

Raes Khan and anr. Vs. Ivth Additional District Judge, Rampur and ors.

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Court : Allahabad

Decided On : May-10-2002

Reported in : 2002(3)AWC2010

Judge : Anjani Kumar, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(1)

Appeal No. : C.M.W.P. No. 41601 of 1999

Appellant : Raees Khan and anr.

Respondent : ivth Additional District Judge, Rampur and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Naheed Ara Moonis, Adv.

Disposition : Writ petition dismissed

Judgement :

Anjani Kumar, J.

1. This writ petition under Article 226 of the Constitution of India has been filed against the order of the trial court whereby the trial court has decreed the suit filed by the landlord on the ground of sub-letting and the revisional court confirmed the

order of the trial court.

2. The landlord plaintiff filed the suit on the ground that Races Khan defendant No. 1 was a tenant and he sub-let the shop in dispute to Ameer Khan who is his own brother. Admittedly, the tenancy was in the name of Races Khan. The parties led the evidence before the trial court. The trial court arrived at the finding that from the evidence available on record, it is clear that Races Khan has sub-let the shop in dispute in favour of defendant No. 2, Ameer Khan. The aforesaid order and decree of the trial court has been confirmed by the revisional court. A suit with regard to arrears of rent has been dismissed.

3. Learned counsel for the petitioners has argued that from the evidence on record, the findings arrived at by the trial court is wholly erroneous and it has been argued to demonstrate before the revisional court and revisional court erroneously rejected. The revisional court has dealt with the argument raised by the learned counsel for petitioners that it has been admitted by Races Khan, who was examined, that he is selling the betels in a tokra for past two years at the distance of 4/5 paces from the shop in dispute which is run by defendant No. 2 who is his own real brother and defendant No. 2 is only helping him in business and he has no concern with profit and loss. Learned counsel for the petitioners further submitted that the plaintiff has not discharged the burden relying upon a decision referred by the revisional court wherein the law as stated is that once the plaintiff has discharged his burden, the burden is shifted on the defendant to prove the case in his favour. Thus, in the present case the burden was on defendant No. 1 to prove that he is running the business in the shop in dispute and the defendant No. 1 has given his oral evidence in discharge of that burden wherein he has stated that he is running and maintaining the business but no evidence to this effect has been filed either before the trial court or the revisional court. In the absence of the aforesaid material, it cannot be presumed that defendant No. 1 is controlling the business, where admittedly the defendant No. 2 is regularly sitting and managing the business. The defendants led the evidence that the business of betels is being carried out in a different locality whereas it is admitted case of the defendants that the defendant No. 1 is carrying business of selling betels at 4/5 paces away from the shop in dispute, where the tea stall is run by defendant No. 2.

4. In this view of the matter, the trial court has come to the conclusion that two versions have been placed by the defendants which in fact support the case of the plaintiff. It is further clear from the fact that a notice terminating the tenancy sent at the address of the shop in dispute has been received.

5. In this view of the matter, the trial court's finding with regard to sub-letting by the defendant No. 1 in favour of defendant No. 2.

6. Learned counsel for the petitioner has relied upon a decision in 2000 (3) ALR 636 and 1998 (2) ALR 560. A perusal of the law laid down by these two decisions will demonstrate that the findings recorded by the trial court are in fact in accordance with the law laid down by the aforesaid two cases. Learned counsel for the petitioner referred the paras 9, 10 and 11 of the written statement of the defendants. In my view, in the aforesaid three paras the findings arrived at by the trial court as well as the revisional court, cannot be said to be suffering from any error of law.

7. In view of what has been stated above, the writ petition deserves to be dismissed and is hereby dismissed. Interim order, if any, stands vacated.

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