

(2005) 10 AHC CK 0146

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 10038 of 1984

Sri Shiv Shankar Awasthi

APPELLANT

Vs

Additional District Judge (Special
Judge), Judge, Small Causes
Court and Anand Chandra Man
Singh

RESPONDENT

Date of Decision: Oct. 24, 2005

Acts Referred:

- Evidence Act, 1872 - Section 91, 92
- Provincial Small Cause Courts Act, 1887 - Section 25

Citation: (2006) 1 AWC 810

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

Bench: Single Bench

Advocate: B.N. Asthana and P.K. Asthana, for the Appellant; S.N. Verma and Avinash Tripathi and S.C., for the Respondent

Judgement

S.U. Khan, J.

This is tenant's writ petition arising out of suit for eviction filed by respondent No. 3 Anand Chand Man Singh (since deceased and survived by Legal Representatives) against petitioner Shiv Shanker Awasthi (since deceased and survived by Legal Representatives). The suit was registered as Suit (S.C.C. Suit) No. 34 of 1981. The main ground taken in the suit for eviction of the tenant was material alteration. Earlier also, an eviction suit had been filed by the landlord against tenant. In the said suit compromise was entered into and tenant delivered possession of a small portion of the tenanted accommodation to the landlord and landlord under the said Agreement constructed a wall to separate the portion which was left in the tenancy occupation of the tenant from other portions in occupation of other tenants. In the suit-giving rise to the instant writ petition, tenant on the one hand pleaded that under the compromise entered into in S.C.C. Suit No. 20 of 1974 tenant was entitled

to raise constructions. Tenant further took up the case that after the said compromise landlord permitted him to make constructions. Tenant also took up third case and pleaded that all the constructions had been made by the landlord. Copy of the earlier compromise in S.C.C. Suit No. 20 of 1974 has been filed as Annexure C.A.J to the counter affidavit. In the said compromise no permission was granted to the tenant to make any constructions. In the suit giving rise to the instant writ petition Commissioner was also appointed who reported that tenant had made 4 Varandahs, staircase, septic tank on the ground floor and 3 Varandahs on the first floor. Initially, only ground floor was in the tenancy occupation of the tenant.

2. Trial Court on the one hand held that constructions had been made by the landlord. Thereafter trial court held that landlord had orally permitted the tenant to raise the constructions. Thereafter trial court held that the constructions had neither diminished the value nor utility of the accommodation in dispute. Trial court ultimately on 29.10.1983 dismissed the suit, for eviction and permitted the plaintiff to withdraw the amount, which the tenant had deposited u/s 20(4) of U.P. Act No. 13 of 1972. Against the judgment and decree passed by the trial court/ J.S.C.C./Munsif Fatehpur dated 29.10.1983 landlord respondent No. 3 filed S.C.C Revision No. 113 of 1983. The Revisional Court/ A.D.J.(Special Judge) Fatehpur reversed the findings of the trial court. Revisional Court held that the constructions were made by the tenant and they diminished the value and utility of the building and materially altered the same. Revisional Court rightly observed that landlord had stated in his statement that constructions raised by the defendants would have cost Rupees 20 to 25 thousands. Trial court wrongly held that both the parties had admitted that constructions costed about rupees 4 to 5 thousands. In the written statement, copy of which is annexure 4 to the writ petition, in paragraph 23 it was stated by the tenant that under oral agreement (Jabani Samjhauta) entered into in the year 1976 in between him and the landlord, tenant surrendered some portion of the accommodation in his tenancy (occupation) and in consideration thereof landlord got constructed latrine, varandah, staircase and Dochhatti in the end of 1976. Tenant did not say any thing about written agreement, which had been entered into in between the parties in S.C.C. Suit No. 20 of 1974. The said agreement was entered into in December 1976 and accepted by the Court on 18.1.1977. When written agreement had been entered into, no evidence of oral agreement to set up an altogether different agreement was admissible. u/s 20(2) (c) of the Act a tenant is liable to eviction if he has, without the permission in writing of the landlord, made or permitted to be made any such constructions or structural alterations in the building as is likely to diminished its value or utility or to disfigure it. In view of the said provision oral permission even if found proved, is of no value. Raising constructions in the courtyard and on the first floor and making a staircase to reach the first floor clearly amounts to disfigurement of the building. If the area of courtyard is curtailed due to construction, value and utility of the house as residential unit is also diminished, as courtyard is essential part of, the house unless

