
Aziz Ullah Chauhan Vs Abdul Mohi

C.M.W.P. No. 59522 of 2008

Court: Allahabad High Court

Date of Decision: July 28, 2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 15 Rule 5#Evidence Act, 1872 " Section 116#Provincial Small Cause Courts Act, 1887 " Section 25#Transfer of Property Act, 1882 " Section 106#Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 2, 20, 20(4), 21

Citation: (2011) 6 ADJ 6220

Hon'ble Judges: Shashi Kant Gupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Shashi Kant Gupta, J.

The present writ petition is directed against the order dated 21.8.2008 passed by the Additional District Judge,

Court No. 1. Allahabad in S.C.C. Revision No. 1005 of 2004, Abdul Mohi v. Aziz Ullah Chauhan. whereby the order dated 9.11.2004 passed

by Judge Small Causes Allahabad decreeing the Suit No. 10 of 1996 was set aside.

2. Brief facts of the case are as follows :

3. The suit property through a written agreement dated 27.7.1985 was let out by the erstwhile landlord Izazat Ullah Chauhan in the year 1985 in

favour of the respondent at the rate of Rs. 200 per month with the stipulation that after every five year, the rate of rent would be increased by

10%, i.e., with effect from 27.7.1990 the rate of rent would be Rs. 220 per month and thereafter from 27.7.1995, the rate of rent would be further

increased to Rs. 242 per month. The property was purchased by Aziz Ullah Chauhan from his real brother Izazat Ullah Chauhan through a

registered sale deed dated 11.7.1994. After purchasing the said property, the petitioner issued a registered notice dated 16.9.1994 informing the

respondent about the said purchase of the disputed property and asking him to pay the monthly rent to him.

4. The respondent-tenant gave reply to the said notice through his counsel and denied that rate of rent Rs. 220 and stated that rate of rent was Rs.

200 and not Rs. 220. Despite the service of notice dated 16.9.1994 and repeated demands, the respondent neither tendered nor paid any rent to

the petitioner. The petitioner served another combined notice dated 6.11.1995 u/s 106 Transfer of Property Act (in short ""T. P. Act"")) which was

duly replied by the respondent through his counsel on 22.11.1995 but no rent was paid by the respondent, as such, the respondent committed

default in payment of the rent. As a result, the petitioner filed a suit for arrears of rent and ejectment u/s 20 of the U. P. Act No. 13 of 1972 (in

short ""the Act"")) which was allowed by the trial court by its order dated 9.11.2004. Aggrieved and dissatisfied with the order passed by the trial

court, the respondent filed S.C.C. Revision No. 2005 of 2004 which was allowed and the order dated 9.11.2004 was set aside. Hence, the

present writ petition.

5. Learned counsel for the petitioner submitted that the judgment and order passed by the revisional court was totally erroneous, being contrary to

the mandatory provisions of law and settled principle, and is based on inadmissible evidence. It was further submitted that the revisional court has

reassessed and re-appreciated the evidence and recorded its own finding without any basis which is not permissible under law. It was further

submitted that the order passed by the revisional court is illegal and unjustified and has drawn cryptic, abrupt, arbitrary and erroneous conclusion

based on complete misreading of case and misconception of the legal position relevant to the matter, as such, the order passed by the revisional

court is vitiated by law and has caused substantial miscarriage of justice. It was further submitted that even though the revisional court has held that

the respondent has erred in depositing the entire amount of rent as claimed by the petitioner as there was shortfall in depositing the rent under sub-

clause (4) of Section 20 of the Act but still the revisional court has illegally and arbitrarily permitted the respondent to deposit shortfall at the stage

of revision, which is not permissible in law. It was further submitted that the court below has erred in holding that the plaintiff is not the sole owner

or landlord of the disputed premises, and the sale deed executed in favour of the petitioner is null and void as the same was not executed by the

joint owner of the premises in dispute.

6. Per contra, learned counsel for the respondent-tenant has submitted that in fact the agreement was executed in the year 1984 with regard to the

enhancement of rent which was never acted upon and, in fact, the erstwhile landlord himself had received rent at the rate of Rs. 200 per month,

and this aspect of the matter was not considered by the court below. It was further submitted that the revisional court was fully justified that the

petitioner is not the sole owner-landlord of the disputed premises and the erstwhile owner had no power to execute the sale deed in favour of the

petitioner.

7. Heard the learned counsel for the petitioner, learned counsel for the respondent and perused the material available on record.

8. The contention of the learned counsel for the respondent that both the courts below have erred in holding that the respondent was liable to pay

rent at the enhanced rate has got no force. It is suffice to say that the courts below have recorded concurrent finding on this issue that the

respondent-tenant was liable to pay enhanced rent as stipulated in the rent agreement, and the said finding is finding of fact which is based on

appraisal of evidence produced in the case and it does not suffer from any error of law, as such, the said finding cannot be interfered with by the

Court.

