

Jagdish Prasad Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-11-2000

Reported in : 2000(1)AWC853

Judge : Shitla Prasad Srivastava, J.

Acts : Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 3, 20(2) and 30 Transfer of Property Act, 1882 - Sections 111;

Appeal No. : C.M.W.P. No. 4518 of 1984

Appellant : Jagdish Prasad

Respondent : State of U.P. and Others

Advocate for Def. : S.C. and ;Pankaj Mittal, Adv.

Advocate for Pet/Ap. : G.N. Verma, Adv.

Judgement :

Shitla Prasad Srivastava, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner for quashing the orders dated 27.2.1984 and 28.2.1981 passed by the respondent Nos. 2 and 3 respectively.

2. The brief facts for the purposes of the present petition, as stated in the petition, are that Suit No. 36 of 1977 was filed by Sri Dhan Prakash, respondent No. 4, against the petitioner, under Section 20 (2) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. The relief claimed by the respondent, who was landlord of the premises in question was that the petitioner should be evicted from the accommodation in question as he committed default in payment of rent and continued after termination of his tenancy. Therefore, the plaintiff was entitled for the damages and mesne profit also. The respondent alleged in the suit that the petitioner was a tenant of the shop on a rent of Rs. 60 per month and that the rent from 1.11.1974 to 31.12.1976 amounting to Rs. 1,300 is due. It was further alleged that a registered notice was sent to the petitioner on 10.1.1977 which was served on the petitioner personally. Therefore, from 12.2.1977 his possession was as trespasser as his tenancy was terminated. The respondent claimed a decree for Rs. 1.300 from 1.11.1974 to 31.12.1975 as arrears of rent and damages at the rate of Rs. 70 per month and further a decree for ejectment was also prayed for.

3. The suit of the plaintiff-respondent No. 4 was contested by the petitioner on the ground that the petitioner is a tenant of the shop on an annual report of Rs. 250 per annum from year to year and not on a rent of Rs. 50 per month. It is further stated by the petitioner that the tenancy began from 1st of January of each year and ended on 31st of December of that year. It was also claimed by the petitioner that he was tenant of the shop from the year 1961 when he took shop from one Kishori Lal father of the plaintiff-respondent and his brother on a rent of Rs. 100 per annum. Later on Kishori Lal enhanced the rent from Rs. 100 to Rs. 200 per annum but he never used to issue any receipt and thus Kishori Lal had realised rent upto 1975. Kishori Lal died in the year 1975 and after his death Sri Jagdish Prasad elder brother of the deceased being karta of the family again enhanced the rent of the shop from Rs. 200 to Rs. 250 per annum and rent from 1.1.1976 to 31.12.1976 amounting to Rs. 250 was realised by Sri Jagdish Prasad in the month of February, 1976. It is further stated that the respondent No. 4 sent a notice that rent from 1.11.1975 is due. It was further stated in the notice that the shop in question was required by the plaintiff for starting some business for his son Mukesh Kumar along with Jagdish Prasad. who wants to start cloth merchant shop jointly with Jagdish Prasad arrears of rent Rs. 1.300 was also mentioned. The

notice was replied by the petitioner and the plea which has been taken in the written statement was taken in the notice. It was further stated that after the death of Kishori Lal the elder brother Jagdish Prasad realised Rs. 250 as rent on 16.2.1976 which was paid through Asha Ram owner of the firm Dharam Das Asa Ram. So the rent of the shop was : Rs. 250 per year which was paid upto 31.12.1976. After receipt of the notice Rs. 250 was sent through post which was refused by the plaintiff. After refusal of rent sent ; through post the petitioner deposited the rent under Section 30 of U. P. Act No. 13 of 1972 in the Court of Munsif Baghpat in Misc. Case No. 108 of 1977 for the period from 1.1.1977 to 31.12.1977 amounting to Rs. 250 which was ordered to be deposited by the Munsif vide order dated 29.8.1977. It was stated that the plaintiff-respondent never sent any information ; that the plaintiff was sole landlord on any ground nor Jagdish Prasad his other brother told the petitioner that the respondent No. 4 was the sole owner. It was not pleaded In the plaint that the plain tiff-respondent is the sole landlord on the basis of the Will.

4. The assertion made by the petitioner is that the plaintiff-respondent did not file any Will in his evidence, The trial court on 28.2.1981 decreed the suit for ejectment of the petitioner, for recovery of arrears of rent of Rs. 1,300 and Rs. 50 per month as rent. The trial court also decreed the suit for pendants lite and future damage at the rate of Rs. 70 along with the costs of the suit.

