

(2010) 05 AHC CK 0134

Allahabad High Court

Case No: Second Appeal No. 647 of 2006

Siya Ram

APPELLANT

Vs

Nagar Palika Parishad, Tilhar and
another

RESPONDENT

Date of Decision: May 11, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100

Hon'ble Judges: Rakesh Tiwari, J

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Rejoinder affidavit filed is taken on record.

2. Heard counsel for the parties.

3. It appears from the order dated 28.7.2006 that this second appeal was admitted but question of law has not been formulated.

4. Counsel for the appellant submits that the appeal was admitted on the substantial question of law, " Whether the lower appellate court erred in law in dismissing the suit as even a trespasser or an unauthorised occupant cannot be dispossessed except in accordance with law".

5. In support of his contention, he has relied upon paragraph no. 9 of the judgment rendered in Krishna Ram Mahale Vs. Mrs. Shobha Venkat Rao reported in A.I.R. 1989 S.C.2097, which reads thus :

"This proposition was also accepted by a Division Bench of this Court in Ram Rattan Vs. State of U.P.(1977) 2 SCR 232: AIR 1977 SC 619).The Division Bench comprising of three learned Judges held that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing

his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. In the present case, we may point out that there was no question of the plaintiff entering upon the premises as a trespasser at all as she had entered into the possession of the restaurant business and the premises where it was conducted as a licensee and in due course of law. Thus, defendant no. 3 was not entitled to dispossess the plaintiff unlawfully and behind her back as has been done by him in the present case. It was pointed out by Mr. Tarkunde that some of the observations referred to above were in connection with a suit filed under S. 6 of the Specific Relief Act, 1963 or analogous provisions in the earlier Specific Relief Act, 1877. To our mind, this makes no difference in this case as the suit has been filed only a few weeks of the plaintiff being unlawfully deprived of possession of the said business and the premises and much before the period of six months expired. In view of the aforesaid conclusions arrived by us, we do not propose to consider the question whether the agreement between the plaintiff and defendant no. 3 amounted to a licence or a sublease."

6. Second decision relied upon by the learned counsel for the appellant is State of U.P. and others Vs. Maharaja Dharmander Prasad Singh etc. reported in A.I.R. 1989 S.C.997. On the basis of aforesaid authorities, counsel for the appellant submits that it is well settled law that where a person is in settled possession of the property, he cannot be dispossessed except in accordance with law.

7. Per contra, Sri Prem Chandra, learned counsel for the respondents submits that father of the plaintiff appellant was a Halwai and was selling sweet meet on a Chabutara on roadside about ten feet away from the centre of the road. It is stated that the court below has held that the plaintiff appellant was a licensee and not a tenant, who was allowed to sell his goods on the roadside on payment of Tehbazari.

8. After hearing counsel for the parties and on perusal of the record, it appears that trial court had found that the plaintiff appellant was only a licensee and not a tenant. This finding has been given by the trial court on issue no. 1 and 2 framed by it as under :

9. The trial court noting the fact that though the appellant claimed that he was a tenant and was paying rent under Kiraidari but he could not produce the same and from the documents filed by the plaintiff, it appears that he was only a licensee. The relevant extract of findings recorded on the aforesaid issues are as follows :

10. As regards the judgment in Krishna Ram Mahale's case (supra) is concerned, in that case the plaintiff had filed a suit for recovery of possession of premises upon which she had entered as a licensee to conduct the business of restaurant. She was subsequently dispossessed by the licensor unlawfully and behind her back. Immediately thereafter she filed suit for recovery of possession. In these circumstances, it was held therein that she was entitled to decree for recovery of

possession. Since she was unlawfully dispossessed, it could not be said that the licence having expired long back and the plaintiff not being entitled to renewal of licence could only ask for damages for unlawful possession.

11. From the above, it is clear that petitioner in the aforesaid case had been unlawfully dispossessed by the licensor before expiry of the licence period whereas in the instant case the plaintiff appellant is a licensee on day to day basis on payment of Tehbazaari. His licence expires every day in the evening. It may also be noticed that in the case of Krishna Ram Mahale (supra), a restaurant was being run by the plaintiff in a private property whereas in the instant case admittedly the plaintiff appellant was selling sweets on roadside and claims to have inherited from his father who was selling sweets since 1955.

12. In the case of State of U.P. and others Vs. Maharaja Dharmander Prasad Singh (supra), the question before the Court was whether the purported forfeiture and cancellation of the lease of the Nazool land by the State Govt., were valid or not and be allowed to be agitated in proceedings under Art. 226. It was held in that case that a lessor with the best of title, has no right to resume possession extra judicially by use of force from a lessee even after the expiry or earlier termination of the lease by forfeiture or otherwise. The use of the expression re entry in the lease deed does not authorise extrajudicial methods to resume possession. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible possession is prohibited, a lessee cannot be dispossessed otherwise than in due course of law.

13. At this stage, reference may also be made to a Division Bench decision of this Court rendered in Shivala Footpath Sangathan Sansthan (Dukandar) and others Vs. District Magistrate, Kanpur Nagar and others (2004(1) C.R.C.703, where the petitioners had their shops on footpath and allotment in their favour were made by Nagar Nigam for use of footpath and they were paying Tehbazari. The Court in the aforesaid circumstances held that petitioners therein have no right to occupy the footpath and Nagar Nigam has no right to allot footpath which is for public use by pedestrians.

14. In the present case, the plaintiff appellant has lost from the lower appellate court. He has not been evicted during trial or appeal before the lower appellate court as injunction was in force. He has also not been evicted during pendency of the present second appeal as an interim order was in his favour. The defendant respondents have applied for vacation of the interim order and have prayed the Court to pass appropriate orders. This action or proceeding cannot tantamount to eviction of plaintiff appellant by extra judicial methods or not in accordance with law.

15. The licence of the plaintiff appellant has expired long back. Considering all facts and circumstances of the case in totality and following the ratio laid down in Shivala

Footpath Sangathan Sansthan (Dukandar)'s case (supra), judgment of the lower appellate court is upheld as footpath cannot be allotted to any person or given on licence on payment of Tehbazari. Hence the plaintiff appellant has no legal right to occupy footpath meant for public use by pedestrians. No substantial question of law is involved in this appeal as there can be no estoppel against the statute.

16. The appeal is accordingly dismissed. Interim order, if any, stands vacated. No order as to costs.