
(2011) 04 AHC CK 0258
In the Allahabad High Court
Case No : Rent Control No. 14 of 2011

Vinod Jaiswal

APPELLANT

Vs

Special Judge Lakhimpur Kheri and Ors.

RESPONDENT

Date of Decision : 04-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 24, 47
Provincial Small Cause Courts Act, 1887 — Section 18, 25

Citation : (2011) 04 AHC CK 0258

Hon'ble Judges : Anil Kumar, J

Final Decision : Allowed

Judgement

Anil Kumar, J.—Heard Sri Hari Om Singh, counsel for petitioner and Sri Anurag Narain, learned counsel appearing on behalf of contesting respondents.

2. With the consent of learned counsel for parties who are present today, the writ petition is heard at the admission stage.

3. In brief the facts of the present case are that one Sri Prem Narain Mahendra filed a suit (registered as SCC Case No. 1 of 1996) for arrears of rent, damages and eviction in the court of Judge, Small Causes (Sr. Div.), Gonda, allowed by judgment and decree dated 01.03.2001.

3. Aggrieved by the same, Civil Revision No. 65 of 2001 filed before this Court, dismissed vide order dated 03.03.2006 (Annexure 6) thereafter heirs of deceased/ landlord instituted an execution proceedings for execution of decree dated 01.03.2001 passed in SCC Case No. 1 of 1996. Accordingly, Execution Case No. 2 of 2007 registered in the court of Additional District Judge, Kheri.

4. In the said suit, objections filed by petitioner under Section 47 read with Section 151 CPC, as per version of the petitioner, the court concerned who passed decree is vacant and without any application and order whatsoever, the matter transferred by District Judge to the Court of Special Judge, Lakhimpur Kheri for execution of the decree dated 01.03.2001.

5. In view of the abovesaid facts, Sri Hari Om Singh, counsel for petitioner submits that order dated 24.11.2010 (Annexure1) under challenge in the present writ petition is illegal, arbitrary and in violation to the provisions as provided under Order 37 Rule 1(b) read with Section 150 CPC, liable to be set aside.

6. The said position is not disputed by Sri Anurag Narain, learned counsel for contesting respondent.

7. For the foregoing reasons, order dated 24.11.2010 (Annexure No. 1) passed by. O.P. No. 1 is set aside. However, a direction is issued to District Judge, Lakhimpur Kheri to dispose of application for transfer moved by decree holder dated 9.03.2011 under Section 151 CPC read with Section 24 CPC, a copy of which is annexed as Annexure No. SA1 along with supplementary affidavit filed today, after taking into account that the court passed the decree is now in existence, after hearing the parties on point in issued.

8. With the above observations, writ petition is allowed.