

Mohammad Ahmad Khan Vs. Ashok Kumar

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Court : Allahabad

Decided On : Aug-21-2009

Reported in : 2010(1)AWC138

Judge : Prakash Krishna, J.

Appellant : Mohammad Ahmad Khan

Respondent : Ashok Kumar

Disposition : Revision dismissed

Judgement :

Prakash Krishna, J.

1. The present revision under Section 25 of the Provincial Small Cause Courts Act has been filed by the defendant of SCC suit No. 29 of 1986 filed against him by the plaintiff landlord opposite party. The said suit was filed for recovery of possession over the shop detailed at the foot of the plaint and for recovery of arrears of rent and damages for its use and occupation. The suit has been decreed by the judgment and decree dated 13-11-1987. The property in dispute was purchased by means of a sale deed dated 8-4-1986 by the present plaintiff from Smt. Meera Jindal who had let out it to the defendant on monthly rent of Rs. 150/-. It was stated that the defendant was in arrears of rent since July 1, 1984 and the tenancy has been determined by means of a notice given under Section 106 of

the Transfer of Property Act. It was further pleaded that the shop in question being a 'new construction' and was constructed in the year 1979, the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as U.P. Act No. 13 of 1972) are not applicable.

2. The suit was contested on number of pleas including that the shop in question is not a 'new construction'. It was stated that the provisions of U.P. Act No. 13 of 1972 are applicable as the shop, which is housed in a room, was constructed in the year 1974.

3. The points for determination, on the basis of the pleadings of the parties, were framed by the trial court who found that Smt. Meera Jindal, the predecessor in interest of the plaintiff has not transferred the arrears of rent in favour of the plaintiff. The suit was decreed for recovery of possession over the disputed shop after ejectment of the defendant mainly on the ground that the provisions of U.P. Act No. 13 of 1972 are not attracted and for recovery of Rs. 405/- as rent and Rs. 15/- as damages along with pendente lite and future damages at the rate of Rs. 150/- per month.

4. The only point mooted by Sri B.D. Mandhyan, learned Senior Counsel for the applicant is that the finding recorded by the trial judge under point No. 1 that the disputed shop was constructed in the year 1979 is vitiated. He submits that the plaintiff landlord has not discharged the burden to establish that the shop in dispute was a 'new construction' within the meaning of Section 2(2) of U.P. Act No. 13 of 1972. Learned Counsel for the plaintiff opposite party, on the other hand, supports the impugned judgment and order.

5. Considered the respective submissions of the learned Counsel for the parties and perused the record.

6. From the record it is clear that there appears to be no dispute that originally four rooms belonging to school were constructed in the year 1974. Thereafter, by raising partition walls and fixing shutters, these four rooms were converted into 16 shops. On these facts, the question which falls for determination is whether the shops thus constructed can be treated as a 'new construction' within the meaning

of Section 2(2) of the Act. Clauses (a), (b) and (c) of Explanation I to Section 2(2) of the Act, which are relevant for the present purpose, read as follows:

a) the construction of a building shall be deemed to have been completed on the date on which the completion thereof is reported to or otherwise recorded by the local authority having jurisdiction, and in the case of a building subject to assessment, the date on which the first assessment thereof comes into effect, and where the said dates are different, the earliest of the said dates, and in the absence of any such report, record or assessment, the date on which it is actually occupied (not including occupation merely for the purposes of supervising the construction or guarding the building under construction) for the first time:

Provided that there may be different dates of completion of construction in respect of different parts of a building which are either designed as separate units or are occupied separately by the landlord and one or more tenants or by different tenants;(b) 'construction' includes any new construction in place of an existing building which has been wholly or substantially demolished;

(c) where such substantial addition is made to an existing building that the existing building becomes only a minor part thereof the whole of the building including the existing building shall be deemed to be constructed on the date of completion of the said addition.

