

Balagat Husaln Vs. Vth Additional District Judge and anr.

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Court : Allahabad

Decided On : May-19-2004

Reported in : 2004(3)AWC2754

Judge : Tarun Agarwala, J.

Acts : [Provincial Small Cause Courts Act, 1887](#) - Sections 25; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20 and 30

Appeal No. : C.M.W.P. No. 358 of 1986

Appellant : Balagat Husain

Respondent : Vth Additional District Judge and anr.

Advocate for Def. : Tarun Verma, S.C.

Advocate for Pet/Ap. : M.P. Singh and ;R.C. Singh, Adv.

Disposition : Writ petition dismissed

Judgement :

Tarun Agarwala, J.

1. The petitioner filed a suit for eviction of the defendant from the premises in question on the ground that the defendant committed a default in the payment of

rent. The defendant contested the suit and submitted that he was not a defaulter and that he had remitted the rent by money order, which was refused and, thereafter, the defendant had deposited the rent under Section 30 of U. P. Act No. 13 of 1972.

2. The trial court after determining the points in issue, decreed the suit and held that the defendant was defaulter and was in arrears of rent. The trial court found that the deposit made by the defendant under Section 30 of the Act was illegal and that the defendant ought to have offered the amount to the landlord after receiving the notice and in the event the landlord refused to accept the rent, only then the tenant could deposit the rent under Section 30 of the Act. The trial court found that pursuant to the notice dated 1.6.1984 the defendant had not paid the rent to the landlord and therefore, the benefit of Section 30 of the Act could not be made available to the tenant.

3. Aggrieved by the decision of the trial court, the tenant filed a revision under Section 25 of the Provincial Small Cause Courts Act. The revisional court found that the landlord had earlier sent notices to the tenant pursuant to which the tenant had tendered the rent to the landlord by money order, which was refused and thereafter, the tenant deposited the rent under Section 30 of the Act. The revisional court further found that the landlord had withdrawn the rent deposited by the tenant under Section 30 of the Act. The revisional court found that the rent up to July, 1984, had been deposited by the tenant under Section 30 and in view of the fact that the amount deposited under Section 30 of the Act was also withdrawn by the landlord, the revisional court held that the rent had been duly paid by the tenant to the landlord. In view of this reasoning, the revisional court held that the tenant was not, in arrears of rent and, therefore, he could not be evicted under Section 20 (2) (a) of the Act.

4. Aggrieved by the decision of the revisional court, the landlord has filed the present writ petition. Heard Sri R. C. Singh, the learned counsel for the petitioner and Sri Tarun Verma, the learned counsel for the respondents. The learned counsel for the petitioner contended that the revisional court had no jurisdiction to reappraise the evidence and could not interfere in the finding of fact arrived at by

the trial court. In support of his submission the learned counsel for the petitioner relied upon the judgments in *Laxmi Kishore v. Har Prasad Shukla*, 1981 ARC 545 ; *Smt. Zubeda Begum v. IVth Additional District Judge, Jalaun and Ors.*, 1982 (1) ARC 74 and again in *Hira Lal Jasrapuri and Anr. v. IIIrd Additional District Judge, Gorakhpur and Ors.*, 1982 (1) ARC 117. in which it was held that the revisional court cannot reappraise the findings given by the trial court.

5. In *Laxmi Kishore and Anr. v. Har Prasad Shukla*, 1979 AWC 746, a Division Bench of this Court held that the decision under Section 25 of the Provincial Small Cause Courts Act must be according to law, i.e., there should be no miscarriage of Justice due to a mistake of law. This Court further held that the Court while exercising revisional power under Section 25 of the Act does not possess Jurisdiction to determine the issues of fact itself by entering into the evidence and assessing it. The Division Bench further held that if the revisional court finds that there is no evidence to sustain a finding on a particular issue of fact or is based on Inadmissible evidence in which case the revisional court is justified in deciding the question itself.

6. In *Jagdish Prasad v. Smt. Angoori Devi*, 1984 (1) ARC 679, the trial court decreed the suit on the ground of sub-tenancy. The revisional court reversed the finding of subtenancy and set aside the decree. The High Court quashed the order of the revisional court on the ground that the revisional court had no jurisdiction to reappraise the evidence on record on the issue based on facts. The Supreme Court set aside the judgment of the High Court and affirmed the order of the revisional court holding that :

'The revisional jurisdiction under Section 25 of the Provincial Small Cause Courts Act is not as wide as the appellate jurisdiction under Section 96 of the Civil Procedure Code ; yet in a case of this type, we do not think that fault could be found with the revisional court for pointing out the legal error committed by the trial court In its approach to this material aspect. The legal position having been totally misconceived by the trial court and there being an assumption of the position which the landlord was required to prove by evidence, the revisional authority was entitled to point out the legal error and rectify the defect.'

7. In *Rauf v. Illrd Additional District Judge, Deoria and Anr.*, 2001 (3) AWC 1852, this Court held that 'the revisional court while exercising revisional power under Section 25 of the Act, normally will not set aside the finding on the question of fact to substitute its own finding, but where the revisional court finds that the judgment under revision suffers from the vice of perversity or it is based on wrong appreciation of evidence, the revisional court will interfere with the same and set aside such finding. It is further held that the finding of fact recorded by the trial court is not sacrosanct and ultimately if it is found that it is not according to law or was based on misreading or misappraisal of the evidence or the view taken was perverse, in which case the revisional court should not hesitate and to rectify the mistake and set aside the finding recorded by the trial court.'

8. In the present case, the question of again tendering the amount of rent pursuant to the notice dated 1.6.1984, did not arise, inasmuch as, the landlord had issued notices earlier, whereupon, the tenant had tendered the amount by money order, which was refused by the landlord and thereafter, the tenant deposited the amount of rent under Section 30 of the Act. The amount so deposited by the tenant was withdrawn by the landlord. Thus, the question of offering or tendering the rent again to the landlord pursuant to a fresh notice dated 1.6.1984, did not arise and the tenant was justified in depositing the rent under Section 30 of the Act. It has come on record that the tenant had deposited the amount of rent under Section 30 of the Act till July, 1984. Thus, the tenant was not in arrears of rent. The approach adopted by the trial court was wholly erroneous and was not according to law. The mistake committed by the trial court was rightly rectified by the revisional court.

9. In view of the aforesaid, there is no error in the order passed by the revisional court. The writ petition is devoid of merit and is dismissed. However, there shall be no order as to cost.