

Haridev Misra Vs. Vth Additional District Judge, Gorakhpur and ors.

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Court : Allahabad

Decided On : May-11-1988

Reported in : AIR1988All295

Judge : S.D. Agarwala, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 24C(7); [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petn. No. 7886 of 1985

Appellant : Haridev Misra

Respondent : Vth Additional District Judge, Gorakhpur and ors.

Advocate for Def. : R.N. Sharma, Adv. ;S.P. Gupta, Standig Counsel

Advocate for Pet/Ap. : Tarun Varma, ;S.N. Verma, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.D. Agarwala, J.

1. This is a petition under Article 226 of the [Constitution of India](#) arising out of a Suit No. 285 of 1981 by Jamuna Dass Agrawal, respondent No. 2, and Smt. Ketki

Devi, respondent No. 3, against the petitioner, for arrears of rent and damages and for ejectment from the premises in dispute.

2. The property in dispute is a house, situate in Mohalla Ali Nagar South in the district of Gorakhpur. This is a second innings of this Court. The matter had earlier come to this Court by means of a writ petition No. 8889 of 1984, decided on 29th August, 1984, by which the order of the revisional Court was quashed and the revisional Court was directed to rehear the revision within three months of the receipt of the judgment of this Court

3. The suit was filed on the allegations, that the petitioner is a tenant in the first floor of the house in dispute. It was alleged that the petitioner was a tenant on a monthly rental of Rs. 70/- and he was further liable to pay Rs. 3/- as water and electricity charges per month. The allegation was that the petitioner was in arrears of rent since July, 1979, and that he did not even pay the electricity charges since August, 1981, to November, 1981, a notice of demand dated 17th November, 1981, determining the tenancy of the petitioner as also demanding the arrears of rent was served upon him on 21st November, 1981. Since the arrears of rent were not paid in accordance with the notice of demand, a suit was filed for eviction of the petitioner from the disputed accommodation and for recovery of Rs. 2,560.68 p. as arrears of rent etc.

The petitioner contested the suit mainly on the ground that the rate of rent was not Rs. 70/- per month. His case was that the rate of rent was only Rs. 40/- per month and that besides rent, he was provided with furniture for which he paid Rs. 30/- per month. He, however, admitted that he had to pay Rs. 3/- as water charges per month. His case further was that after the tenancy commenced, he returned the furniture and, therefore, he is not liable to pay furniture charges.

4. The Judge, Small Causes Court by his judgment dated 10th November, 1983, dismissed the suit. The Judge, Small Causes Court held that the rate of rent was Rs. 40/- per month and, as such, the petitioner was not a defaulter. Against the decision dated 10th November, 1983, the landlord respondents filed a revision No. 10 of 1984. This revision came up for hearing before the 5th Additional District Judge, Gorakhpur. The revisional Court by its judgment dated 19th May, 1984,

allowed the revision, set aside the judgment of the trial Court and decreed the suit for arrears of rent, ejectment and damages. The revisional Court clearly held that the rate of rent was Rs. 70/- per month. Aggrieved by the said decision, the petitioner filed a writ petition in this Court being Civil Misc. Writ No. 8889 of 1984. In this Court, the main dispute, which was raised between the parties was in regard to the rate of rent. This Court, after examining the findings recorded by the revisional Court, came to the conclusion that since the judgment of the revisional Court was contradictory with regard to the rent note alleged to have been executed by the petitioner, the judgment was quashed and the revisional Court was asked to re-examine the case of the parties in the light of the evidence on record and thereafter decide the revision afresh. As stated above, this judgment was delivered on 29th August, 1984.

5. After remand, the matter was again examined by the revisional Court. The revisional Court again by its judgment dated 13th April, 1985, allowed the revision, set aside the judgment of the trial Court dated 10th November, 1983, and decreed the suit for ejectment. It clearly upheld the contention of the landlord respondents that the rate of rent was Rs. 70/- per month and not Rs. 40/-per month, as alleged by the petitioner. The petitioner has now challenged the judgment dated 15th April, 1985, by means of the present petition in this Court.

6. I have heard the learned counsel for the parties.

7. Learned counsel for the petitioner has contended that the revisional Court had no jurisdiction to reassess the evidence and thereafter record a finding of fact contrary to that recorded by the trial Court that the rate of rent was Rs. 70/- per month. The submission is consequently that the judgment of the revisional Court is vitiated in law. His further submission is that the only course open to the revisional Court was to remand the matter to the trial Court for reassessment of the evidence on the record even if it came to the conclusion that the rent note in dispute had been proved.

8. Learned counsel for the respondents, however, has urged that the finding recorded by the Judge, Small Causes Court was a finding based after ignoring the most material document, namely, the rent note, and, consequently, the revisional

Court was entitled to record its own finding considering the effect of the rent note executed between the parties.

9. The alleged rent note 97-Ga executed by the petitioner is the sole bone of contention between the parties. In this rent note, it has been categorically stated that the rent of the property would be Rs. 70/- per month. This rent note was filed in the trial court. Jamuna Dass Agrawal (P.W. 1), who appeared in the witness box before the trial Court, proved the said rent note. It was marked as Ext. No. 8.

