

(1992) 09 AHC CK 0090

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 3368 of 1986

Ram Autar

APPELLANT

Vs

IV Additional District Judge and
Others

RESPONDENT

Date of Decision: Sept. 3, 1992

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 7
- Provincial Small Cause Courts Act, 1887 - Section 25
- Transfer of Property Act, 1882 - Section 111, 114A

Citation: (1993) 1 AWC 69

Hon'ble Judges: S.P. Srivastava, J

Bench: Single Bench

Advocate: Ajit Kumar and M.C. Singh, for the Appellant; B.D. Mandhyan, S.C. Mandhyan and Vinod Sinha, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.P. Srivastava, J.

This writ petition of a tenant-Petitioner arises out of a suit filed by the landlord Respondent No. 3 praying for a decree for the ejectment of the Petitioner from the premises in dispute and for recovery of the arrears of rent and damages for use and occupation pendence-lite and future at the rate of Rs. 41/- per month and also for the recovery of water-tax and house tax. The trial Court decreed the suit and the said decree was affirmed in revision by the Respondent No. 1 Feeling aggrieved from the aforesaid decree, the tenant-Petitioner has now approached this Court for redress.

2. The suit referred to above had been filed on 21-3-79. Initially the Plaintiff-landlord had come up with the allegations that the tenant-Defendant defaulter within the meaning of Section 20(2)(a) of U.P. Act No. 13 of 1972 and had further sub-let the accommodation and was liable to be evicted therefrom on the ground contemplated u/s 20(2)(e) of the said Act. During the pendency of the suit certain events took place which required to be brought to the notice of the trial Court and necessitated the amendment of the plaint. The subsequent events provided a fresh ground for the decree sought for in as much as it attracted the ground contemplated u/s 20(2)(d) of the U.P. Act No. 13 of 1972. In these circumstances an application seeking amendment in the plaint was moved by the Plaintiff-landlord which was allowed by the trial Court on 29-10-82 and became final. With the order allowing the amendment the necessary pleadings attracting the ground for ejectment contemplated u/s 20(2)(d) of the U.P. Act No. 13 of 1972, thus, became part of the pleadings of the Plaintiff. The Defendant was allowed to file an additional written statement and on the pleadings of the parties the trial Court framed a specific issue on the amended pleadings which was issue no 4 and the parties were afforded full opportunity to lead evidence on this issue. This issue No. 4 covered the controversy as to whether the Defendant was liable to ejectment on the ground that he had without the consent in writing of the landlord used the desmised premises for a purpose other than the purpose for which he had been admitted to the tenancy of the building and the act of converting a portion of building in dispute for residential user being inconsistent with the use which has been permitted was sufficient for the grant of a decree of his eviction from the premises in dispute.

3. While considering the question of default in the payment of rent, the trial Court recorded a finding that although the Defendant tenant was a defaulter within the meaning of Section 20(2)(a) of the Act yet he was entitled to the benefits available u/s 20(4) of the said Act and consequently no decree for ejectment could, be passed against him on that ground. On the question of subletting also the finding returned by the trial Court was in favour of the Defendant-tenant. However, while deciding the issue relating to the inconsistent user attracting the ground envisaged u/s 20(2)(d) of the Act the trial Court came to the conclusion that the premises in dispute had been let out for its utilisation for business purposes exclusively and conversion of the upper storey of the accommodation in dispute for residential user clearly amounted to user for an inconsistent purpose as envisaged u/s 20(2)(d) of the Act and consequently inspite of the findings on the question of default and creation of sub-tenancy having been returned against the Plaintiff the Defendant was liable to be evicted from the premises in dispute. The suit was, therefore, decreed for ejectment and for recovery of arrears of rent and pendenfe-lite and future damages at the rate of Rs. 41/- per month and for an amount of Rs. 31.57 p. towards the arrears of water tax.

4. The decree passed by the trial Court referred to above was challenged by the Defendant-tenant in revision filed u/s 25 of the Provincial Small Cause Courts Act

without any success. Before the revisional Court it was urged that it was incumbent on the Plaintiff to specifically aver in the notice terminating the tenancy issued by him the facts attracting the ground envisaged u/s 20(2)(d) of the Act and since the aforesaid notice which preceded the filing of the suit did not contain such averments no decree for eviction of the Defendant could be passed on that ground. The revisional Court repelled the above contention and took the view that it was not necessary to aver in the notice the facts attracting the grounds of eviction contemplated u/s 20(d) of the Act. The revisional Court upheld the finding returned by the trial Court and the question of inconsistent user of the premises in despite and contravention of Section 20(2)(d) of the Act and upheld the decree passed by the trial Court.

