

Abdul Jabbar and ors. Vs. 2nd Additional District Judge, Orai and ors.

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Court : Allahabad

Decided On : Apr-24-1980

Reported in : AIR1980All369

Judge : A.N. Verma, J.

Acts : [Evidence Act, 1872](#) - Sections 85; [Notaries Act, 1952](#) - Sections 2 and 3; [Provincial Small Cause Courts Act, 1887](#) - Sections 25; Uttar Pradesh Provincial Small Cause Courts (Amendment) Act

Appeal No. : Civil Misc. Writ Petn. No. 5955 of 1979

Appellant : Abdul Jabbar and ors.

Respondent : 2nd Additional District Judge, Orai and ors.

Advocate for Def. : V.K. Gupta, Adv.

Advocate for Pet/Ap. : Rajeshji Verma, ;R. Dwivedi and ;P.K. Biswas, Advs.

Disposition : Petition dismissed

Judgement :

A.N. Verma, J.

1. These are two connected petitions arising out of two suits filed by the plaintiffs-respondents against the petitioners in each of the two petitions for the eviction of

the petitioners.

2. The relevant facts are these: The respondents Nos. 3 and 4 (in Writ Petition No. 5955 of 1979) filed two suits against the petitioners of the two petitions on the ground that they were the tenants of the respective accommodations and despite a notice determining the tenancy, they did not vacate the accommodation in dispute.

3. The petitioners contested the two suits and denied the title and ownership of the plaintiffs. The petitioners asserted that they were themselves the owners of the property in dispute. They also denied having been served with any notice.

4. The trial court accepted the version of facts as given by the petitioners and dismissed the two suits,

5. The landlords filed Revisions under Section 25 of the Provincial Small Cause Courts Act and the same have been allowed. The learned District Judge allowing the Revisions has decreed the plaintiffs-respondents' suits for the ejectment of the petitioners as well as for recovery of arrears of rent etc.

6. Dr. R. Dwivedi, learned counsel for the petitioners has challenged the legality of the decrees passed by the learned District Judge decreeing the plaintiffs-respondents' suits principally on two grounds. These are:

(1) The view taken by the learned District Judge that Notary public appointed and functioning in other countries, could be regarded as Notary Public within the meaning of Section 85 of the Evidence Act, is manifestly unsustainable in law;

(2) The finding of the trial court on the question whether relationship of landlord and tenant existed between the plaintiffs and the defendants was correct, and not being vitiated by any error of law was not amendable to review under Section 25 of the Provincial Small Cause Courts Act.

7. Having heard learned counsel for the parties, I find no merits in either of these two petitions.

8. As both the petitions turn upon a common question of law, they are being disposed of by a common judgment.
9. Elucidating the first point, learned counsel contended that the power of attorney executed by Badruddin respondent No. 4 in favour of Iftikhar Ahmad respondent No. 3, not having been authenticated by or executed before a Notary Public appointed for that purpose in this country as contemplated by the provisions of Notaries Act, the same could not be presumed to have been duly executed within the meaning of Section 85 of the Evidence Act. Counsel contended that the presumption which is embodied in Section 85 of the Evidence Act is available only to Notaries Public as defined by the Notaries Act. In the present case, the Notary Public who has authenticated the power in question is of Pakistan, and inasmuch as it had not been proved by any evidence that there was any reciprocity between India and Pakistan in that behalf, the Notary Public authenticating the power, could not be regarded as a Notary Public within the meaning of Section 85 of the Evidence Act, and consequently the presumption under Section 85 of the Act could not apply.
10. In support counsel placed reliance on two decisions, namely, *D. Sardar Singh v. Seth Pissumal Harbhagwandas Bankers* (AIR 1958 Andh Pra 107, para 5) and AIR 1970 Manipur 57.
11. Counsel for the respondent No. 1 on the other hand urged that there was absolutely no warrant for giving a restricted meaning to the words 'Notary Public' in Section 85 of the Evidence Act. The contention was that the provision of Notaries Act could not be imported into Evidence Act,
12. In support, learned counsel placed reliance on three decisions, namely, *Jugraj Singh v. Jaswant Singh* (AIR 1971 SC 761). *National and Grindlays Bank Ltd. v. World Science News* (AIR 1976 Delhi 263 para 11) and *In re: K.K. Roy (Private) Ltd.* (AIR 1967 Cal 636).
13. Having heard learned counsel for the parties at some length on this issue, I am clearly of the view that the authorities cited by the counsel for the respondents are more apposite than the authorities cited by counsel for the petitioner. Furthermore,

I am of opinion that the view taken in the authorities cited by counsel for respondents is more consistent with the demands of equity and justice.

