
(2007) 09 AHC CK 0092

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 45294 of 2007

Nurunnisa @ Lalli

APPELLANT

Vs

Special/Additional
District Judge, Court
No.4, Saharanpur and
others

RESPONDENT

Date of Decision: Sept. 18, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226

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

Final Decision: Allowed

Judgement

S.U. Khan, J.

Learned Counsel for the. petitioner makes an order prayer for deletion of the name of respondent No. 4 from the array of the parties. The prayer is accepted. Let the name of respondent No. 4 Maulana Mohd. Salman be deleted from the array of the parties.

2. Heard learned Counsel for the petitioner as well as the learned Counsel for the contesting respondent who appeared through caveat.

3. Plaintiff, which was described as "Waqf Khuda Vand Tala known as Madarsa Mazahir Uloom, Saharanpur through its Mutwalli Mufti Muzaffar Hussein" filed S.C.C. Suit No. 9 of 1990 for eviction against the tenantpetitioner. The suit was decreed by J.S.C.C., Saharanpur on 5.3.2001 and the petitioner was directed to be evicted from the tenanted property which is in the form of a residential accommodation consisting of one room and other amenities rent of which is Rs. 28.50 per month. Against the said judgment and decree the tenant has filed S.C.C. Revision No. 13 of 2001, which at present is pending before Special/Additional District Judge, Court No. 4 Saharanpur. During pendency of revision Muzaffar Hussain, who had originally instituted the suit as mutwalli, died. Three applications were filed for substitution in place of Muzaffar Hussain. One was filed by for

substituting the name of Maulana Mohd. Salman. The other was filed by the petitioner Shrimati Nurunnisa seeking substitution of the same person i.e., Maulana Mohd. Salman. The third application was filed by Maulana Mohd. Sayeedi, respondent No. 3. The Revisional Court through order dated 4.8.2007 rejected the application of petitioner as well as of Maulana Mohd. Salman and allowed the application of respondent No. 3 Maulana Mohd. Sayeedi. The said order was not challenged by the petitioner.

4. Thereafter on 10.9.2007 Revisional Court passed an order dismissing the revision as abated. The said order has been challenged through this writ petition. As impleadment application of respondent No. 3 had already been allowed, hence there was no question of abatement. Learned Counsel for the respondents states that in the memorandum of revision the name of respondent No. 3 was not substituted, hence abatement order was passed. Actually correction of name in the pleadings or in the memo of appeal or revision in pursuance of the order passed by the Court on substitution or impleadment application is a ministerial act for want of which suit, appeal or revision cannot be dismissed, as abated.

5. Accordingly writ petition is allowed. Impugned order dated 10.9.2007 is set aside. The concerned clerk of the office of the Revisional Court is directed to carry out the amendment in the memo of revision in pursuance of the order dated 4.8.2007. Revisional Court is directed to decide the revision very expeditiously, preferably within four months from the date on which certified copy of this order is filed.

6. It is further directed that no unnecessary adjournment shall be granted to any of the parties. If the Trial Court is certified is inclined to grant any adjournment then it must be given on a very heavy cost, which shall not be less than Rs. 500/ per adjournment. It is further directed that until final disposal of the revision eviction of the petitioner shall remain stayed provided that with effect from September, 2007 onward petitioner deposits rent/damages for use and occupation of the premises before the Revisional Court @ Rs. 500/ per month by the 7th of each succeeding month for immediate payment to landlord/respondent. In case of two defaults the stay order shall stand automatically vacated and the petitioner should be evicted through process of the Court. This direction is being issued in view of Supreme Court judgment in Atma Ram Properties v. Federal Motors 2005 (58) ALR 650 (SC)=2005 (26) AIC 84 (SC).

Writ Petition Allowed.