

Braham Singh Vs. Iv Additional District Judge, Meerut and ors.

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Court : Allahabad

Decided On : Jul-29-1988

Reported in : AIR1988All301

Judge : S.D. Agarwala, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 23

Appeal No. : Civil Misc. Writ Petn. No. 2764 of 1984

Appellant : Braham Singh

Respondent : iv Additional District Judge, Meerut and ors.

Advocate for Def. : G.P. Singh, Adv. and ;A.D. Prabhakar, Standing Counsel

Advocate for Pet/Ap. : P.K. Misra, 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 proceedings in suit No. 533 of 1975 filed in the court of Judge Small Causes, Meerut, Harvinder Singh Duggal v, Brahm Singh.

2. The property in dispute is house No. 165, now number, 290/291 and recently numbered as 31, Shivlok, Kankherkhera, Meerut. The petitioner is the tenant, Harvinder Singh Duggal, respondent 3 is the landlord. The suit for ejectment, arrears of rent and damages at the rate of Rs. 125/- per mensem was filed by the respondent 3 against the petitioner. The case set up in the plaint was that the petitioner was a tenant at the rate of Rs. 125/- per mensem. He defaulted in the payment of rent since J-4-1974. He has consequently served with a notice of demand and ejectment dt. 18th Dec. 1974, which was served upon him on 26-12-1974. In spite of the service of notice of demand, the petitioner did not comply with the said notice and hence the suit was filed for the reliefs sought in the plaint.

3. The petitioner in defence set up a case that no relationship of landlord and tenant was established between him and respondent 3.

4. The Judge Small Causes Court after considering all the evidence on record came to the conclusion that relationship of landlord and tenant was clearly established between the petitioner and respondent 3. It was also found that the petitioner was a defaulter and consequently, the suit was decreed.

5. Aggrieved by the said decision, a revision was filed in the court of the District Judge, Meerut, under Section 25 of the Provincial Small Cause Courts Act. The revision came up for hearing before the IVth Additional District Judge, Meerut who by his judgment dt, Jan 24, 1984 dismissed the revision. The revisional court also examined the matter again in detail on the question whether relationship of landlord and tenant was established between the parties or not and held that such a relationship did exist. The petitioner has now challenged the judgments dt. 10th Mar. 1978 and 24th Jan. 1984 by, means of the present writ petition.

6. I have heard learned counsel for the parties. Learned counsel for the petitioner has contested that the case involved a disputed question of title and as such the courts below have acted illegally and with material irregularity in exercise of their jurisdiction in not returning the plaint to be presented to a court having jurisdiction determine the title and hence the judgments passed by both the courts below are vitiated in law.

7. In the instant case, it is not disputed that by a sale deed dt. 18th Oct. 1962 the disputed accommodation was purchased by respondent 3 landlord from one Tehal Ramand the petitioner. The sale deed is exhibit 3 on the record. A lease deed was executed by the petitioner in favour of respondent 3 on 18th July, 1967, which is exhibit 4 on record, by which the petitioner took the property on rent from respondent 3 at the rate of Rs. 125/-per mensem. On the record there are also counter-foils exhibits 7 to 29, which have been signed by the petitioner himself, which clearly shows payment of rent by the petitioner to respondent 3. From these documents, a relationship of landlord and tenant is clearly established.

8. In defence, however, the petitioner sought to rely on a subsequent contract alleged to have been entered between plaintiff-respondent 3 and the petitioner, by virtue of which it is further alleged that respondent 3 has agreed to sell the property to the petitioner. It is further alleged that a suit No. 20 of 1975 has been filed by the petitioner in the court of First Civil Judge Meerut for specific performance of the said Contract and the suit is still pending.

9. In the present suit only relevant question which was to be examined by the courts below was as to whether a relationship of landlord and tenant was established. Both the courts below have found that such a relationship did exist. The question as to whether by virtue of a subsequent agreement the property is liable to be transferred in favour of the petitioner, is not at all relevant for the purpose of deciding the suit. In case the said suit is decided in favour of the petitioner, he can always seek transfer of the property in his favour but that would not affect his tenancy rights which were created between the parties by virtue of the lease deed as well as by virtue of the fact that the petitioner is paying rent to the respondents.

10. Section 23 of the Provincial Small Cause Courts Act provides as follows :--

'Section 23. Return of plaints in suits involving questions of title-

(i) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court

cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title. (2) When a Court returns a plaint under Sub-section (1), it shall comply with the provisions of the second para of Section 57 of the Civil P.C. (1882) and make such order with respect to costs as it deems just, and the Court shall, for the purposes of the Indian Limitation Act, 1877, be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction?.

11. From a reading of the above Section, it is clear that in case the right of the plaintiff and the relief claimed by him is dependent upon the proof or disproof of a title to immovable property and such question cannot be finally determined by the Court then a discretion has been given to the Small Causes Court to return the plaint.

12. In the instant case, the right of the plaintiff and the relief claimed by him do not depend upon the proof or disproof of any question of title to immovable property. It depends upon whether a relationship of landlord and tenant exists between the parties. Thus the Small Causes Court had the jurisdiction to decide. In the circumstances it cannot be said that the courts below have acted illegally, and with material irregularity in exercise of their jurisdiction. The Submission made by learned counsel for the petitioner, in my opinion, is not substantiated.

13. In the result, the petition is dismissed. The stay orders dt. 22-2-1984 and 14-8-1984 are, hereby vacated. Parties are directed to bear their own costs.

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