Prakashwati as sole heir. Respondent No. 4 was occupying shop after death of Rameshwar Dayal. Ram Babu, Respondent No. 4 however was doing business from the shop in dispute.

5. Triveni Sahai and Ram Autar filed SCC Suit No. 29 of 1979 against Smt. Prakashwati and Ram Babu inter alia on the allegations that they became owner/landlord on the basis of the sale deed dated 9th July, 1974 but in spite of the notice of demand and knowledge of the change in ownership, Defendant No. 1 (Smt. Prakashwati) has failed to pay the rent and she has sub-let the disputed shop in favour of Defendant No. 2 Ram Babu. The tenancy has been terminated by serving a notice dated 16th August, 1978. However neither the shop has been vacated nor the rent was paid hence the suit was filed for recovery of Rs. 900/- as arrears of rent and mesne profits and for possession of the shop. Mesne profit at the rate of Rs. 25/- per month pendente lite and future mesne profits till actual delivery of possession.

6. Suit was contested by Smt. Prakashwati and Ram Babu by filing separate written statements. The Defendant No. 1 Prakashwati Devi took the plea that Vimladevi has never executed sale deed in favour of Plaintiff and they have no right to file the suit. It was also stated that Lala Lakhpai Rai had one son and one daughter and therefore Vimladevi alone could not execute sale deed. The rate of rent was stated to be Rs. 60/- per month. She further stated that the Defendant No. 2 was a Compounder of her late husband and after his death Ram Babu is running the disputed shop on her behalf. Defendant No. 2 is not her sub-tenant but he is servant. It was further stated that rent has been deposited by her through Ram Babu in the court. It was also stated that Ram Babu with a mala fide intention has started claiming himself to be the tenant of the shop in dispute.

7. Ram Babu, Defendant No. 2 (Respondent No. 4) however, in his written statement, claimed himself to be the tenant of the shop in dispute since the time of the previous landlord and owner. After death of Rameshwar Dayal landlord had accepted him as tenant at the rate of Rs. 25/- per month. Om Prakash son of Lala Lakhpai Rai always treated him as a tenant. On the receipt of the notice amount

of Rs 1205/- was remitted through money order which was refused by the Plaintiff. It was claimed that no default has been committed and the suit is liable to be dismissed with special costs.

8. Learned Judge after hearing both the parties decree the suit by judgment and decree dated 19th November, 1979. The learned Judge, Small Causes found that Triveni Sahai and Ram Autar became owner and landlord-It was also found that Ram Babu was never tenant either on behalf of Lakhpat Rai or Om Prakash or the Plaintiff It was also found that the shop was sublet by Smt Prakashwati and default has also been committed. It was further found that the amount deposited u/s 20(4) of the Act by Defendant No. 2 Ram Babu cannot annure to the benefit of Defendant No. 1 Smt. Prakashwati Since the default has been committed, the suit is liable to be decreed.

9. Aggrieved by the judgment and decree of learned Judge, Small Causes, Ram Babu, Respondent No. 4, alone filed a revision being S.C.C. Revision No. 83 of 1979 Smt. Prakashwati, Respondent No. 3, submitted to the judgment and decree of the Judge Small Causes. The revision, however, was allowed by learned Ist Addl. District Judgs, Mainpuri by order dated 5th May, 1981 which has been challenged in Writ Petition No. 10034 of 1981. The writ petition was admitted and thereafter notices were issued for service on Respondents by registered post acknowledgement due. The service was deemed sufficient on Respondent No. 4 under Chapter 8 Rule 12 by order dated 20th December. 1982 and on Respondent No. 3 service was deemed sufficient by order dated 10th March. 1987 Thus both the Respondents have been served but no counter affidavit has been filed. Ram Babu, Respondent No. 4 who alone filed revision disputing the judgment of Judge, Small Causes Court is Petitioner in Writ Petition No 12231 of 1985, which was directed to be decided along with Writ Petition No. 10034 of 1981, by order dated 15th October, 1985 and after the aforesaid orders both writ petitions are listed together. Thus otherwise also Ram Babu has sufficient notice of Writ Petition. No. 10034 of 1981 but he has not chosen to file any counter affidavit.

