

Zaheer Ahmad Vs. Ivth Additional District Judge, Fatehpur and ors.

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Court : Allahabad

Decided On : Apr-12-2002

Reported in : 2002(2)AWC1592

Judge : Anjani Kumar, J.

Acts : U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(1)

Appeal No. : C.M.W.P. No. 22158 of 1997

Appellant : Zaheer Ahmad

Respondent : ivth Additional District Judge, Fatehpur and ors.

Advocate for Def. : A.K. Shukla, S.C.

Advocate for Pet/Ap. : R.K.S. Chauhan, Adv.

Disposition : Petition allowed

Judgement :

Anjani Kumar, J.

1. This is tenant's petition under Article 226 of the Constitution of India. The landlord filed a suit for eviction of the tenant from the shop in question. The suit was dismissed by the trial court. Aggrieved thereby, the landlord preferred a

revision before the revisional court. The revisional court after re-appreciating the evidence decreed the suit instead of remanding back the matter to the trial court. Against the judgment and order of the revisional court the present writ petition has been filed.

2. Learned counsel for the petitioner has relied upon two decisions of this Court one in Smt. Batasho Devi v. IIIrd Additional District Judge, Mathura and Ors. 1999 (2) ARC 862 and the second in Smt. Sushila and Ors. v. IVth Additional District Judge. Kanpur and Ors. 1999 (I) AWC 644 : 1998 (2) ARC 595.

3. The second case of 1998 (2) ARC 595, relates to applicability of the right of the landlord to file a suit on the ground available under Section 20 (1) of the U. P. Act No. 13 of 1972. The controversy in the present case does not touch to the aforesaid case law and this case law will not help the petitioner.

4. In the first case cited by the learned counsel for the petitioner in 1999 (2) ARC 862, this Court in paras 5 and 6 of the judgment has held that :

'The revisional court, however, further probed into the matter and after appreciating evidence it observed that trial court had mixed up the issues, it was not within the contemplated jurisdiction of the court below to conclude and hold that Mahabir Prasad was tenant and give him benefit of deposits which were made by Ram Niwas in this suit. Perusal of the impugned judgment shows that revisional court on its own looked into the evidence and thereafter disagreed with the conclusion recorded by the trial court and it further recorded its own finding, contrary to the finding recorded by trial court.

It may be, at the very outset, observed that revisional court having come to the conclusion that suit was not triable by Judge Small Causes Court, it should not have ventured to proceed further with the matter. The other findings recorded by the revisional court cannot be sustained on that score, if the said finding of the revisional court is to be accepted. However, the mere fact that someone disputed the relationship of tenancy was not enough to take away the jurisdiction of Judge, Small Causes Court which was to be determined on the basis of pleadings contained in the plaint.'

This Court has further held that :

'Revisional court has also committed manifest error apparent on the face of record in recording contrary finding of fact and thereafter directing the suit to be dismissed while it could not do so in exercise of its power under Section 25, Provisional Small Cause Courts Act.'

5. In view of above observation relied upon by the learned counsel for the petitioner, the suit should have been remanded back by the revisional court to the trial court for deciding afresh instead of decreeing the suit as has been done in the present case.

6. In this view of the matter the order of the revisional court is modified to the extent it says 'that the suit is decreed' and in its place 'the suit stands remanded to the trial court for deciding afresh in the light of the observations made' by the revisional court in its Judgment impugned in the present writ petition.

7. In view of the aforesaid observations, the writ petition is allowed. The order of the revisional court to the extent, referred to above, is set aside. The parties to bear their own costs.

8. The trial court is directed to decide the matter within 3 months as the matter is quite old.

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