

Raj Mohan Krishna Vs. the Second Additional District Judge and Others

Raj Mohan Krishna Vs. the Second Additional District Judge and Others

SooperKanoon Citation : sooperkanoon.com/448669

Court : Allahabad

Decided On : Apr-23-1992

Reported in : AIR1993All40

Judge : G.P. Mathur, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3 and 21; Registration Act - Sections 49; Evidence Act - Sections 116

Appeal No. : Civil Misc. Writ Petition No. 3554 of 1989

Appellant : Raj Mohan Krishna

Respondent : The Second Additional District Judge and Others

Advocate for Def. : S.C. and ;Ajit Kumar, Adv.

Advocate for Pet/Ap. : A. Wahal, Adv.

Judgement :

ORDER

1. Parties have exchanged affidavits and, therefore, the writ petition is being disposed of finally at the admission stage.

2. Durgesh Kumar Srivastava, respondent No. 3, filed an application on 24-4-1985 against the petitioner for release of the premises bearing No. 273 (southern

portion) Mumfordganj, Allahabad, which is in his occupation. The release application was allowed by the Prescribed Authority by order dated 19-11-1987. The petitioner filed an appeal against the said order which was allowed by order dated 19-12-1988 by the IInd Addl. District Judge and the case was remanded to the Prescribed Authority to consider the question of bona fide need afresh.

3. One of the pleas raised on behalf of the tenant was that Durgesh Kumar Srivastava, respondent No. 3, was not the landlord of the building and as such he had no right to file the release application. The learned IInd Additional District Judge decided this question against the petitioner and held that respondent No. 3 was the landlord of the building in dispute. It is for quashing of this part of the appellate order that the present writ petition has been filed.

4. I have heard learned counsel for the parties and have examined the record.

5. The material on-record reveals the following facts:--

(1) the disputed premises were let out to the petitioner by K. N. Srivastava, father of respondent No. 3; (2) K. N. Srivastava gave written information to the petitioner on 24-10-1981 to the effect that on account of family partition, Durgesh Kumar Srivastava had become the sole owner of the disputed premises and that rent with effect from 1-10-1981 should be paid to him; (3) thereafter the petitioner paid rent to Durgesh Kumar Srivastava but took up the plea that he was not the landlord only after the release application was filed; (4) the brother of respondent No. 3, Balni Ranjan Srivastava filed, O.S.No. 156 of 1981 and in terms of the said decree the building in dispute fell in the share of respondent No. 3; and (5) the name of respondent No. 3 has been recorded over the building in dispute in the record of Nagar Mahapalika Allahabad after the decree was passed in the aforesaid civil suit.

6. The facts and circumstances enumerated above conclusively establish that Durgesh Kumar Srivastava, respondent No. 3, is the landlord of the building and he is fully entitled to file a release application against the petitioner.

7. Learned counsel for the petitioner has contended that the family settlement, on the basis of which it is alleged that respondent No. 3 has become owner of the building in dispute, is inadmissible as it is unregistered document in view of S. 49 of the Registration Act. In my opinion the contention raised by the learned counsel for the petitioner has no substance at all. It is well settled that an oral family arrangement does not require of a memorandum prepared after the family arrangement had already been made either for the purpose of record or for information of the Court for making necessary mutation does not require registration as the memorandum itself does not create or extinguish any right in the immovable property (see *Kale v. D.D.C.* (AIR 1976 SC 807) and *Roshan Singh v. Zile Singh* (AIR 1988 SC 881)). That apart in the present case a declaratory suit had also been filed in which a decree has been passed on 26-11-1981. The disputed building fell in the share of respondent No. 3 in accordance with the decree passed in the suit. Respondent No. 3 is not claiming right over the property in dispute only on the basis of the family settlement but also on the ground that in Suit No, 156 of 1981 he has been held to be the owner of the property in dispute.

