

State of U.P. Vs Sri R.B.L. Gupta

Court: ALLAHABAD HIGH COURT

Date of Decision: July 12, 2016

Citation: (2016) 7 ADJ 681 : (2017) 121 ALR 370 : (2017) 121 ALR 46 : (2017) 1 ARC 288 : (2017) 135 RD 219

Hon'ble Judges: Pankaj Mithal, J.

Bench: Single Bench

Advocate: S.M. Iqbal Hasan, Advocate, for the Appellant; Swapnil Kumar, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Pankaj Mithal, J.â€”Heard learned Standing Counsel for the petitioner State of U.P. and Sri Swapnil Kumar, learned counsel for the contesting

respondents No. 1/1 and 1/2.

2. The respondents had filed SCC Suit No.108 of 1989 against the petitioner for rent and eviction with regard to property No.6/336, Khandari

Hari Parwat, Agra. The said suit was decreed on 14.11.1991.

3. The respondents moved an application for the execution of the above decree. Accordingly, Execution Case No.20 of 1999 was registered. In

the said execution case petitioner filed objections under Section 47 C.P.C. and the same have been rejected vide order dated 25.11.2011. The

revision preferred against it has been dismissed on 09.09.2014.

4. The above two orders passed by the Executing Court rejecting the objections of the petitioner have been impugned by means of this petition

under Article 227 of the Constitution of India.

5. The above orders have been passed way-back on 25.11.2011 and 09.09.2014. This petition has been filed on 05.05.2016 after about two

years. The petition, therefore, suffers from delay and latches. The petitioner has tried to explain the delay in filing the petition by stating that it had

filed Original Suits No.103 of 2011 and 1040 of 2011 and was waiting for the decision of the above suits.

6. One of the aforesaid suit No.1040 of 2011 is still pending and has not been decided. The other suit has been decided on 19.01.2016.

7. In this view of the matter, the explanation that the petitioner was waiting for the decision of the above suits is not acceptable.

8. On merits the argument of learned Standing Counsel is that the decree put in execution is without jurisdiction and a nullity for the reason that the

property is a Nazul property and the Small Causes Court had no jurisdiction to hear and decide the suit. The Executing Court has not considered

the above objection.

9. The Executing Court as well as Revisional Court have both observed that one of the objections of the petitioner under Order 47 C.P.C. was

that the decree passed by the Small Causes Court on 14.11.1991 is without jurisdiction but has repelled the said argument by noting that the suit

was for the eviction of a tenant by the landlord after determination of tenancy and as such it was cognisable by the Small Causes Court and

therefore, the decree is not without jurisdiction.

10. The courts below further records that the respondents have filed two other suits namely civil suit No.279 of 1988 and 831 of 1992 against the

petitioner, one for decree of permanent injunction restraining the petitioner from demolishing the construction situate over the land in dispute and

the other for damages.

11. Both the above suits have been decreed and in respect of one of them an application under Order 9, Rule 13 C.P.C. was filed by the

petitioner which was also rejected. In both the suits, the respondents have claimed themselves to be the owners and landlords of the property as

was claimed by them in the suit giving rise to the present executing proceedings.

12. Thus, the consistent case of the respondents had been that they are the owners and landlords of the property in dispute and that the petitioner

tenant thereof. The suit was essentially based upon the relationship of landlord and tenant between the parties and the decree passed therein is not

without jurisdiction.

13. The petitioner in paragraph 27 of the petition has stated that it has filed original suit No. 1040 of 2011, State of U.P. v. Tej Pal and others

before the Civil Judge, (Sr. Division) Agra, for the cancellation of the sale deed dated 31.07.1958 (by which the property was purchased by the

respondents/their predecessor in interest); for declaring the ex-parte decree dated 07.08.1991 passed in original suit No. 279 of 1988, R.B.L.

Gupta v. State of U.P. and others, ex parte decree dated 14.11.1991 passed in S.C.C. Suit No.108 of 1989, R.B.L.Gupta v. State of U.P., the

ex parte decree dated 26.02.1996 passed in original suit No. 881 of 1992 as illegal null and void; to restrain the respondents from interfering in its

possession use and enjoyment of the suit property; to restrain the respondents from executing of the ex parte dated 14.11.1991 passed in S.C.C.

Suit No. 108 of 1989; and to declare the petitioner to be the owner in possession of the aforesaid property.

14. The reliefs claimed by the petitioner in the above suit clearly demonstrates that the relief claimed by the petitioner by filing objections in the

execution proceedings had already been claimed by it by means of the aforesaid suit.

15. In view of the institution of the above suit and its pendency the petitioner can get the desired relief therein irrespective of the objection taken to

the said effect in the execution proceedings.

16. The aforesaid decree which has been put in execution is final as on date as the application of the petitioner filed under Order 9, Rule 13 C.P.C.

for setting aside the same stand rejected.

17. The argument of the learned Standing Counsel that the decree is without jurisdiction ex facie has no force for the reason that the suit was for

eviction of a lessee on determination of lease and was squarely within the jurisdiction of the Small Causes Court as per Section 15 of the Provincial

Small Cause Courts Act, 1887.

18. The said suit was dependent upon the relationship of landlord and tenant between the parties and the question of title or the nature of the land

were completely foreign to the cause adjudicated therein.

19. The submission that there was no relationship of landlord and tenant between the parties and therefore also the decree was without jurisdiction

is without substance.

20. The Small Causes Court has decreed the suit in view of the relationship of landlord and tenant between the parties. The said view taken by the

Small Causes Court may not be correct but that would not render the decree to be without jurisdiction.

21. In view of the aforesaid facts and circumstances, there is no merit in the objections of the petitioner and the courts below have not erred in law

in dismissing them and holding that the decree passed by the Small Causes Court is not a nullity or without jurisdiction.

22. The petition lacks merit and is accordingly, dismissed.