5. I have heard Sri. Ajit Kumar, learned Counsel for the Petitioner and Sri B.C. Mandhyan, learned Counsel for the landlord-Respondent and have perused the record.

6. This Court in its decision in the Case of Dr. Bhupeshwar Sahi v. State of U.P. 1988 (1) ARC 134, while not doing the effect of the provisions contained in Section 20(2) of the U.P. Act No. 13 of 1972 had clarified that the said provision provided for the conditions whereunder a suit for eviction of the tenant could be filed. It was observed that the said provision only contemplated that it could be done after the determination of the tenancy of the tenant. It was further observed that the notice required u/s 20(2) of the Act was only for determination of tenancy and nothing further. In this connection it may also be noticed that Section 20 of the Act relates to a suit for eviction and such a suit filed under Sub-section (2) there is an ordinary suit and not any special proceeding created under the Act is governed by the CPC except that, being a suit of Small cause nature those provisions of the Code are not to apply to it, the application whereof has been excepted by Section 7 thereof and Order "L" in the first Schedule there to. It is, therefore, obvious that if the suit is based on any of the grounds mentioned in Section 20(2) of the Act, it is necessary for the Plaintiff to aver in his plaint the facts attracting the grounds mentioned in Section 20(2) of the Act on the basis whereof he seeks the decree for eviction. But the scheme of the Act does not contemplate any such requirement to be complied with while issuing a notice contemplated u/s 20(2) thereof. The notice envisaged therein is clearly a simple notice determining the tenancy and in Case the suit is based on the ground contemplated u/s 20(2)(a) of the Act a further notice demanding the payment of the arrears of rent. Section 20(1) of the U.P. Act No. 13 of 1972 imposes a bar prohibiting filing of a suit for eviction of a tenant from a building notwithstanding the determination of his tenancy. This bar stands lifted if any of the grounds envisaged u/s 20(2) of the Act are satisfied. Section 20(2)(a) of the Act, however, contemplates that even though the bar contemplated therein stands lifted on the fulfillment of the requisite conditions contemplated therein yet the suit could be instituted even after the determination of the tenancy of the tenant only if a further notice of demand requiring payment of the arrears of rent is issued and served on the tenant and the

same is not complied with within the time allowed, Since in such circumstances it is for the Plaintiff to make out a Case under the Rent Act for eviction of the tenant on the ground is contemplated u/s 20(2) of the U.P. Act No. 13 of 1972 it becomes obligatory upon him to aver in the plaint the necessary facts in this regard and proved them. There is no such obligation on any landlord-Plaintiff requiring him to aver the facts in regard to the fulfillment of the conditions contemplated u/s 20(2) of the Act in the notice determining the tenancy which notice has to precede the filing of the suit. The view taken by the revisional Court does not, therefore, suffer from any such infirmity as suggested by the Counsel for the Petitioner.

7. The aforesaid question can be looked into with another aspect. The apex Court in its decision in the Case of [Ramesh Kumar Vs. Kesho Ram](#), has observed as below:

..the normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the suit. But this is subject to an exception. Where ever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the Court is not precluded from taking a "cautious cognizance" of the subsequent changes of fact or law to mould the relief..

8 In its decision in the Case of [Pasupuleti Venkateswarlu Vs. The Motor and General Traders](#), it was held by the Apex Court as below:

....Equally clear is the principle that procedure is the hand maid and not the mistress of the judicial process. If a fact arising after the suit has come to Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justified bending the rules of procedure, where no specific provision or fairplay is violated with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances..