it is in the form of modern flat. Raising construction on the first floor when only ground floor is let out also amounts to disfigurement of the building (vide [Gurbachan Singh and another Vs. Shivalak Rubber Industries and others,](#) . It appears that virtually tenant started making extensive constructions in the building in dispute treating it to be his own. Tenant had surrendered only about 1/6th part of the accommodation in his possession under compromise of December 1976, filed in S.C.C. Suit No. 20 of 1974. Rate of rent is Rs. 55/- p.m. It is not conceivable that a landlord receiving Rs. / 55/- as rent will spend 20 to 25 thousands rupees or even 4 to 5 thousands rupees in making constructions for the benefit of the tenant. Even 5,000/- rupees will cover the rent for about 8 years. Accordingly I do not find any error in the judgment and order passed by the Revisional Court dated 28.5.1984 through which revision was allowed, judgment and decree of the trial court was set aside and relief of eviction was also granted.

3. Learned counsel for the tenant-petitioner has argued that the Revisional court should not have re-appreciated the evidence and in stead it should have remanded the matter. I do not agree with this contention. Whether a particular construction amounts to material alteration or not is a pure question of law, which can be seen by the Revisional Court as held by the Supreme Court in [Om Prakash Vs. Amar Singh and Others,](#) Regarding finding of construction by the tenant, firstly, the trial court had not recorded a categorical finding. Secondly, trial court had held that it was oral permission of the landlord. Oral permission is meaningless as Section 20(2) (c) uses the word "written permission". This again was a question of law. Thirdly, in this regard the main thing to be considered was the agreement arrived at in between the parties in S.C.C. Suit No. 20 of 1974. The question that oral evidence is not admissible to vary the terms of written agreement is again a question of law, as it involved interpretation of Sections 91 and 92 Evidence Act. Fourthly, the trial court had placed a admission in the mouth of the plaintiff, which he had never uttered. The Supreme Court in [Jagdish Prasad Vs. Smt. Angoori Devi,](#) has held that if findings of the trial court are based on inadmissible evidence or evidence has been ignored under wrong assumption, then Revisional Court hearing revision u/s 25 Provincial Small Causes Court Act, can reassess evidence.

4. Accordingly writ petition is dismissed.

5. Tenant-petitioner is granted time till 30.4.2006 to vacate provided that within one month from today he files an undertaking before the trial court to the effect that on or before the expiry of the aforesaid period he will willingly vacate and hand over possession of the property in dispute to the landlord respondent and within one month from today deposits the entire arrears of rent due till 31.10.,2005 for immediate payment to landlord. For this period of about six months which has been granted to the tenant to vacate he shall deposit within one month Rs. 3,000/- (at the rate of Rs. 500/- per month from 1.11.2005 till 30.4.2006) as damages for use and occupation. This amount shall also be paid at once to the landlord respondent. In

case of default in compliance with any of these conditions tenant petitioner shall be evicted through process of court after one month.

6. It is further directed that in case undertaking is not filed or Rs. 3000/-are not deposited within one month then tenant petitioner shall be liable to pay damages at the rate of Rs. 2,000/- per month since after one month till the date of actual vacation.

7. Similarly if after filing the aforesaid undertaking and depositing Rs. 3,000/- the accommodation in dispute is not vacated within the time allowed, then damages for use and occupation shall be payable at the rate of Rs. 2,000/- per month since after the time allowed till actual vacation.