

(2005) 10 AHC CK 0162

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 242 of 1987

Smt. Kubra Begum

APPELLANT

Vs

IIIrd Additional
District Judge and
Others

RESPONDENT

Date of Decision: Oct. 21, 2005

Acts Referred:

- Provincial Small Cause Courts Act, 1887 - Section 23
- Transfer of Property Act, 1882 - Section 107

Citation: AIR 2006 All 55 : (2006) 2 AWC 1089

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

Bench: Single Bench

Advocate: Rafat Raza Khan and M.A. Qadeer, for the Appellant; A.K. Sand and Bushra Maryam and S.C., for the Respondent

Final Decision: Dismissed

Judgement

S.U. Khan, J.

This writ petition arises out of SCC suit No. 272 of 1983 filed by petitioner against Bhoorey original respondent No. 3 since deceased and survived by legal representatives. Smt. Kubra Begum plaintiff and Bhoorey the defendant were first cousins in the sense that their fathers were real brothers. In the suit it was alleged that in the accommodation in dispute which is portion of a house defendant Bhoorey was tenant since 1962 as at that time it had been given on rent to him by Smt. Azizen (mother of plaintiff and aunt of defendant Bhoorey), that thereafter Smt. Kubra plaintiff-petitioner, Khatoon and Zohra filed a partition suit against Smt. Azizen, Chotey, Nanhe and Banney being O.S. No. 525 of 1962 in respect of the house of which portion in dispute is a part; that the said suit was decreed and portion in dispute came in the share of Chootey who sold it to plaintiff-petitioner Smt. Kubra Begum and thereafter she was also delivered possession of the same

hence she became landlord of the accommodation in dispute and Shri Bhoorey became her tenant. It was further alleged that initially rent was Rs. 10/- per month later on it was enhanced to Rs. 40/- per month. Defendant Bhoorey denied that he was ever the tenant of the accommodation in dispute. He asserted that he was residing in the accommodation in dispute as of right for about 45 years and he was not the tenant either of the plaintiff or of Smt. Azizen. The suit was decreed for ejectment and arrears of rent by JSCC, Moradabad on 4.7.1984. Against the said judgment and decree respondent No. 3 filed SCC Revision No. 141 of 1984 which was allowed by III A.D.J., Moradabad on 3.10.1986 hence this writ petition. Revisional Court held that alleged rent note Ex.-3 dated 30.9.1962 being unregistered could not prove relationship of landlord and tenant. Revisional Court also held that no payment of rent at any point of time was proved hence it could not be held that defendant was the tenant of the plaintiff.

2. I do not find any error in the finding of the revisional Court. u/s 107 Transfer of Property Act tenancy can be created either through a registered lease deed or through delivery of possession and payment of rent if it is for less than a year. Absolutely no payment of rent at any point of time having been proved, and alleged lease deed being unregistered, there was no evidence of creation of relationship of landlord and tenant. Apart from it in the sale deed dated 16.12.1963 executed by Chotey in favour of plaintiff petitioner copy of which is Annexure-3 to the writ petition there is no mention that Bhoorey is tenant in the said property. Similarly in the document of delivery of possession by the Amin of the said portion dated 26.2.1966 there is no mention that only formal possession was delivered to the plaintiff. Copy of dakhnama is Annexure-4 to the writ petition which states that actual complete possession was delivered by the Amin over the property in dispute to Kubara Begum plaintiff-petitioner. In the said dakhnama also there is absolutely no mention that there was any tenant in the said portion. In view of this it cannot be said that relationship of landlord and tenant in between plaintiff and defendant stood proved.

3. Even otherwise in view of very close relationship of the parties theory of landlord-tenant relationship becomes improbable.

4. However, in my opinion revisional Court while dismissing the suit should have granted liberty to file regular suit on the basis of title or should have directed for return of plaint u/s 23 of Provisional Small Causes Courts Act. In my opinion the matter is quite old hence no useful purposes will be served by directing return of plaint at this stage.

5. Accordingly, while dismissing the writ petition it is directed that plaintiff-petitioner is at liberty to file suit for possession before regular civil Court on the basis of title against legal representative of respondent No. 3. Subject to the above writ petition is dismissed.