9. In the present Case when the subsequent events making available to the Plaintiff Respondent the ground for eviction contemplated u/s 20(2)(d) of the Act came into existence, he promptly brought them to the notice of the Court by seeking an amendment of the plaint which was allowed. The Defendant-Petitioner was allowed to file an additional written statement and a specific issue on the amended pleadings was also framed by the trial Court on which the parties were allowed to lead evidence. The Defendant-tenant therefore, cannot be said to have been prejudiced in any manner. The trial Court was fully justified in taking note of the subsequent event which had taken place and on the finding recorded by it, upholding the claim of the Plaintiff that the ground envisaged u/s 20(2)(d) of the Act had been made out. there could be no legal impediment in granting the decree of eviction sought for. In this connection it may be noted that as clarified by this Court in its decision in the Case of Karori Mai v. 8th Addl. District Judge, Kanpur 1980 ALJ

914, the words "other than the purpose for which he was admitted to the tenancy" used in Clause (d) of Sub-Section (2) of Section 20 are words of very wide import and they clearly imply that if the purpose for which the tenant uses the premises let out to him is other than that for which it was initially let out to him, the tenant would be liable for ejectment. It was observed in that Case that where the landlord proves that the tenant has used the premises without the consent in writing of the landlord for the purpose other than that for which it was let out to him, he becomes entitled to a decree for ejectment without further proving that the two purposes were inconsistent with each other. Of course, inconsistency of the two purposes is also a ground for ejectment, but it is only an alternative ground for the same. In the present Case using the premises for residence is clearly a purpose other than that for which the Petitioner had been admitted to the tenancy in the building in question. Obviously, therefore, the decree passed by the Court below cannot be said to be contrary to law.

10. The learned Counsel for the Petitioner has urged that the Plaintiff's claim for the eviction decree based on the ground contemplated u/s 20(2)(d) of the U.P Act No. 13 of 1972 clearly attracted the provisions contained in Section 114-A of the Transfer of Property Act which provides that no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing specifying the particular breach complained and if the breach is capable of remedy, requiring the lessee to remedy the breach and if the lessee fails within a reasonable time from the date of the service of the notice to remedy the breach, if it is capable of remedy.

11. In this connection it may be noticed that Section 114-A contemplates a situation where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter. The provisions relating to forfeiture are contained in Section 111 of the Transfer of Property Act. Section 111(g) of the Transfer of Property Act which pertains to determination of lease by for future clearly contemplates that there should be a breach of an express condition which may authorise re-entry of the lessor. In the present Case there is no such express condition in the lease in question. Further the provisions contained in Section 20(2)(b) of the U.P. Act No. 13 of 1972 cannot be equated with the provisions contained in Section 111(g) of the Transfer of Property Act so as to be perative subject to any condition as envisaged u/s 111(g) of the Transfer of Property Act or to any limitation as provided for in Section 114-A of the Transfer of Property Act. It may further be noticed that Section 38 of the U.P. Act No. 13 of 1972 clearly contemplate that the provisions of the Rent Act shall have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act, 1882. This provision is meant for ensuring that the provisions in the Rent Act will prevail and ever ride any provision in the Transfer of Property Act. 1882 if the same is inconsistent with the provisions of rent Act. As observed by the Hon"ble Supreme Court in the Case of [P.J. Gupta and Co. Vs. K. Venkatesan Merchant and Others](#), , the special procedure provided by the Act

displaces the requirements of the procedure for eviction under the Transfer of Property Act...". Therefore, it was observed by the Supreme Court that "we need not concern ourselves with the provisions of the Transfer of Property Act...".

12. The Supreme Court in its decision in the case of [V. Dhanapal Chettiar Vs. Yesodai Ammal](#), clearly observed that "even if the lease is determined by forfeiture under the Transfer of Property Act the tenant continues to be a tenant that is to say, there is no forfeiture to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act, not otherwise. In any State Statutes different provisions have been made as to the ground on which a tenant can be evicted and in relation to his incurring the liability to be so evicted. Some provisions overlap those of Transfer of Property Act. Some are new which are mostly in favour of the tenants but some are in favour of the landlord also. The Apex Court clearly observed that one has to look to the provisions of law contained in the four corners of any State Rent Act to find out whether a tenant can be evicted or not. The theory of double protection or additional protection has been stretched too far and without a proper and due consideration of all its ramifications. The Supreme Court went on to observe that "making out a Case under the Rent Act for eviction of the tenant by itself is sufficient."

13. Taking into consideration the legal position as indicated above, I am clearly of the view that there is no merit even in the aforesaid submission of the learned Counsel for the Petitioner.

14. For the reasons indicated herein before, I do not find any such error much less manifest error of law in the impugned orders which may call for an interference by this Court in the exercise of its writ jurisdiction Under Article 226 of the Constitution of India. The writ petition is devoid of merits and is accordingly dismissed. However, parties are directed to bear their own costs.