10. Sri Triveni Sahai and Ram Autar also filed an application u/s 21(1) (a) and (b) of U.P. Urban Building (Regulation of Le ting Rent and Eviction) Act 1972. here-in-after referred to as "Act" for release of the shop in dispute in their favour They claimed themselves to be owner and landlord. It was also stated that the shop in dispute is old construction and it is in dilapidated condition On account of excessive rain its front portion has already fallen and the remaining construction dilapidated and is in very dangerous condition and at any time there can be any major accident. It was also stated that the condition of the shop has become so bad that it is beyond repairs and it requires demolition and reconstruction. It was further submitted that their sons are sitting idle and unemployed and the need of the shop in dispute is genuine and bonafide to get the sons employed: they want to initiate a cloth shop. It was also stated that the shop in dispute bad been sublet by tenant in favour of opposite party No. 2 Ram Babu but no business is

being done after front portion of it had fallen down on 10th August, 1982.

11. These proceedings were not contested by Smt. Prakashwati and only Ram Babu filed an objection. He admitted Triveni Sahai and Ram Autar as owner and landlord. However the maintainability of the application was challenged on the ground that as he is not a tenant the application cannot be entertained. The bonafide need of the applicant landlord was also disputed. Petitioner Ram Babu asserted that he is a medical practitioner and is carrying on medical hall in the premises in dispute for the last nearly 12 years He requested Plaintiffs to permit him to get repairs, in the shop, done but they refused to give permission. It was further stated that Rule 17 has not been complied with, the shop has not yet outlived its utility and the alleged damage to the front portion was caused as the owners of the neighboring building for purposes of construction had dug foundation which was filled by rainy water and it caused damage. The facts relating to the dispute in the case before Judge Small Causes were also mentioned. The prescribed Authority, however, after hearing the parties and perusing the materials on record allowed release application by his order dated 13th December, 1982. Aggrieved by the order of the Prescribed Authority Petitioner Ram Babu filed Appeal No. 7 of 1983 which has been dismissed by learned III Additional District Judge, Mainpuri on 20th August, 1985. Challenging the aforesaid orders of Prescribed Authority and appellate authority Writ Petition No. 12231 of 1985 has been filed.

12. I have heard Sri Ashok Bhushan, learned Counsel for the Petitioner Ram Babu and Sri R.N. Bhalla, learned Counsel for the Respondents No. 3 and 4 Sri R.N. Bhalla is also counsel for Petitioner in Writ Petition No. 10034 of 1981.

13. It is relevant to mention here that the Respondent No. 5 Smt. Prakashwati who inherited the tenancy after death of Rameshwar Dayal as his widow did not appear either before the Prescribed Authority or before the appellate authority in response to the notice issued by both the authorities and the proceedings were ex parte against her. She was impleaded as formal party. She has also not put in appearance in spite of service in Writ Petition No. 10034 of 1981, hence no notice is required to be sent to her and, in my opinion, writ petitions can be disposed of finally in her absence.

14. Sri Ashok Bhushan, learned Counsel for the Petitioner Ram Babu made following submissions.

15. Writ Petition No 12231 of 1985 hereinafter referred to as "second petition is being dealt with first Sri Ashok Bhushan. learned Counsel for the Petitioner submitted that in the second petition Respondents No. 3 and 4 were not owner and landlord and the application moved by them for release of the shop in dispute is not legally maintainable Reliance has been placed on the facts stated in paragraphs No. 22 and 23 of the writ petition and the judgment dated 5-5-1981 parsed in Revision No. 83 of 1979 where in the revisional authority held that the Respondents No. 3 and 4 cannot be treated as owner and landlord

of the shop in dispute on the basis of the compromise decree dated 20-5-1978 It has been submitted that the appellate authority while deciding the appeal has not adverted itself to this material point and thus has committed a manifest illegality. Second submission is that on the facts stated in the release application as it was a case of deemed vacancy u/s 12 of the Act the application for release u/s 21(1) (a) and (b) of the Act was not legally maintainable. The third submission of the learned Counsel is that as Respondent's No. 3 and 4 admittedly purchased the shop in dispute in 1974 the application for the release of the shop was not legally maintainable as no notice contemplated under the proviso to Section 21(1) of the Act was given. It has been further submitted that the Petitioner Ram Babu was sub-tenant and his need for the shop in dispute should also have been taken into consideration.