5. The petitioner filed a revision. On 27.2.1984 the revision was partly allowed, the decree of the lower court was partly modified. The revisional court came to the conclusion that formerly the rate of rent fixed by the trial court cannot be Interfered with in revision as it is question of fact. On the point of ownership of the house In question, the revisional court held that as the petitioner has accepted the plaintiff to be the landlord In his application filed under Section 30 of the U. P. Act No. 13 of 1972 and as the rent was remitted to the plaintiff by money order, the petitioner is estopped from saying that the plaintiff is not the exclusive owner of the property In. dispute. Notice was also held to be invalid. On the question of default, it was held by the revisional court that the suit could not have been decreed for arrears of rent from 1.12.1975 but it could only be for a period beginning from 1.12.1975. Therefore, he modified the order of the trial court to this extent. The suit was

ultimately decreed for recovery of Rs. 660 as arrears of rent and for ejectment also with a further direction to recover Rs. 50 per month as damages for use and occupation. pendents lite. The petitioner has challenged these two orders and Judgments in this writ petition.

6. Sri G. N. Verma learned counsel for the petitioner has urged that notice by one landlord was not a valid notice. He has further submitted that the question in the present case is as to whether the notice on behalf of one landlord is valid notice and further that if the rent was paid to Jagdish Prasad after the death of Kishori Lal and he accepted the rent, the defendant-petitioner cannot be held to be a defaulter and the rent shall be deemed to have been paid to the plaintiff-respondent who was one of the co-landlord. Sri G. N. Verma learned counsel for the petitioner has placed reliance before the Court the definition of landlord as given in Section 3 (j) of the Act. which is quoted below :

'3 (j) 'landlord', in relation to a building means a person to whom its rent is or if the building were let, would be, payable and includes, except in clause (g), the agent or attorney, or such person.'

7. His submission is that if the rent was accepted by Jagdish Prasad one of the heirs of Kishori Lal brother of the plaintiff, then that shall be treated to be rent accepted on behalf of the plaintiff also. For that purpose, he has placed reliance in a case Smt. Hamidan v. Vth Additional District Judge, Allahabad, 1983 ARC 405. though it was a case under Section 21 of U. P. Act No. 13 of 1972 but it was held that in the absence of any finding as to ouster--Rent realised by the landlord exclusively would be deemed to be realised on behalf of other co-landlords also. For that purpose, he has placed reliance in a case Gopal Das and another v. 1st Additional District Judge. Varanasi and others, 1987 ARC 281 (FB), where definition of landlord has been discussed. Sri Verma further submitted that since 'rent collector' is included within the definition of 'landlord' for the purposes of the Act. he is the person entitled to resort to the remedy provided under the Act to recover the possession. He. however, is not entitled to determine the contractual tenancy which under the provisions of Section 111, Transfer of Property Act can be done only by the lessor or his authorised agent. For that purposes, he has

placed reliance in a case *Fatzubhai Mahmadbhai v. Bal Krishina Naradlal Bhatt.* : AIR1972 Guj9 . He has further submitted that in order to effect any variation of contract between the landlord and tenant all co-owners of landlords must combine. For that purposes, he has placed reliance in a case *Vegha Jesingh v. Manilal Bhogilal Desai and others*, AIR 1935 Bom 262. Further his submission is that one co-lessor cannot give notice to quit in respect of his share. For that purpose he has placed reliance in a case AIR 1957 Assam 70 and further placed reliance in a case AIR 1968 Ker 229.

8. In nut shell the argument of the learned counsel for the petitioner is that the suit was not maintainable on behalf of one of the landlords when admittedly the petitioner was a tenant from the time of Kishori Lal father of the plaintiff and Kishori Lal left behind him two sons Jagdish Prasad and the present plaintiff and this Jagdish Prasad realised the rent as landlord. His further submission is that the finding recorded by the trial court that the plaintiff was entitled to get the damage and pendent lite at the rate of Rs. 70 is vitiated as the rent has been held to be Rs. 50 per month. Sri Verma has submitted that the revisional court was trying to decide the point as to whether the plaintiff was the sole landlord or there were other landlords also and the plaintiff was placing reliance on the basis of the Will alleged to have been executed by his father but the revisional court instead of deciding the right of the plaintiff on the basis of the Will has decided this question on the basis of the admission made by the defendants in the application under Section 30 of the Act and giving reply of the notice under Section 106 of the Transfer of Property Act. His submission is that real controversy has not been decided by the Court below. According to him same error has been committed by the trial court as the trial court has also placed reliance on this so-called admission of the defendants.