9. It has not been disputed by the respondent that the premises in dispute was let out by the erstwhile owner landlord Izazat Ullah Chauhan under

the written agreement dated 27.7.1985 (which was filed by the petitioner before the court below) at the rate of Rs. 200 per month with the

stipulation that after every five year, the rate of rent would be increased by 10%. The said agreement dated 27.7.1985 was filed by the petitioner

before the court below which forms part of the record. Through the said agreement, the respondent was inducted by the previous owner Izazat

Ullah Chauhan as the tenant of the disputed premises and consequently the tenant-landlord relationship existed between Izazat Ullah Chauhan and

the respondent, and there was privity of contract between them.

10. It is also notable that the petitioner is the real brother of the erstwhile owner Izazat Ullah Chauhan who is said to have received the property

through partition deed which also forms part of the record. It is also noteworthy that during the life time of Izazat Ullah Chauhan (erstwhile landlord

who had inducted the respondent as tenant), the tenant respondent neither challenged his title nor the relationship of landlord and tenant and paid

rent exclusively to erstwhile landlord Izazat Ullah Chauhan. Admittedly, the said property was purchased by the petitioner from his brother Izazat

Ullah Chauhan through a registered sale deed 11.7.1994 and no suit for cancellation of the said sale deed had ever been filed by anyone. After the

execution of the sale deed, the petitioner stepped into the shoes of the erstwhile owner Izazat Ullah Chauhan and had rightly claimed the rent from

the respondent-tenant. The payment of rent was denied by the tenant-respondent merely on the plea that the sisters of the petitioner have also

made claim with regard to the ownership of the disputed premises although none of the brothers of the petitioner came forward to dispute either

the title or the sale deed executed in favour of the petitioner.

11. It is also pertinent to note that the impleadment application was filed by the two sisters of the petitioner before the trial court claiming

themselves to be the co-owner of the property but the said impleadment application was dismissed on merit by the trial court and thereafter a

revision was also filed against the order passed by the trial court dismissing the impleadment application which too was dismissed by the revisional

court, and the order of the revisional court was not challenged further, the same attained finality and therefore, it cannot be questioned now.

12. The expression "Landlord" has been defined in Section 3(j) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972

(in short "the Act") which reads as under :

(j) "Landlord", in relation to a building, means a person to whom its rent is or if the building were let, would be, payable and includes, except in

Clause (g) the agent or attorney of such person :

13. This Court in the case of Sheetal Prasad Kesharwani Vs. XVIth Addl. District and Sessions Judge, Kanpur Nagar and others, , has held as

follows :

16. It is well-settled that landlord" need not be owner and that any person to whom tenant is under an obligation to pay rent (irrespective of the

fact whether he is owner or not) is the landlord.

14. This Court in the case of Gopal and another v. IInd Addl. District Judge, Mirzapur and others, 1980 ARC 178, has held as follows;

12. Another thing worthy of being noticed is that the petitioner had been admittedly paying the rent to respondent 3 treating him as his landlord.

Section 3(j) of the U. P. Act XIII of 1972 defines the word "landlord", which in relation to building, means a person to whom its rent is or if the

building were let would be, payable, and includes, except in Clause (g), the agent or attorney, of such person. Hence, the petitioner having been

paying rent to respondent 3, was estopped from denying the title of the said respondent and in asserting that he was not competent to file the

application u/s 21(1)(a) of U. P. Act XIII of 1972. Being a landlord, he was entitled to move such an application.

15. In the present case also it is not disputed that the property in dispute was let out by erstwhile owner landlord Izazat Ullah Chauhan to the

respondent-tenant and the rent was being paid by the tenant to him, and the tenant had attorned him as his landlord, as such, there was landlord-

tenant relationship between them and there was privity of contract between them as the tenant respondent attorned him as his landlord.

16. The landlord has been defined under the Act. inter alia, a person to whom its rent is or if the building were let. would be, payable and includes,

except in Clause (g) the agent or attorney or such person; hence, the petitioner having been paying rent to the plaintiff cannot subsequently deny the

title of the said person and assert that he was not competent to issue notice and file a suit u/s 20 of the Act.

17. There is one more aspect of the matter which cannot be ignored. The plain reading of Section 20 of the Act would clearly show that it is not

necessary that the suit can be filed only by landlord-owner of the property. The said suit can be filed by the landlord alone even if he is not the

owner of the property in dispute.

18. The Apex Court in the case of Sri Ram Pasricha Vs. Jagannath and Others, , has held in paragraph 14 as follows :

There are two reasons for our not being able to accept the above submission. Firstly, the plea pertains to the domain of the frame of the suit as if

the suit is bad for non-joinder of other plaintiff"s. Such a plea should have been raised, for what it is worth, at the earliest opportunity. It was not

done. Secondly, the relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the

suit for eviction. The tenant in such a suit is estopped from questioning the title of the landlord u/s 116 of the Evidence Act. The tenant cannot deny

that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the

question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading of other co-

owners as such.

19. Thus, in the aforementioned case, the Apex Court is of the view that under the general law, in a suit between landlord and tenant the question

of title to the leased property is irrelevant.

20. The Apex Court in the case of Sheela and Others Vs. Firm Prahlad Rai Prem Prakash, , while dealing with Section 12 of the M. P.