8. Learned counsel for the petitioner next contended that the decree in O.S. No. 156 of 1981 is collusive in nature and should be ignored. In support of his submission he placed reliance on *Devi Das v. Mohan Lal* (AIR 1982 SC 1213) and *B. N. Tewari v. 3rd Addl. District Judge* (1982 UPRCC 413). In the case of *Devidas* (supra) after-purchasing the property the subsequent purchaser initiated proceedings for the ejectment of the tenant. The case of the tenant was that the sale by the original owner was not bona fide and made with an ulterior motive was a sham transaction. The Rent Control Authorities did not at all consider the case set up by the tenant. It was on these facts that the Hon'ble Supreme Court remanded the matter for recording a finding on the question whether the sale of the building was a bona fide transaction. In the case of *B. N. Tewari* (supra) it was held that it was open to a tenant to show that a partition or family settlement is mala fide in the sense that there was no real partition or family settlement whatsoever and the very factum of the alleged transaction lacked basis. Both these cases have no application to the case in hand. The family partition has been effected between the father and his sons. Respondent Mo. 3 did not derive title only on the basis of family partition but on the basis of the decree passed in the

partition suit. It is not open to a tenant to challenge the decree passed in a civil suit in proceedings for release under S. 21 of the Act. The Prescribed Authority is a Tribunal of limited jurisdiction which has been constituted under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, for deciding applications under S. 21 or other provisions enumerated under the Act. It has no jurisdiction at all to examine the correctness or otherwise of a decree passed by a competent Civil Court. The Tribunal has to proceed on the basis that the decree of a Civil Court is a valid decree and has to recognise the rights of the parties on its basis. It has been held in *Khem Chand v. IV A.D.J.* (1989 (2) ARC 344) that it is not open to any part to challenge the genuineness of a decree of a Civil Court before the Prescribed Authority and so long as the decree is not set aside it has to be accepted as genuine.

9. There is another important aspect of the case. It is not disputed that after the father of respondent No. 3 intimated the petitioner on 24-10-1981 that he (respondent No. 3) had become the exclusive owner of the property and rent should be paid to him, the petitioner started paying rent to respondent No. 3. He challenged the title of respondent No. 3 only after the release application was filed in the year 1985. The petitioner having accepted respondent No. 3 as the owner and landlord and having paid rent to him for almost four years it was not open to him to contend that he was not the landlord and was not entitled to file the release application. Under S. 3(j) of the Act, landlord has been defined in relation to a building as a person to whom its rent is payable. It is not necessary that the person should be the owner of the building. Under S. 116 of the Evidence Act a tenant, who is inducted by a person as such, cannot challenge the successor's title if he attains the status of the successor-in-interest as landlord. Payment of rent without objections estops the tenant from challenging the title of the landlord. (See *Awadesh Trivedi v. Spl. Judge* (1986(1) ARC 173) and *Hari Prasad Gupta v. Prescribed Authority* (1986 (2) ARC 315). Even in the case of *B. N. Tiwari v. 3rd Addl. District Judge* (supra) cited by the learned counsel for the petitioner, it was observed as follows:--

'It is a well settled cardinal rule that no tenant can be allowed to question the title of landlord. If after the alleged partition a tenant has attorned to a particular

erstwhile co-owner as his sole landlord. I apprehend that it will not be open to such a tenant to question the title of such a landlord on the ground that the transaction, whereby his landlord became the sole owner of the property, was a mala fide one and not a genuine one.'

10. In view of the admitted position that right from October, 1981 the petitioner paid rent to respondent No. 3 without any objection, it is not open to him to challenge his right of filing the release application. The finding of the learned Additional District Judge to the effect that respondent No. 3 is the landlord and is competent to file the release application is, therefore, perfectly correct.

11. There is no merit in this writ petition. It is accordingly dismissed with costs. The stay order is vacated.

12. The release application was filed in the year 1985 and the matter has become quite old. The Prescribed Authority is accordingly directed to conclude the proceedings as expeditiously as possible preferably within four months of the presentation of a certified copy of this order before him.

13. Petition dismissed.