9. Sri Pankaj Mittal, appearing for the respondent has urged that in the present suit there were two questions. The first question was the rate of rent and the second question was regarding the right to file suit. His submission is that so far as the question of rate of rent is concerned, both the Courts below held that the rent of Rs. 50 was per month and not per annum. Therefore, this finding may not be disturbed under Article 226 of the Constitution of India. He has further submitted

that so far as the validity of notice is concerned, there was no contest regarding validity of the notice in the written statement filed by the defendants. He has placed reliance In a case Bhagwan Das Agarwala v. Bhagwan Das Kanu : [1977]3SCR75 on the point of notice under Section 106 of Transfer of Property Act. He has further placed reliance in a case RangNath v. State of V. P. and others, 1984 (1) ARC 642. For the purpose that under general law in a suit between the landlord and the tenant the question of title to leased property is irrelevant therefore suit cannot be drawn out on account of not impleading ; of other co-owners. He has further placed reliance In a case Krishna Ballabh v. Ramendra Nath Das, 1997 (1) ARC 116.

10. After hearing learned counsel for the parties and going through the record. I am of the view that it is true that finding of fact recorded by the Court below on the point of rate of rent is a question of fact but that question of fact should have been determined on the basis of some evidence available on record. In the instant case, the plaintiff filed suit for ejectment on the basis that the defendant was tenant month to month on payment of Rs. 50. The defendant denied and said that the rent was Rs. 250 per annum. The plaintiff claimed for the payment of pendente lite and damage at the rate of Rs. 70 per month. The trial court decreed the suit for ejectment with a finding that the petitioner was the tenant of the shop in question and the rate of rent was Rs. 50 per month. But for the pendente lite and future damage, the trial court without any basis or evidence held that the plaintiff is entitled to recover Rs. 70 per month as damages. The revisional court affirmed the finding with regard to the rate of rent to be Rs. 50 per month and on the basis of the finding recorded by the trial court on the question of rent treating it to be a finding of fact but came to the conclusion that there was no evidence to show that the shop can fetch Rs. 70 per month as rent. The revisional court set aside the finding of the trial court on this point and further the revisional court did not agree with the finding of the trial court that the plaintiff was entitled to recover the rent from 1.11.1974 and held that the arrears will be only from 1.12.1975. The revisional court has also decreed the suit for future damage at the rate of Rs. 50. Thus the revisional court has reversed the finding of fact recorded by the trial court on the point of future damage at the rate of Rs. 70 and also on the point of arrears of rent. A perusal of the Judgment of the revisional court would show that the

question of ownership or as to whether the plaintiff was the sole landlord in relation to the building or not has not been decided in accordance with law rather it has been decided on the basis of the assertion made by the defendant in his application under Section 30 of the aforesaid Act. Considering the facts and circumstances of the case and law on the point coupled with the decisions cited by the learned counsel for the parties, I am of the view that the trial court should have considered the point which had arisen in the case as to whether the suit of the plaintiff was maintainable or not and as to whether the plaintiff was the landlord or not. The assertion made by a person on the question of fact may be binding on him but when there is legal interpretation of a point raised or arisen in a suit, then this point should be decided on the basis of the existing law of the land because there cannot be any estoppel against the statute. In the instant case, the question as to whether the plaintiff was landlord or not should have been decided. Keeping in view the facts and circumstances of the case, I think only on the point as to whether the plaintiff was landlord or not the matter should be sent back to the revisional court and the revisional court can decide it without calling for evidence. As the question of rate of rent and future damages are concerned and the revisional court has not agreed with the finding of the trial court on the rate of rent and future damages, I think since the trial court has fixed damage without any evidence at the rate of Rs. 75 per month and the revisional court modified it at Rs. 50 per month. I think the revisional court shall also look into the matter and decide this point afresh.

11. I, therefore, allow the writ petition and set aside the order of the revisional court dated 27.2.1984 and remand the case back to the revisional court with a direction to restore the revision to its original number and decide the case on the points mentioned above in accordance with law afresh. However, there will be no order as to costs.