

(2016) 01 AHC CK 0045

ALLAHABAD HIGH COURT

Case No: Matters Under Article 227 No. 7346 of 2015

Surendra Mohan
Saxena

APPELLANT

Vs

Sanjay Mohan Das

RESPONDENT

Date of Decision: Jan. 14, 2016

Acts Referred:

- Constitution of India, 1950 - Article 227
- Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Section 20(2) (a)

Citation: (2016) 1 ARC 608

Hon'ble Judges: Suneet Kumar, J.

Bench: Single Bench

Advocate: Rafiuddin Ansari, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Suneet Kumar, J. - Heard learned counsel for the parties.

2. The petition is directed against the order dated 13 October 2015, passed by the revisional court in Revision No. 14 of 2014 arising from the judgement and decree dated 17 May 2014, passed by Small Causes Court, at Gorakhpur in Suit No. 51 of 2001.

3. The tenant-applicant has approached this Court assailing the aforementioned orders whereby the suit for eviction and arrears of rent has been decreed.

4. A suit was instituted under Section 20 of Act 13 of 1972 for eviction, arrears of rent and damages, wherein, it was alleged by the plaintiff-respondent that he is owner/landlord of the suit property, the applicant/tenant is in arrear since 1993. The applicant put in appearance and contested the suit contending that the respondent is not landlord/owner of the suit property, whereas one Smt. Tara Devi is the

landlord, who inducted the applicant as tenant in the suit property, further, there is no arrears of rent.

5. The trial court upon considering the material and evidence available on record rejected the contention of the applicant and decreed the suit, aggrieved, applicant preferred a Revision under Section 25 of Provincial Small Causes Act, the same points were re-agitated before the revisional court which has been considered by the revisional court in detail. It is noted in the impugned order that the trial court framed as many as 8 issues and issue no.1 pertains to whether there is relationship of landlord and tenant, inter se, parties. It is noted in the impugned order that the premises was rented by one Smt. Tara Devi approximately 27-28 years ago on a monthly rent of Rs. 60/.

6. The respondent claimed title and ownership on the basis of a registered will deed dated 16 March 1966, the will deed would record that at the relevant time, the respondent being a minor, therefore, a committee was constituted by the executant comprising of Principal of D.A.V College, Gorakhpur, an Advocate and Smt. Tara Devi, wife of the executant of the will deed to manage the affairs of the property and on the respondent attaining the age of majority, the management would automatically shift to the respondent. This fact was in the knowledge of the applicant, the revisional court would note that in Misc. Case No. 78 of 1993 Smt. Tara Devi filed an application and affidavit (42 Ga), wherein she had clearly stated that she is no longer landlord of the property, she was only managing the affairs of the trust as per provision of the will deed, but as on date, the respondent Madan Mohan Das is owner-landlord of the property. This fact was also placed before the court in suit no. 901 of 1998 instituted by the applicant against Smt. Tara Devi seeking permanent injunction. The certified copy of the written statement filed by Smt. Tara Devi was brought on record, in paragraph 14 of the written statement, it was clearly stated that the applicant was fully aware that Smt. Tara Devi is not landlord of the premises but Sri Sanjay Mohan Das son of late Madan Mohan Das is the landlord. The written statement is dated 16 July 1999. It was contended by the applicant before the court below that the Will that has been brought on record is a certified copy but the original document has not been brought on record. The court below relying upon several judgements of this Court held that proving of the Will was not necessary where the trust itself was created by the will and the trustee herself made a statement that she no longer is managing the affairs of the property and is neither the landlord. The respondent since upon attaining the age of majority, the affairs of the property is being managed by the respondent, therefore, it is not open for the applicant to assail the will or title of the respondent, the plea thus was rejected. This fact is not being disputed that the applicant was paying rent to Smt. Tara Devi as trustee and after the respondent took over the affairs of the trust, the applicant failed to deposit the rent since 1993.

7. It was contended before the courts below that the rent was being deposited in a Misc case under Section 30 of Act 13 of 1972, but it was admitted by the applicant before the court below that on institution of the present suit, the applicant has not deposited rent and other expenses as required under law in said proceedings, therefore, the applicant was in arrears of rent.

8. The submission of the learned counsel for the applicant is that the applicant has given details of receipts which were not considered. The record would reveal that the revisional court considered each and every receipt which is detailed in the impugned order, further, the applicant has not deposited the rent after institution of suit as such it was held that the applicant is in arrears. Finally, it was sought to be urged that the notice as required for eviction and arrears of rent was not served upon the applicant, the revisional court upon considering the material available on record came to a conclusion that the notice was served by registered post as well as Under Postal Certificate, the registry was refused with the endorsement that the applicant refused to accept the same, therefore, it was held that when the notice was sent on a proper address to the proper person and in the event of applicant refusing to accept it, there is a presumption that the notice was duly served.

9. Learned counsel for the applicant sought to re-agitate the factual aspect that was raised before the trial court as well as before the revisional court which has been considered in detail.

10. This court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, would not disturb the concurrent finding of fact returned by the court below unless the applicant succeed in showing any elementary illegality, infirmity or perversity, the applicant has miserably failed to show that there is elementary illegality, infirmity or perversity.

11. In these circumstances, this Court is not inclined to interfere with the concurrent finding of fact.

12. The revisional court has recorded that the applicant is no longer residing in the premises since 2005 as the structure has already been demolished being in dilapidated condition, this fact is not being disputed by the learned counsel for the applicant before this Court. In these circumstances, no further time is granted to the applicant to vacate the premises.

13. The petition being devoid of merit is accordingly dismissed.

14. No order as to costs.