Ganga Sahai Vs Nattho Mal Bansal and Another

Court: Allahabad High Court

Date of Decision: Aug. 11, 2010

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 151
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 â€" Section 21(1)

Citation: (2010) 6 AWC 5984

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rakesh Tiwari, J.
Heard learned Counsel for the parties and perused the record.

2. This writ petition has been filed challenging the validity and correctness of the impugned judgment and order dated 21.7.2010 passed by

Additional District Judge, Court No. 9, Agra in R.C.M.A. No. 119 of 2008: Sri Govind Prasad v. Sri Nattho Mal Bansal, appended as

Annexure-8 to the writ petition.

3. The backdrop of the case in which the aforesaid order has been passed by the court below is that an application was filed by the Respondent

u/s 21(1)(a) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, (hereinafter referred to as ''Act''), before the

Prescribed Authority/Judge Small Causes Court, Agra being P. A. Case No. 32 of 2005: Nattho Mal Bansal v. Govind Prasad for release of the

shop in question. Subsequently, written statement was filed denying plaint allegations.

4. The Prescribed Authority/J.S.C.C. Agra allowed the application filed u/s 21(1)(a) of the Act vide judgment and order dated 30.7.2008 which

was challenged in Misc. Appeal No. 119 of 2008 on 1.9.2008 before the District Judge, Agra which is still pending. During pendency of the said

appeal, the Petitioner filed impleadment application under Order 1, Rule 10 (2) read with Section 151 of CPC claiming himself to be a tenant of

the shop in dispute on the ground that after death of Madho Prasad tenancy devolved upon him being real brother of Govind Prasad who had no

legal right in the tenancy.

5. The lower appellate court has rejected the impleadment application filed by the Petitioner vide its judgment and order dated 21.7.2010 against

which this writ petition has been filed.

6. The contentions of the learned Counsel for the Petitioner are to be tested on the basis of the definition as defined under Sections 3(a) and 3(g)

quoted below :

3 (a) ""tenant"", in relation to a building, means a person by whom its rent is payable, and on the tenant''s death:

(i) in the case of a residential building, such only of his heirs as normally resided with him in the building at the time of his death ;

(ii) in the case of a nonresidential building, his heirs ;

3 (g) ""family"", in relation to a landlord or tenant of a building, means, his or her:

(i) spouse,

(ii) male lineal descendants,

(iii) such parents grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant,

as may have been normally residing with him or her.

7. Admittedly, Madho Prasad died issue-less. Therefore, the question would arise as to whether Petitioner is his legal heir or not. This position has

to be looked into along with definition of family upon whom tenancy would devolve upon death of the tenant. Admittedly, the Petitioner is not a

male lineal descendants of the tenant Nattho Mal Bansal and, therefore, would not come under the definition of his family, hence tenancy would not

devolve upon him.

8. In view of the above, the Petitioner has no legal right to pursue the case claiming himself to be a tenant under U. P. Urban Buildings (Regulation

of Letting, Rent and Eviction) Act, 1972 in the proceedings for release of the accommodation filed by the landlord. If he claims any right as a

tenant he may institute a suit for adjudication of this question fresh. In so far as order passed by the court below rejecting impleadment application

is concerned, learned Counsel for the Petitioner has not been able to show any illegality or infirmity in the said order.

9. The writ petition is, therefore, dismissed.