7. The aforesaid provision has been subject matter of interpretation and consideration by the Apex Court in the case of Ram Saroop Rai v. Smt. Lilawati 1980 ARC 466 wherein it has been held that a landlord who claims exemption from the provisions of U.P. Act No. 13 of 1972 and bases his claim on the ground that the building in question is exempt from the operation of the Act has to prove that the construction of the building is within 10 years of the suit. It has been held that in such matters, the landlord is in a position to give better evidence and it is not possible for the tenant to give direct testimony about the time of the construction or the nature of the construction vis-a-vis Clause (b) or (c) of Explanation I. The language of Clause (c) says that where such substantial addition is made to an existing building, that the existing building becomes only a minor part thereof, the whole of the building including the existing building shall be

deemed to be constructed on the date of the completion of the said addition. To put it differently, it contemplates a situation where certain additions are made to an existing building. It does not apply to a case where some construction in the existing building is made. Care to such situation has been taken of by Clause (b) of the said Explanation. It says that the construction includes any new construction in place of an existing building which has been wholly or substantially demolished. The said clause is not exhaustive and it is only inclusive one. Clause (b) contemplates the situation as exists in the present case. It has come on record that there were four rooms earlier belonging to school. Thereafter, these rooms were converted into 16 shops by raising partition walls and shutter. It has also come on record that a chabutra was raised by the present plaintiff landlord. The rooms which earlier were not commercial in nature have been converted into a commercial accommodation. The extent and nature of the accommodation by raising partition walls have been changed. From an ordinary man's point of view, such an accommodation will be a 'new construction' on account of change of object and purpose of the use of accommodation.

8. I could lay my hand on a recent judgment of the Apex Court in *Mudari Lal v. Sushila Rani and Anr.* 2007(3) ARC 501 wherein, after noticing various pronouncements on the point, it has been held that what would construe 'construction' is explained by Explanation I appended to Section 2(2) of the Act. For the said purpose, a legal fiction has been created. Clauses (b) and (c) of Explanation I provide for an extensive definition so as not only to include a construction upon demolition of an existing structure but also substantial addition to an existing building to the effect that the existing building becomes only minor part thereof. It has been elaborated that the provisions of Section 2(2) of the Act contain a deeming provision. By reason thereof, a legal fiction has been created. It, therefore, must be given its full effect.

9. Applying the above ratio to the facts of the present case, by converting four rooms ' accommodation to 16 shops by raising partition walls and fixing shutters and raising chabutra, the existing construction has become a minor part and substantial addition has been made to the existing construction and as such, in my considered view, new building has been constructed on old construction in the

year 1979 and as such, the said building is exempt from the operation of U.P. Act No. 13 of 1972 for a period of 10 years thereof. The suit, giving rise to the present revision, being filed in the year 1986 i.e. well within the period of 10 years from the date of construction, is exempt from the operation of the Act.

10. The trial court, after discarding the oral testimony of the parties, in para-8 of the judgment has noticed that initially there existed four rooms and in early 1979 in place of these four rooms 16 shops were constructed by raising partition walls inside the rooms and by fixing shutters. It has noticed the defendant's admission in the written statement that before converting rooms into shops, the owner had constructed a chabutra over vacant land lying on the East of the rooms and thereafter partition walls, shutters were fixed on the eastern side. It has rightly taken into consideration the fact that the valuation of the property has considerably increased and there was substantial increase in the house tax. The court below has rightly relied upon Jagdish Praasad v. District Judge, Ghaziabad and Ors. 1980 ALJ 229 in support of its judgment.

11. Learned Senior Counsel for the applicant has relied on Sardara Mal v. Nanhey Khan 1980 ARC 66 which is a case of minor repairs. The said decision is distinguishable on facts. The case on hand is not a case of minor repairs, but of raising substantial construction by way of partition walls, affixation of shutters and construction of chabutra. The other two cases namely Meraj Uddin v. District Judge, Aligarh and Ors. 1986(2) ARC 182 and Anil Kumar Sharma v. Smt. Meena Gangal and Anr. 2002(2) ARC 413 have no application to the facts of the present case and are distinguishable.

12. No other point was pressed.

13. Time to vacate the accommodation in dispute is granted upto 31-12-2009, provided the applicant files an undertaking on affidavit before the court below that he will handover vacant and peaceful possession of the disputed accommodation to the landlord on or before 31-12-2009. Since the matter has been pending in the Court since the year 1987 if the applicant fails to vacate the disputed accommodation on or before the time granted by this Court, he will be liable to pay the damages for use and occupation of the disputed accommodation at the rate of

Rs. 1,000/- per month as he has enjoyed the stay order for a period of more than two decades on a paltry sum of Rs. 150/- per month with effect from December 1987 (the date of stay order is 23-11-1987).

14. In view of the above discussions, I find no merit in the revision. The revision is dismissed with costs.

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