

Bhagwati Prasad Vs Radhey Shyam

Court: Allahabad High Court

Date of Decision: Sept. 17, 2014

Acts Referred: Evidence Act, 1872 " Section 63, 65

Provincial Small Cause Courts Act, 1887 " Section 25

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 " Section 12, 12(2), 20, 20(2)(e), 20(4)

Citation: (2014) 11 ADJ 479 : (2014) 6 ALJ 747 : (2014) 107 ALR 244 : (2015) 1 RCR(Rent) 481

Hon'ble Judges: Pradeep Kumar Singh Baghel, J

Bench: Single Bench

Advocate: Kshitij Shailendra, Advocate for the Appellant; Rajesh Tripathi, Punit Kumar Gupta and Vishnu Gupta, Advocate for the Respondent

Judgement

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Pradeep Kumar Singh Baghel, J.

This is a revision under section 25 of the Provincial Small Cause Courts Act, 1887 (Act No. 9 of 1887)

against the judgment and order dated 28 January 2014 passed by the Additional District Judge, Hathras, decreeing the suit of the respondent

landlord for eviction of the revisionist/defendant from the premises in dispute. The essential facts of the case are that the revisionist was carrying out

business of the carpet in the premises in question. The landlord sent a notice dated 11.10.2002 on the ground that the tenant did not pay the rent

from 1.4.2001 to 31 October, 2002. He did not pay the rent since 1.4.2001 in spite of the several reminders.

2. The notice was duly served upon the tenant. The landlord has also determined tenancy of the tenant/revisionist. When the premises was not

vacated after the period mentioned in the notice the landlord instituted a suit for eviction and arrears of rent in the Small Causes Court, Hathras. It

was registered as Suit No. 8 of 2002. The case of the landlord was that the provisions of the Uttar Pradesh Urban Buildings (Regulations of

Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) are not applicable and the tenant has stopped the payment of the rent from 1

April, 2001. In addition to above he also inducted outsiders as a partner of his firm, who were not family members, therefore, on the ground of

subletting also the tenant was liable to be evicted. During the pendency of the suit the plaintiff No. 1 Radhey Shyam died on 6.9.2010 and the

plaintiff No. 2, his wife also died on 9.11.2010. Their legal heirs Ajay Kumar Jain, Atul Kumar and Anoop Kumar Jain were brought on the

record as plaintiffs. The revisionist-defendant contested the suit by filing the written statement. It was admitted that they were tenant of monthly rent

of Rs. 1,500/-. The ownership of the landlord was not denied. It was averred in the written statement that the claim of the landlord that the building

is newly constructed, therefore, the provisions of the U.P. Act No. 13 of 1972 are not applicable, is incorrect. It is an old building and it is covered

under the provisions of the U.P. Act No. 13 of 1972. It was also stated that after receiving the notice of the landlord the entire rent from 1.4.2001

to 31.10.2002 has been deposited under the provisions of the Order XV, Rule 5 of the Code of Civil Procedure, 1908 (for short, "the Code") on

the first date of hearing. Thus the tenant was entitled for the protection of section 20(4) of the U.P. Act No. 13 of 1972.

3. Both the sides adduced the documentary evidence and witnesses, who were also examined in support of their cases.

4. The Court below framed the following points for determination;

(i) Whether U.P. Act No. 13 of 1972 was applicable?

(ii) Whether the tenant-defendant has committed any default?

(iii) Whether the defendant without the consent of plaintiff has admitted sub-tenant, if so, its effect?

(iv) Relief, for which the plaintiff was entitled?

5. The Court below found that the landlord's contention that the U.P. Act No. 13 of 1972 is not applicable, is incorrect. It recorded a finding that

premises in question was constructed in the year 1991.

6. With regard to the issue No. (ii) finding was recorded that the tenant has made default in payment of rent. But the Court below found that the

tenant has deposited the entire rent together with the interest in terms of the Order XV, Rule 5 of the Code, therefore, the said issue was also

decided against the landlord.

7. In respect of the issue No. (iii) about subletting, the Court below found that the tenant has inducted his brother and wife as partner in his Firm

without the consent of the landlord, therefore, the tenant was liable to be evicted in terms of section 20(2)(e) of the U.P. Act No. 13 of 1972.

