

State of U.P and Another Vs. Badan Singh

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Court : Allahabad

Decided On : Apr-10-2001

Reported in : 2001(2)AWC1322

Judge : U.S. Tripathi, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 80 - Order 17, Rule 2; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 9

Appeal No. : Civil Revision No. 561 of 1985

Appellant : State of U.P and Another

Respondent : Badan Singh

Advocate for Def. : S.K. Singh, Adv.

Advocate for Pet/Ap. : N.L. Ganguli, Adv.

Judgement :

U.S. Tripathi, J.

1. The State of U. P. and Superintendent of Police, Government Railway Police have filed this revision against the judgment and order dated 3.7.1985 passed by the 1st Additional District Judge/J.S.C.C., Mainpuri in S.C.C. Suit No. 2 of 1980

decreeing the suit of the opposite party for ejectment and arrears of rent and damages.

2. The plaintiff/respondent filed S.C.C. Suit No. 2 of 1980 against the State of U. P. applicant No. 1 and Superintendent of Police, G.R.P.. Agra, applicant No. 2 for ejectment and arrears of rent and damages on the ground that the applicants approached him to let out his house to the State of U. P. for occupation of staff of G.R.P.. Mainpuri, as it was urgently required. The G.R.P., Mainpuri, occupied the disputed premises on 8.2.1979 on an understanding that reasonable rent would be paid to the respondent/ plaintiff having regard to prevailing rent in the vicinity. However, the rent could not be settled between the parties and the applicant No. 2 continued paying Rs. 130 per month as rent subject to the settlement of the rent subsequently. The premises in question consisted of 12 rooms. 2 verandas and a big courtyard with a lawn and pucca boundaries. The prevailing rent in the vicinity was much more than rent of Rs. 312.50 per month. The respondent plaintiff served a notice on the applicants demanding rent at the rate of Rs. 250 per month and no reply was received. He moved an application under Section 9 of the U. P. Act No. 13 of 1972 (herein after called as 'the Act') for determination of standard rent before the Rent Control and Eviction Officer. The said application was rejected. He filed appeal against the said order in the Court of District Judge. Mainpuri. It was allowed and the case was remanded back. The Rent Control and Eviction Officer again rejected the application and the respondent/ plaintiff again filed appeal. The appeal was dismissed on the ground that the provisions of the Act were not applicable to the premises in question. Since the provisions of the Act were not applicable the respondent/plaintiff terminated the tenancy of the applicants by serving simple notice to quit. He also claimed Rs. 11,875 as rent and damages. Despite of service of notice, the applicants did not vacate the premises hence the suit.

3. The applicants contested above suit on the grounds that the rate of rent was Rs. 130 per month and not Rs. 312.50 P. as claimed by plaintiff/respondent. The assertion of respondent/plaintiff regarding rent was barred by res judicata. Notice given under Section 106 of the Transfer of Property Act and Section 80, C.P.C. to the applicants/ defendants were illegal and that suit was also bad for non-joinder

of Inspector General of Police.

4. On the date of hearing, plaintiff/ respondent examined himself. Thereafter, learned counsel for the defendants applicants moved application for adjournment. The learned J.S.C.C. rejected the above application. Thereafter, learned counsel for the applicants left the Court and the learned J.S.C.C. proceeded with the case under Order XVII, Rule 2, C.P.C. Considering the examination-in-chief of the plaintiff/ respondent, the learned J.S.C.C. decreed the suit of the plaintiff/ respondent in toto.

5. The above judgment and decree has been challenged in this revision.

6. Heard the learned standing counsel appearing on behalf of the applicants and none appeared from the side of the respondent and perused the record.

7. It was contended by the learned standing counsel that the learned J.S.C.C. has decreed the suit holding that rate of rent was Rs. 312.50 P.M. which the applicants failed to pay after alleged service of notice of demand while on the own showing of the plaintiff/respondent, the rent of the premises in question was not agreed and he applied twice for fixation of rent before the Rent Control and Eviction Officer, but was unsuccessful. Therefore, the findings of the learned J.S.C.C. that rent was Rs. 312.50 paise per month is without any basis and suffer from perversity.

8. On the own showing of the plaintiff/respondent, no rent was agreed between the parties and defendants/applicants continued to pay Rs. 130 per month subject to settlement of rent subsequently. He applied before the Rent Control and Eviction Officer under Section 9 of the Act twice for fixation of rent, but his applications were rejected- As such on the own showing of plaintiff/ opposite party, no rent was fixed and, therefore, notice of demand to pay the rent at the rate of Rs. 312.50 paise per month was invalid. Moreover, the learned J.S.C.C. has also not recorded any finding about the rate of rent.

9. The defendant/ applicants have also raised a plea that the notices under Section 106 of the Transfer of Property Act and under Section 80. C.P.C. were invalid. The suit for ejectment could be decreed only if it was proved that tenancy

of tenant was legally and validity terminated. The learned J.S.C.C. has not recorded finding that notices under Section 106 of the Transfer of Property Act and Section 80. C.P.C. were valid and tenancy of the defendants/applicants was legally and validly terminated.

10. In this way, the finding recorded by the learned J.S.C.C.suffers from perversity and are based on no evidence.

11. Since no proper finding regarding rate of rent, validity of notice have been recorded, the suit was not properly decided. This Court,therefore, has no option but to allow the revision and remit the case to the trial court for fresh decision in the light of observation made above.

12. The revision is, accordingly, allowed. The order under revision is set aside and the case is remitted back to the Court concerned for fresh decision, after affording opportunity to the parties to adduce their evidence, in the light of observations made above.