10. The trial Court, on examining this rent note as well as the other documents, including its own assessment of the signatures of the petitioner, came to the conclusion that this document was not a genuine document, as it did not bear the signature of the petitioner defendant. Having held that it did not bear the signatures of the petitioner, it did not consider this document to arrive at a finding in regard to the rate of rent.

11. The revisional Court in the earlier Civil Revision No. 10 of 1984, which was the subject-matter of challenge in Civil Misc. Writ No. 8889 of 1984, held that the document contained the signatures of the defendant petitioner, as it was admitted by Arun Kumar (D.W. 2), who was a witness for the defendant and he further concluded that there was evidence to prove the signatures of the defendant petitioner on the said document and recorded a categorical finding that the document (paper No. 97-C) was executed by the defendant petitioner and it contained his signatures. The further contention raised is that it required registration was also repelled.

12. After remand by this Court on 19th May, 1984, the matter was again examined by the revisional Court. The revisional Court again came to the conclusion that, in fact, the rent note (Paper No. 97-Ga) Ext. 8, bore the signatures of the tenant petitioner, as has been clearly admitted even by his own witness Arun Kumar (D.W. 2). The revisional Court, consequently, after considering the rent note, which was ignored by the trial Court, recorded a finding that the rent of the premises was Rs. 70/- per month. In the light of the above facts, the contention of the parties has to be considered.

13. The outcome is that the rent note (Ext. 8), which was the most material document to establish the rate of rent at Rs. 70/- per month, was ignored by the trial Court on the ground that it was not genuine and, consequently, not proved. The question, therefore, which arises for consideration in this Court is as to what procedure should be adopted by the revisional Court once it came to the conclusion that the said material document has been wrongly ignored to be considered by the trial Court.

14. In *Laxmi Kishore v. Har Prasad Shukla*, 1981 All Ren Cas 545, a Division Bench of this Court held as under:

'If it finds that there is no evidence to sustain a finding on a particular issue of fact, it can ignore the finding. Same will be the case where the finding is based only on inadmissible evidence. In such cases, the Court will be justified in deciding to the question of fact itself, because the evidence is all one way. No assessment is needed. The Court can also decide the revision if only a question of law or some preliminary point of law, viz. validity of notice, is sufficient for its decision.

But, if it finds that a particular finding of fact is vitiated by an error of law, it has power to pass such order as the justice of the case requires; but it has no jurisdiction to reassess or reappraise the evidence in order to determine an issue of fact for itself. If it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guidelines. It cannot enter into the evidence, assess it and determine as issue of fact.'

15. In the above case, it was held by this Court that in case where it comes to the conclusion that the trial Court had based its findings on inadmissible evidence then the revisional Court would be justified in deciding the question of fact itself because the evidence is all one way and no assessment is needed.

16. The question as to in what manner the revisional Court has to exercise its power also came up for decision in a recent decision of the Supreme Court in *Jagdish Prasad v. Smt. Angoori Devi*, (1984 (1) All Ren Cas 679). In this case, the trial Court held that the sub-tenancy has been established in the case. The

revisional Court took the view that the case of sub-tenancy had not been established. This decision of the revisional Court was challenged in the High Court. The High Court reversed the decision of the Additional District Judge. The Supreme Court reversed the decision of the High Court and held that the revisional Court was justified in setting aside the finding recorded by the trial Court. It held as under:

'The Additional District Judge rightly took exception to this approach to the matter by the trial Court and since the evidence of the plaintiff had not been scrutinised under the erroneous impression of the legal position the same was looked into to find out whether the claim of the sub-tenancy had been established. This was not an attempt to reassess evidence but to take into consideration the evidence which had not been looked into by the trial Court. The revisional jurisdiction under Section 25 of the Provincial Small Cause Courts Act is not as wide as the appellate jurisdiction under Section 96 of the Civil Procedure Code; yet in a case of this type fault could be found with the revisional Court for pointing out the legal error committed by the trial Court in its approach to the material aspect. The legal position having been totally misconceived by the trial Court and there being an assumption of the position which the landlord was required to prove by evidence, the revisional authority was entitled to point out the legal error and rectify the defect. This is all that had been done by the Additional District Judge.'

17. From the observations of the Hon'ble Supreme Court, it is clear that where the trial Court did not take into consideration valuable evidence, it is open to the revisional Court to consider the evidence and arrive at a question of fact.

18. In *Karim Ullah v. 3rd Addl. District Judge, Allahabad*, in Civil Misc. Writ No. 3577 of 1984, which was decided by me on 29th March, 1988, I had an occasion to consider a similar question raised before me. After examining the various cases, I came to the conclusion that where the trial Court ignored to consider a material document then it will be open to the revisional Court to consider the evidence and record its own findings. It would not be a case of reassessment of the evidence. The principle laid down by me in the case of *Karim Ullah v. The 3rd Additional Dist. Judge, Allahabad*, (*supra*) would apply to the facts of the present case also.