8. I have heard learned Counsel for the revisionist Sri Kshitij Shailendra, and Sri Vishnu Kumar Gupta, learned Counsel for the landlord-

respondent.

9. Learned Counsel for the tenant/revisionist submitted that the plaintiff-respondent had specifically pleaded non-applicability of the U.P. Act No.

13 of 1972 not only in the notice but also in the plaint, therefore, he would estop from maintaining the suit on the ground of subletting under section

(20)(2)(e) or section 12(2) of the U.P. Act No. 13 of 1972 as the plaintiff cannot be led to blow hot and cold and cannot take inconsistent plea. It

was further submitted that admittedly there was no written agreement governing tenancy between the parties and once the plaintiff took the plea of

non-applicability of the provisions of U.P. Act No. 13 of 1972. There being no written agreement, neither section 111(g) of the Act No. 4 of 1882

would come into picture nor section 20(2)(e) of the U.P. Act No. 13 of 1972.

10. It was submitted that the plea of sub-letting was very vaguely pleaded in the notice as well as in the plaint in absence of specifically no evidence

was to be appreciated in this regard. There was no material on record to suggest that Bhagwati Prasad had removed his possession from the firm

or the property or the business.

11. Sri Kshitij Shailendra, learned Advocate relied on the following judgments Jagdish Prasad Vs. Smt. Angoori Devi, ; Dipak Banerjee Vs.

Lilabati Chakraborty, ; Mahendra Saree Emporium Vs. G.V. Srinivasa Murthy, ; M/s. Delhi Stationers and Printers Vs. Rajendra Kumar, ; Gopal

Saran Vs. Satyanarayana, ; Joginder Singh Sodhi Vs. Amar Kaur, ; M/s. Bharat Sales Ltd. Vs. Life Insurance Corporation of India, ; Associated

Hotels of India Ltd., Delhi Vs. S.B. Sardar Ranjit Singh, ; Shama Prashant Raje Vs. Ganpatrao and Others, ; Rajbir Kaur and Another Vs. S.

Chokesiri and Co., ; Kala and Another Vs. Madho Parshad Vaidya, .

These cases were not cited by the learned Counsel for the revisionist at the time of argument, however he has mentioned these judgments in his

written submissions.

I have perused the aforesaid judgments. They have no application on the issue involved in the facts of the present case.

12. Learned Counsel for the respondent-landlord submitted that the tenant-defendants in their written statement claimed that the building in

question was very old and the provisions of the U.P. Act No. 13 of 1972 were fully applicable. The first rent receipt dated 11.4.1988 shows that

Bhagwati Prasad alone was the tenant and in other rent receipts also Bhagwati Prasad is shown as tenant. The D.W. 1 in his statement had

admitted that in 1988 he alone was proprietor of the aforesaid Firm and he admitted the Papers 73-Ga and 74-Ga, which proved that Thakur Das

is partner of the defendant Bhagwati Prasad (Thakur Das, the brother of the tenant). The paper 74-Ga demonstrated that Thakur Das and Smt.

Ram Lata Devi wife of Bhagwati Prasad were tenant. These two documents are sufficient to establish that the tenant has sublet the tenanted

property as these persons were not the family member as the brother was not family member.

13. As regards the submission of the defendant-revisionist that there is estoppel against the landlord as he has pleaded that the Rent Control Act is

not applicable, therefore, the eviction cannot be made under section 20(2)(e) of the U.P. Act No. 13 of 1972, the learned Counsel submitted that

there is estoppel against the law, if on the facts it is found that provisions of the Act No. 13 of 1972 are attracted then pleading of landlord will not

exempt it for applicability of the Act.

14. I have heard learned Counsel for the parties and considered their submissions.

15. It is not disputed that the premises was let out by the landlord to the defendant-revisionist Bhagwati Prasad. It is true that the landlord has

pleaded that the U.P. Act No. 13 of 1972 was not applicable on the ground that the building is newly constructed but the Court below, on the

basis of evidence on record, found that the U.P. Act No. 13 of 1972 is applicable. I find that finding of the Court below on the issue rests on

documentary and oral evidence. In addition to above, it is trite law that there cannot be any estoppel against the law.