16. Sri R.N. Bhalla, on the other band, submitted that as Ram Babu Petitioner failed to establish himself as a tenant or subtenant the present writ petition is, in the circumstances, not legally maintainable. Reliance has been placed in cases Smt. Vatsal Nayar v. Smt Vandana Tandon 1988 (1) ARC 57 Chhakki Lal v. III Additional District Judge Mainpuri AIR 1977 All. 8 It has been further submitted that as the finding of both the authorities below on question of bonafide need of Respondents No. 3 and 4 and finding that the shop in dispute is in dilapidated condition and requires demolition and construction have not been questioned The writ petition is liable to be dismissed. It has also been submitted that the orders of both the authorities are concluded by findings of fact which are based on materials on record which cannot be questioned under Article 226 of the Constitution of India. Reliance has been placed in cases Ram Dhani v. II Additional District Judge Varanasi 1986 (1) ARC 192 and Naresh Chandra v. Smt Mena Devi 1986 (1) ARC 406.

17. I have considered the arguments advanced by the learned Counsel for the parties. Since the learned Counsel for the Petitioner Sri Ashok Bhushan has not questioned the finding of the authorities below on question of bonafide need and that the shop in dispute is in dilapidated condition and requires demolition and reconstruction and comparative hardship, I need not look into these findings. The challenge on behalf of the Petitioner are mainly legal regarding maintainability of the application for release which are being dealt with separately. The first submission of the learned Counsel for the Petitioner is that the Respondents No. 3 and 4 are not owner landlord in view of the judgment of the revisional court dated 5-5-81 and the application was not maintainable. I have thoroughly perused the judgment dated 5-5-81. In my opinion, the judgment is not relevant for the present proceedings. Since it is not disputed that the Respondents No. 3 and 4 purchased the shop in dispute, through sale deed dated 9th July, 1974 executed in their favour by Smt. Vimladevi and in partition suit between Respondents No. 3 and 4 and transferee from Sri Om Prakash brother of Smt. Vimla Devi, the shop in dispute fell in share of Respondents No. 3 and 4, they became owners and landlords. The decree in their favour passed by Civil court has become final. In this partition suit both Vimla Devi and Om Prakash and

transferees were the parties. It is also not disputed that in partition suit shop in dispute fell in shares of Respondents No. 3 and 4. In my opinion on these facts it cannot be denied that the Respondents No. 3 and 4 became owners and landlords of the shop in dispute. Further the tenant Respondent No. 5 Smt. Prakashwati has not questioned their status. She could not contest the application for release. The revisional authority while giving judgment dated 5-5-81 took a strange view which shall be dealt with separately. For not accepting Respondents No. 3 and 4 as owner and landlord, the reasoning given was that the title was claimed on the basis of the sale deed dated 9th July, 1974 and not on the basis of the decree dated 20th May, 1978. In my opinion, this view was wholly erroneous and cannot be sustained. The Respondents No. 3 and 4 claimed title over the shop in dispute on the basis of the sale deed dated 9th July, 1974 which was disputed in view of the another sale deed executed by Om Prakash but this dispute came to rest on a compromise decree passed in Civil Suit No. 107 of 1975 and after the decree passed in the aforesaid suit there remains no doubt against the title of the Respondents No. 3 and 4 regarding the shop in dispute. The cloud which shadowed their title for some time stood washed away after the decree passed by civil court. However the origin of the title in favour of Respondents No. 3 and 4 was through sale deed dated 9th July, 1974 which was recognised in the partition suit. The submission of the learned Counsel in my opinion is not correct. Even Petitioner Ram Babu in para 1 of his objection admitted Respondents No. 3 and 4 as landlord and which was stated only subject to clarification made in additional pleas. In these facts and circumstances there remains no doubt that the Respondents No. 3 and 4 were legally entitled to move an application for release of the shop in dispute in their favour.

