

(2003) 08 AHC CK 0193
In the Allahabad High Court
Case No : C.M.W.P. No. 15213 of 2002

Vivek Gupta

APPELLANT

Vs

Piyush Chandra Srivastava, Judge Small Causes Court/
Prescribed Authority and Others

RESPONDENT

Date of Decision : 23-08-2003

Acts Referred:

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21(1), 23

Citation : (2003) 6 AWC 5680

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : R.K. Jain and A.K. Singh, for the Appellant;

Final Decision : Allowed

Judgement

S.U. Khan, J. -

1. Landlord-Petitioner filed a release application u/s 21(1)(a) of U.P. Act No. 13 of 1972 (hereinafter referred to as the Act) against Dr. Pradeep Kumar Rastogi, Respondent No. 2 being P.A. Case No. 23 of 1994. Prescribed Authority/J.S.C.C., Meerut allowed the release application on 18.8.2000. Respondent No. 2 filed an appeal against the same being Misc. Appeal No. 243 of 2000 which was dismissed by XV Ith A.D.J., Meerut on 25.10.2000. Against the aforesaid orders and judgments, Respondent No. 2 filed a writ petition being W.P. No. 53031 of 2000 which was dismissed on 10.1.2001 and on 18.1.2001, Petitioner was granted time till 30.9.2001 to vacate subject to filing undertaking which was filed by Respondent No. 2 on 30.1.2001. SLP filed before the Hon'ble Supreme Court against the said judgment was dismissed and time to vacate was extended till 31.12.2001 on filing undertaking. Review was also filed before the Supreme Court, which was dismissed.

2. Property in dispute is a shop. Respondent No. 2 in the release proceedings filed written statement asserting therein, inter alia, that his father late Dr.

Jitendra Veer was tenant and on his death all his heirs including the opposite party became tenant of the shop in dispute, that his father was a Homeopathic doctor and had his clinic in the shop in dispute and that after the death of his father the opposite party was carrying on the same practice of Homeopathy. It was stated in the written statement that later Dr. Jitendra Veer on his death left behind six issues, i.e., two sons and four daughters and opposite party was one of the two sons hence release application was bad for non-joinder of other son and four daughters of the late original tenant.

3. The landlord-Petitioner had purchased the property in 1988 and the initial tenant died in the year 1990. Before filing the release application landlord served a notice on 30.8.1993 upon Respondent No. 2 (the only opposite party in the release application). Respondent No. 2 also stated that he passed the course of Homeopathy through correspondence and even during the life time of his father he was assisting him in the clinic. The Prescribed Authority as well as the appellate court turned down the plea that the release application was bad for non-joinder of other heirs of late original tenant, Respondent Nos. 5 to 7 the other heirs of the late original tenant who are admittedly staying in U.S.A. filed impleadment application through their attorney Dr. Tara Chand Gupta in the release application on 16.7.1997. Prescribed Authority on 10.9.1997 rejected the impleadment application. Against the said order of Prescribed Authority rejecting impleadment application writ petition was filed in this High Court being Writ Petition No. 37901 of 1997. The said writ petition was finally disposed of on 26.3.1999. In the said judgment, the High Court observed:

"I clarify as the Petitioners are not parties in the proceeding, they will be at liberty to raise that the judgment in these proceedings is not binding on them. In case they raise such plea it may be decided in accordance with law."

4. After decision of appeal dated 25.10.2000 landlord-Petitioner filed execution application u/s 23 of the Act. In the said execution proceedings three sets of objections were filed one by Respondents Nos. 3 and 4 and the other by Respondent No. 2 and the third one by Respondent Nos. 5, 6 and 7 respectively. Respondent Nos. 5, 6 and 7 were Petitioners in the earlier Writ Petition No. 37901 of 1997.

5. The Prescribed Authority by order dated 26.2.2002 allowed the objections of Respondent Nos. 3 to 7 (heirs of deceased original tenant along with Respondent No. 2). This writ petition is directed against the aforesaid order dated 26.2.2002 passed by the Prescribed Authority. Learned Counsel for the Respondents/ heirs of late original tenant which were not impleaded in the release application has contended that in view of liberty granted by this Court in earlier Writ Petition No. 37901 of 1997 Respondents were at liberty to raise the plea that release order was not binding on them. Learned Counsel has placed reliance upon an authority of the Supreme Court in Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup and another, . The facts in the aforesaid authority of the Supreme Court were that after the death of the tenant of a residential house his three

heirs inherited the tenancy and all the three were residing in the house at the time of death of the original tenant. A suit for eviction filed by the landlord against only two heirs was decreed ex parte. The third non-impleaded heir filed a suit challenging the ex parte decree. The Supreme Court held that even though all the three tenants were joint and notice to one could be sufficient but it was necessary to implead all the joint tenants in the suit and ex parte decree of eviction passed against some of the joint tenants is not binding upon non-impleaded joint tenants. The said authority has been considered in a recent judgments of the Supreme Court in *Ashok Chintaman Juker and Others Vs. Kishore Pandurang Mantri and Another*, . In the later authority, the Supreme Court has distinguished earlier authority on two grounds. Firstly, in the earlier authority, the decree was ex parte and secondly, the person who challenged the decree was actually residing in the house when the suit was filed. In the later authority, the Supreme Court has noticed that the person who challenged the execution was not residing in the house when the suit was filed. It may be noted that in the later authority of the Supreme Court, the suit was decreed on compromise.

6. In the instant case, Respondent Nos. 5 to 7 are residing in U.S.A. and Respondent Nos. 3 and 4 who are daughters of late original tenants are residing in other cities along with their husbands. Technically in case of non-residential building, all the heirs become tenants on the death of the original tenant but on the other hand, decree passed against one of the joint tenants is binding upon other joint tenants also. In the instant case, in view of the fact that Respondent Nos. 3 to 7 had absolutely no concern with the clinic being run from the shop in dispute cannot take advantage of the technicality that they also became tenants on the death of their father. This technicality stands neutralised by the other technicality, i.e., decree passed against one joint tenant is binding upon other joint tenants also. In case any of the said Respondents were also carrying on the business from the shop in dispute, then, of course, equitable consideration would have intervened and he could not be ejected under release order if he had not been impleaded, inspite of the technicality that decree passed against one joint tenant is binding upon other joint tenants.

7. In my opinion, in this manner, both the aforesaid authorities of the Supreme Court may be reconciled.

8. Accordingly, writ petition is allowed. Order dated 26.2.2002 passed by Prescribed Authority is set aside and it is directed that release order passed by Prescribed Authority/ J.S.C.C., Meerut in P.A. Case No. 23 of 1994 dated 18.8.2000 as confirmed by appellate court and this High Court in writ petition shall forthwith be executed and accordingly possession of the shop in dispute after dispossessing any one found in possession should be delivered to the landlord-Petitioner.