14. As regards the cases cited by the counsel for the petitioners, the case reported in AIR 1970 Manipur 57 merely followed the decision of Andhra Pradesh High Court mentioned above. So far as the decision of Andhra Pradesh is concerned I find that it proceeds on the assumption that the Notary Public referred to in Section 85 of the Act must be a Notary Public appointed or recognised for that purpose in this country. The question which has been debated before me was not considered by the learned Judge who proceeded on the hypothesis that Section 85 of the Evidence Act was not applicable to documents authenticated by Notaries Public functioning in other countries. I find that the decision of the Andhra Pradesh High Court is of little assistance in resolving the controversy. The case which has considered the question raised before me in some depth is the one reported in re; K.K. Ray (Private) Ltd. (AIR 1967 Cal 636). In this case, Mr. Justice P. B. Mukherjea (as he then was) traced the entire history of the institution of Notaries Public as it existed from ancient times in different countries. The learned Judge after a very profound treatment of the subject came to the conclusion that it would not be correct to limit the application of Section 85 of the Evidence Act only to the Notaries as denned in the Notaries Act. In fact, the learned Judge suggested that the provisions of the Notaries Act ought to be amended to bring it in line with the laws relating to acceptance of authentication by Notaries public functioning in other countries and the principles on the basis of which the documents authenticated by Notaries Public functioning in other countries have always been accepted.

15. I am with respect, in complete agreement with the enunciation of the law laid down in the case reported in re; K.K. Ray (Private) Ltd. (AIR 1967 Cal 636). Counsel for the petitioner invited my attention to the observations of the learned Judge made in paragraph 32 of the decision in which the learned Judge while considering the effect of the provisions of Notaries Act on the admissibility of documents and affidavits verified by Notaries Public functioning in other countries referred to reciprocity which had been existing in regard to the acceptance of such document between different countries. However, the fact remains that in spite of

Section 14 of the Notaries Act, the learned Judge reached the conclusion that the document before him had been duly authenticated.

16. The decision reported in AIR 1976 Delhi 263 (para 11) also equally fortifies the view canvassed by counsel for the respondents. In paragraph 11 of the Report, the learned Judge has observed that both Sections 57 and 85 lead to the conclusion that the documents authenticated before Notaries Public in other countries must be presumed to have been duly authenticated within the meaning of Section 85 of the Act, and that it would lead to serious difficulties if the other interpretation namely that Section 85 of the Evidence Act is limited only to documents authenticated by Notary Public of this country, was accepted. The learned Judge deciding that case has followed the decisions of the Supreme Court in the case of Jugraj Singh v. Jaswant Singh (AIR 1971 SC 761). In the said decision, the Supreme Court accepted a document which was authenticated before a Notary Public of California, U.S.A. The Supreme Court case applied Section 85 without reference to the provisions of the Notaries Act. In my view, the decision of the Supreme Court is fully applicable to the facts of the present case. The decision is binding upon this Court.

17. Following the decisions cited by counsel for the respondents, I hold that Section 85 of the Act applies equally to documents authenticated by Notaries Public of other countries. I further hold that there are no grounds for importing the provisions of Notaries Act into the interpretation of Section 85 of the Evidence Act. In my opinion, documents which purport to be executed before or authenticated by Notaries Public, bearing proper seals, of other countries ought to be presumed to have been duly notarised within the meaning of Section 85. I, therefore, find no substance in the first point.

18. As regards the second point urged by the counsel for the petitioner, the learned District Judge has set aside the finding of the trial court on the ground that the trial court had failed to consider some of the vital admissions referred to in the judgment of the learned District Judge. These admissions were of a decisive character and having been ignored by the trial court, the learned District Judge was justified in reversing the finding of the trial court under Section 25 of the

Provincial Small Cause Courts Act. The finding of the learned District Judge on the question whether relationship of landlords and tenants existed between the plaintiffs and the defendants is a well discussed finding and is fully justified by the evidence on record, and having regard to the facts and circumstances mentioned in the judgment of the learned District Judge, he was fully justified in reversing the finding of the trial court. The finding of the trial court was based on a consideration of only a part of the evidence on record, ignoring substantial pieces of evidence adduced by the plaintiff. The finding of the trial court on this question was not according to law and was, therefore, rightly set aside.

19. There is no merit in either of these petitions, which are, therefore, dismissed. There will be no order as to costs.

20. The petitioners are, however, granted four months' time to vacate the accommodation. The petitioners will hand over vacant possession of the accommodation in dispute within this period of four months to the plaintiffs-landlords. The petitioners will pay four months' damages at the rate of the rent in advance within a period of one month from today, failing which the decree for ejectment shall be executable at once.

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