16. The section 20 of the U.P. Act No. 13 of 1972 deals with the grounds for eviction of tenant. Section 20(2)(e) of the Act provides that if a

tenant has sublet the accommodation in contravention of the provisions of section 25 whole or any part of the building then he will not be liable to

be evicted. Section 25 prohibits sub-letting the whole of the building or its tenancy. It permits a tenant to sub-let a part of the building with the

permission, in writing, of the landlord and the District Magistrate. Section 25 of the U.P. Act No. 13 of 1972 reads as under;

25. Prohibition of sub-letting.--(1) No tenant shall sub-let the whole of the building under his tenancy.

(2) The tenant may, with the permission in writing of the landlord and of the District Magistrate, sub-let a part of the building.

Explanation.--For the purposes of this section--

(i) where the tenant ceases, within the meaning of Clause (b) of sub-section (1) or sub-section (2) of section 12, to occupy the building or any part

thereof, he shall be deemed to have sub-let that building or part;

(ii) lodging a person in a hotel or lodging house shall not amount to subletting.

17. In the present case it is admitted that initially the defendant-revisionist was the sole tenant of the entire premises. It is his own case that he has

inducted his brother Thakur Das and his wife as a partner of the Firm. This fact is established from the documents 73-Ga and 74-Ga. The said

documents indicate that the defendant-revisionist has admitted his brother, and his share was 70% in the partnership. The document 74-Ga

establishes that he ceases to be partner of the Firm and in his place his wife became partner. Admittedly no permission from the landlord was

sought by Bhagwati Prasad-defendant/revisionist for inducting his brother and wife as a partner of the Firm, namely, Bhagwati Handloom.

18. From the receipts, which were filed as evidence it was provided that defendant-revisionist's name is mentioned as tenant and there is no

receipt in favour of the Bhagwati Handloom Firm.

19. Pertinently, the landlord had submitted the record from the Sales Tax Department and an employee of the said department had brought the

original record and those records were duly proved. The tenant had admitted those documents. He did not deny his signature as well as his

brother's signatures.

20. The tenant-revisionist in his written statement has admitted that his brother Thakur Das was admitted as one of the partners. Section 3(g) of the

U.P. Act No. 13 of 1972 defines the family members, which reads as under;

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,

and includes, in relation to a landlord, any female having a legal right of residence in that building;

21. Evidently, the brother is not a family member, therefore, the finding of the Court below that the revisionist-defendant has inducted the brother

without permission of the landlord does not suffer any illegality.

22. The Supreme Court in the case of Harish Tandon Vs. Addl. District Magistrate, Allahabad, U.P. and others, held if a tenant allows any

person, who is not a member of the family within the meaning of the Act to occupy the premises, in that event Clause (b) of sub-section (1) of

section- 12 shall be attracted. The submission that the said provision should be liberally construed was not accepted by the Supreme Court. The

relevant part is extracted herein below;

27. It was then submitted that although Swarup Kailash, the son-in-law of Ganpat Roy may not be held to be a member of the family within the

meaning of the definition given in section 3(g), nonetheless he shall be deemed to be a member of the family as the expression "family" is generally

understood, and by admitting a son-in-law or daughter-in-law as a partner, it shall not amount to sub-letting within the meaning of the Act. It was

pointed out that section 3 opens with the words "In this Act, unless the context otherwise requires" and as such the definition of the family should

not be strictly construed as given in section 3(g) and in the context of the present case a wider interpretation to the expression "family" should be

given so as to include even the sons-in-law and daughters-in-law. In this connection, reliance was placed on the judgment of this Court in the case

of Smt. Pushpa Devi and others Vs. Milkhi Ram (Dead) by his L.Rs., . As has already been pointed out that in the Act with which we are

concerned, wherever the expression "member of the family" has been used, it is consistent with the definition of "family" given in section 3(g) and

there is no scope for interpreting that expression in a different manner in connection with sub-section (2) of section 12 of the Act. Once the finding

of the High Court that after the death of Sheobux Roy, his sons became tenants in common instead of joint tenants, is reversed for the reasons

mentioned above, the result will be that it has to be held that because of the admission of Swarup Kailash, the son-in-law of Ganpat Roy, as a

partner in the business, there has been a deemed vacancy of the premises within the meaning of sub-sections (2) and (4) of section 12 and it shall

amount to sub-letting within the meaning of section 25, Explanation (i), which is a ground for eviction under sub-section (2)(e) of section 20 of the