18. The second submission of the learned Counsel for the Petitioner is that on the averments made in the application as it was case of deemed vacancy the application u/s 21 of the Act for release of the shop in dispute was not legally maintainable, In my opinion, this submission of the learned Counsel is also not correct. Petitioner in para 5 of the writ petition has asserted that he is carrying on his medical practice independently since last 15 years and affidavit was sworn on 29th August, 1985. In this objection dated 29th October, 1988, he asserted that he is carrying on his medical hall in the premises in question for the last nearly 12 years. Thus from both the averments it is clear that his occupation was on his own showing since 1970. Section 12 of the Act has been held to be prospective in its effect. Thus there was no question of any deemed vacancy as alleged on behalf of the Petitioner. The nature of his occupation according to the undisputed tenant was as servant and he continued the business in place of late Rameshwar Diyal being Compounder. Thus the Petitioner failed to prove himself tenant or sub-tenant in the shop in dispute. There remains no doubt that his possession was through Smt. Parkashwati and the present application for release of the shop in dispute against tenant was legally maintainable. The Petitioner was rightly impleaded as one of the opposite parties as he was in actual possession. In case of Chhakki Lal Vs. IIIrd Additional District Judge, Mainpuri and Others, ,

it has been held that the application for release can be maintainable in such circumstances. In my opinion, there is no error in the orders passed by the authorities below. On this ground even the revisional court which decided revision in favour of Petitioner on 5-5-81 clearly held that the Petitioner was neither a tenant nor sub-tenant. In these circumstances the application was legally maintainable and has been rightly allowed. The last submission of the learned Counsel for the Petitioner is that the application was not maintainable and could not be entertained for want of notice of demand under the provisions of Section 21(1) of the Act. In my opinion, as Petitioner was neither tenant nor a subtenant, this objection is not open to him, The purpose and object of notice contemplated under the aforesaid proviso is for the benefit of tenant and in case the tenant has not objected the maintainability of the application for release, in my opinion, it is not open to the Petitioner to challenge the release application on this ground. This contention is also not acceptable as no such plea was pressed before the appellate authority. In my opinion, submission of the learned Counsel for the Respondents Sri R.N. Bhalla have substance that the Petitioner having no Jocus-standi, the present petition at his instance is not maintainable. The orders of the authorities below cannot be questioned In my opinion, this writ petition has no force and is liable to be dismissed.

19. Now coming to the writ petition No. 10034 of 1981, I have heard Sri R.N. Bhalla and I have thoroughly perused the judgment of the revisional authority dated 5-5-81. In my opinion, revisional authority committed manifest error in interfering with the judgment and decree passed by the learned Judge, Small Causes. The revision court itself recorded finding that the Respondent No. 4 Ram Babu failed to establish himself as tenant of the shop in dispute It was also found that the contract of sub-tenancy has also not been established In view of these findings as the admitted tenant Smt. Prakashwati had not challenged the judgment and decree of the Judge Small Causes, there was no occasion for interference at the revisional stage The revisional court based its judgment mainly on the ground that Triveni Sahai and Ram Autar failed to prove themselves owners and landlord of the shop in dispute. The reason given was that they claimed title on the basis of the sale deed dated 9-7-1974 and not on the basis of the compromise decree dated 20-5-78. In my opinion, this distinction drawn by the revisional authority was wholly based on imagination The source of title of the Plaintiff Petitioner was the sale deed dated 9-7-1974 which was only recognised in the compromise decree dated 20-5-78 and which was necessary to resolve the dispute in title created by another sale deed executed by Om Prakash. It was not justified for the revisional court in the facts and circumstances of the case to reverse the finding of the trial court which was neither perverse nor suffered from any illegality. The legal position is that the revisional court u/s 25 of Provincial Small Causes Court Act cannot record finding for himself for dismissing the suit. From the evidence on record, I do not find anything to justify the finding of the revisional court. There was default committed by tenant in payment of rents. The deposit of rent by Respondent No.

4 Ram Babu could not be taken any legal notice as he was neither a tenant nor a sub-tenant according to the finding recorded by revisional authority itself. Revisional court committed manifest error of law in allowing the revision and dismissing the suit of Plaintiff Petitioners. In my opinion, the order of the revisional authority suffers from manifest error of law and is liable to be quashed, and the judgment and decree dated 19-11-1979 passed by Judge, Small Causes Court deserves to be restored.

20. For the reasons recorded above, Writ petition No. 12231 of 1985 has no force and is, accordingly, dismissed. Civil Misc Writ petition No. 10034 of 1981 is hereby allowed. The judgment of the revisional authority dated 5-5-1981 given in SCC Revision No. 83 of 1979 is quashed and the judgment and decree of learned Judge, Small Causes Court dated 19th November, 1979 shall stand restored. Therefore will be no order as to costs.