19. In *Ganeshi Lal v. Illrd Addl. District Judge, Aligarh*, (1985 (2) All Ren Cas 302), Hon. A. Banerji, J. (as he then was) had also an occasion to consider a similar question. It was held by him as under :

'Section 25 of the Act does not empower the Court to reassess the evidence, even though it feels that the evidence has not been properly assessed. But if the approach of the trial Court is such which reveals a misconception of law then in that event the revisional Court may rectify the error by considering the evidence which had been ignored or not considered. The exercise of that power is thus limited.'

20. The trial Court, as I have already held above, held that the rent note which was executed by the petitioner, was not executed by him, as it did not bear his signatures. The revisional Court has categorically held that it did bear his signatures and, consequently, the rent note is a valid document. This rent note was not considered by the trial Court before arriving at a finding in regard to the rate of rent. Once the revisional Court came to the conclusion that the trial Court wrongly held the rent note to be not a genuine document and that, in fact, the document bore the signatures of the petitioner tenant then it was open to the revisional Court to consider the rent note which was ignored by the trial Court along with other evidence to record its own findings. I do not find any legal infirmity in the procedure adopted by the revisional Court.

21. Learned counsel for the petitioner has relied upon certain cases in support of his contention. The first case relied upon by the learned counsel is *Helper Girdhari Lal v. Saiyed Mohmad Mirasaheb Kadri*, (1987 (3) SCC 538). In this case, it was observed by the Hon'ble Supreme Court as under :

'The Court of Small Causes considered the principles of law, evaluated the evidence and held that there was in fact and in law a partnership. Such a view was not an impossible one or a perverse one. Therefore, there was nothing that could be done about such a view, within the ambit and scope of the power of Section 29(2) of the Rent Act.'

22. Section 29(2) of the Rent Act, which was up for consideration before the Hon'ble Supreme Court was in similar terms as Section 25 of the Provincial Small Cause Courts Act. But in the case before the Hon'ble Supreme Court, the revisional Court reassessed the entire evidence, which was also before the trial court. The question which is up for consideration in this case was not considered by the Hon'ble Supreme Court. In fact, as held above, the specific case of the Hon'ble Supreme Court in this regard is the case of Jagdish Prasad (supra), which, I have already referred to above.

23. In view of the above, I am of the opinion that since the Judge, Small Cause Court ignored to consider the most material evidence, namely, the rent note, in determining the question of the rate of rent, the revisional Court was right after holding that the rent note was a genuine document in considering the other evidence and recording its own findings. It is not a case of reassessing the entire evidence which was done by the Judge, Small Cause Court. In the circumstances, the submission made by the learned counsel for the petitioner, in my opinion, is not substantiated and the submission made by the learned counsellor the respondents is correct.

24. The next case relied upon is the decision in Fakir Chand v. 2nd Additional District Judge, Aligarh, (1984 (1) All Ren Cas 68). In this case, the Judge Small Causes Court took the view that the rent note relied upon by the respondents was not a genuine document inasmuch as there was no occasion for the petitioner to execute the rent note at the time it is alleged to have been executed. The Additional District Judge reappraised the evidence and reversed the finding of fact arrived at by the Judge, Small Causes Court. This Court, therefore, held that the proper procedure to be Adopted by the Court was to send the case to the trial Court for reappraisal of the evidence. This view was taken on the basis of Lakshmi Kishore's case (supra). It was a decision given prior to the decision of the Hon'ble Supreme Court in the case of Jagdish Prasad (supra).

25. In the circumstances, in my opinion, no reliance can be placed on the said decision.

26. The next case relied upon by the learned counsel is Param Sukh v. III Addl. District Judge, (1986 (2) All Ren Cas 305). This case is also based on the decision in the case of Laxmi Kishore (supra). It is not a case where a particular document was ignored by the trial Court and then a decision was given on a question of fact. It is a case where the entire evidence, which was before the trial Court, was reassessed by the revisional Court. In the circumstances, in my opinion, this case does not support the contention raised on behalf of the petitioner.

27. The suit arising out of the present petition was filed as a Small Causes Court suit as far back as in 1981. Twice the Additional District Judge has recorded a finding that the rate of rent is Rs. 70/- per month. Against the first order of the Additional District Judge, the petitioner came to this Court by filing a writ petition No, 8889 of 1984. This writ petition was allowed and a direction was issued under Article 226 of the Constitution to the revisional Court to rehear the revision within three months from the date of receipt of the judgment of this Court. It was in pursuance of this direction that the Additional District Judge again reheard the matter and again came to the conclusion that the rate of rent was Rs. 70/- per month. The rent note executed by the petitioner bears his signature, as found by the Additional District Judge, which clearly states that the rate of rent was Rs. 70/- per month. In view of these circumstances, I do not think it a fit case for interference under Article 226 of the [Constitution of India](#). The decision given by the Additional District Judge was in pursuance of a direction issued by this Court in a writ petition filed by the petitioner himself.

28. In the result, the petition is dismissed. The parties are directed to bear their own costs.