
(2017) 01 AHC CK 0002

In the Allahabad High Court

Case No : Matters Under Article 227 No. 10225 of 2016

Zakir Husain

APPELLANT

Vs

A.D.J., Court No 12 and 2 Others

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2017) 1 ARC 391

Hon'ble Judges : Manoj Misra, J.

Bench : Single Bench

Advocate : Mukesh Chandra Gupta, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Manoj Misra, J.— Heard learned counsel for the petitioner and perused the record.

2. The opposite party no. 3 instituted SCC Suit No. 44 of 2010 against the opposite party no.2 for arrears of rent and eviction. The said suit was decreed by judgment and decree dated 22.02.2011 passed by the Judge, Small Causes against which revision has been preferred by the opposite party no.2 which is pending as SCC Revision No. 13 of 2011 in the Court of Additional District Judge, Court No.12, Agra. During the pendency of the revision, the petitioner filed application no. 40 Ka seeking impleadment in the revision on the ground that the suit property was a Waqf Property and the plaintiff and defendant were in collusion with each other and, therefore, the interest of the Waqf would be prejudiced if the petitioner was not impleaded as a party to the revision proceeding. By the impugned order, the impleadment application has been rejected on the ground that the petitioner is not a necessary party, inasmuch as, in an SCC Suit, which has been instituted on the basis of landlord-tenant relationship, questions of title cannot be gone into. While rejecting the impleadment application, the court below took notice of a judgment and decree passed in Original Suit No. 7 of 1998 instituted by the opposite party no.3

against opposite party no.2 for declaration. In the said suit also, the opposite party no.2 had set up a plea that the suit property was a Waqf property. The court found that the plea was not substantiated. The trial court judgment was affirmed by the appellate court and ultimately the decision of the appellate court was affirmed by this Court in Second Appeal No. 298 of 2010.

3. Assailing the rejection of impleadment application, the learned counsel for the petitioner submitted that since the opposite party no.2 is in collusion with the plaintiff and is likely to handover possession of the suit property even though he was tenant of the Waqf, therefore, the Waqf was a necessary party and the application seeking impleadment ought to have been allowed.

4. It is well settled in law that in a suit instituted in the Court of Judge Small Causes on the basis of landlord-tenant relationship intricate questions of title are neither to be gone into nor required to be adjudicated by the Judge Small Causes though incidentally those questions can be examined only to determine existence of landlord-tenant relationship, therefore, any decree passed by the Court of Judge Small Causes is subject to decision of a competent Court empowered to adjudicate questions of title in respect of immovable property. Accordingly, by rejection of the impleadment application of the petitioner there would be no irreparable loss to the petitioner.

5. Further, in the instant case, the manner in which the matter has been contested by the opposite party no.2 does not show that the opposite party no.2 is in collusion with the plaintiff of the suit. The opposite party no.2 has not only contested the suit proceeding but has also independently contested another title suit up to the High Court level which clearly suggests that the opposite party no.2 is not in collusion with the plaintiff. Under the circumstances, since the decree passed by the Court of Judge, Small Causes would be a decree in personam and not in rem, the interest of the petitioner will not be irreparably prejudiced inasmuch as it would be open to the petitioner to institute a suit on the basis of his title. Accordingly, this Court finds no good reason to interfere with the order passed by the court below rejecting the impleadment application of the petitioner.

6. The petition is dismissed.