Accommodation Control Act, 1961 has held as follows :

While seeking an ejectment on the ground of bona fide requirement under Clause (f) abovesaid the landlord is required to allege and prove not

only that he is a landlord" but also that he is the "owner" of the premises. The definition of landlord" and tenant" as given in Clauses (b) and (i) of

Section 2 of the Act make it clear that under the Act the concept of landlordship is different from that of ownership. A person may be a "landlord"

though not an "owner" of the premises. The factor determinative of landlordship is the factum of his receiving or his entitlement to receive the rent

of any accommodation. Such receiving or right to receive the rent may be on the own account of the landlord or on account of or for the benefit of

any other person. A trustee, a guardian and a receiver are also included in the definition of landlord. Such landlord would be entitled to seek an

eviction of the tenant on one or more of such grounds falling within the ambit of Section 12(1) of the Act which do not require the landlord to be an

owner also so as to be entitled to successfully maintain a claim for eviction. Clause (f) contemplates a claim for eviction being maintained by an

owner-landlord and not a landlord merely. Though of course, we may hasten to add. that the concept of ownership in a landlord-tenant litigation

governed by Rent Control Law has to be distinguished from the one in a title suit. Ownership is a relative term the import whereof depends on the

context in which it is used. In Rent Control Legislation, the landlord can be said to be owner if he is entitled in his own legal right, as distinguished

from for and on behalf of someone else, to evict the tenant and then to retain, control, hold and use the premises for himself. What may suffice and

hold good as proof of ownership in a landlord tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in

a title suit. In M.M. Quasim Vs. Manohar Lal Sharma and others, , it was held that an "owner-landlord" who can seek eviction on the ground of

his personal requirement is one who has a right against the whole world to occupy the building in his own right and exclude anyone holding a title

lesser than his own. In Dilbagrai Punjabi v. Sharad Chandra (1988) Supp SCC 710, this Court held that it was essential to sustain a claim of

eviction u/s 12(1)(f) of the Act to establish that the plaintiff was the owner of the premises. However, the Court upheld the ownership of the

landlord having been proved on the basis of an admission of the ownership of the plaintiff made by the defendant in reply to notice given before the

institution of the suit and the recital of the name of the plaintiff as the owner of the property contained in the receipts issued by the landlord to the

tenant over a period of time. Thus, the burden of proving ownership in a suit between landlord and tenant where the landlord-tenant relationship is

either admitted or proved is not so heavy as in a title suit and lesser quantum of proof may suffice than what would be needed in a suit based on

title against a person setting up a contending title while disputing the title of the plaintiff. Nevertheless pleading and proving ownership, in the sense

as it carries in Rent Control Law. is one of the ingredients of the ground u/s 12(1)(f) of the Act.

21. The revisional court although have held that there was shortfall in depositing the amount as contemplated u/s 20, sub-clause (4) of the Act but

still granted one months time to deposit the arrears within one month. Such direction is totally unwarranted and impermissible under law. Once the

revisional court had upheld that the entire amount as contemplated u/s 20(4) of the Act No. 13 of 1972 was not deposited by the tenant, it had no

jurisdiction to permit the tenant to deposit the balance amount within one month. The revisional court clearly over-stepped its jurisdiction and

committed manifest error and serious procedural illegality. Not only this, the revisional court in its enthusiasm to allow the appeal had gone to the

extent of holding that the sale deed dated 11.7.1994 executed by the erstwhile owner Izazat Ullah Chauhan in favour of the petitioner is null and

void. The revisional court while exercising the power u/s 25 of the Provincial Small Cause Courts Act has got no jurisdiction to declare the sale

deed dated 11.7.1994 null and void.

22. A bare perusal of the record also reveals that the revisional court has also ignored the very vital fact that the trial court also had struck off the

defence of the tenant respondent under Order XV, Rule 5 of the C.P.C., and this aspect was not taken into consideration while passing the

impugned order.

23. It also cannot be ignored that the respondent himself had entered into an agreement dated 27.7.1985 by which the erstwhile owner accepting

him his landlord and owner of the premises and therefore now he cannot be permitted to deny the title of the petitioner as a landlord who has

purchased the property through registered sale deed from his erstwhile owner landlord.

24. The finding recorded by the trial court on all issues is perfectly just and legal, supported by cogent and convincing reasons. However, the

revisional court while setting aside the order passed by the trial court was swayed by irrelevant considerations and the impugned order is based on

complete misreading of the case and misconception of the legal position relevant to the matter.

25. The reasons assigned by the revisional court are superficial and it has applied a very casual approach and has come to a cryptic, abrupt and

erroneous conclusion. The impugned order dated 21.8.2008 passed by the revisional court, looked from any angle, cannot stand the scrutiny of

law. The order passed by the revisional court is totally illegal against the settled provisions of law and it can neither be permitted to reassess or re-

appreciate the evidence on record.

26. In view of the above, the order dated 21.8.2008 passed by the revisional court is set aside. The writ petition is allowed and the order passed

by the trial court is upheld.