Act. The judgment in Mohd. Azeem Vs. District Judge, Aligarh and Others, , does not lay down the correct law and on the other hand we hold

that H.C. Pandey Vs. G.C. Paul, lays down the correct law.

23. It was followed by this Court in the case of Suraj Bhan v. VIIth Additional District Judge 2008 (1) ARC 342. In the said case the tenant had

sub-let the shop in dispute to his real brother and plea has also been taken in the said case that the tenant and his brother were joint tenant. The

said plea was rejected by the Court.

24. The submission of the learned Counsel for the revisionist-defendant that there was estoppel against the landlord is misconceived. The Supreme

Court in P. John Chandi and Co. (P.) Ltd. v. John P. Thomas 2002 (47) ALR 694, has held that some inaction of the landlord to initiate

proceeding of the eviction for a long period on the ground of sub-letting cannot be treated as a consent for sub-letting.

25. The Supreme Court in the case of K. Sanjeeva Rao and Others Vs. Dr Thangam Vergeese (Ms) and Another, has held that even in the case

of elder brother of the tenant it would not be treated as a joint family as the tenancy was in the name of one of the brother only for his own

business. In the present case also the tenancy was not in the name of Firm but defendant-revisionist alone was shown as a tenant, which was

proved from the receipt and other documents.

26. Now I advert the judgments relied by the learned Counsel for the revisionist. In the case of Abdulla Bin Ali and Others Vs. Galappa and

Others, the dispute was in respect of the mortgaged deed. A suit was filed for the declaration of title and ownership in respect of the disputed land,

the said case has no application in the facts of the present case.

27. In the case of Amar Nath (Since Deceased) and Others Vs. Ram Murti Devi and Others, the landlord had filed the suit mainly on the ground

for recovery of arrears of rent and damages and the dispute was with regard to the benefit of section 20(4) of the Act, 1972 as the tenant in the

said case had deposited the total arrears of rent on the first date of hearing. In the said case landlord did not raise the plea about the case of the

subletting. Thus the said case has no application on the facts of the present case.

28. In the case of Mohd. Asharaf and Another Vs. Additional District Judge and Others, , the Court held that mere exclusive possession of a

person other than tenants may be sufficient to prove sub-tenancy. In the said case the tenant had allowed his brother's son to reside with him in

tenanted accommodation and he has not completely withdrawn his possession from the entire tenant in building and he did not completely

withdraw his possession from the entire tenanted building. In that context it was held that it was not a case of subletting.

29. In the present case the petitioner has inducted his brother as partner of 70% of the share and 30% shares to Smt. Ram Kali Devi (his wife),

and he has completely withdrawn from the Firm thus the said case does not help the defendant-revisionist.

30. The case of Ram Das Singh and Another Vs. Duli Chand, deals with the sections 63 and 65 of the Evidence Act, which are not relevant in the

facts and circumstances of this case as in the present case an official of the Sales Tax Department has produced the original records, which has

been accepted by the defendant-revisionist.

31. Accordingly, I am of the view that the findings of the Judge, Small Causes Court do not suffer any error, the revision is liable to be dismissed.

The tenant is allowed four months" time to vacate the premises subject to the following conditions:

(i) The revisionist shall file an undertaking within one month from today before J.S.C.C. that on or before the expiry of the four months he will

handover peaceful possession to the landlord/opposite party and shall not create any third party interest in any manner.

(ii) For the period of four months, which has been granted to him to vacate the premises, he shall pay damages at the rate of Rs. 2,000/- per month

for the use of accommodation.

(iii) In case of default in compliance of any of the conditions, the interim order shall stand vacated.

32. Resultantly, the Revision is dismissed. No order as to costs.