

Smt. Ribha Devi and ors. Vs. Rent Control and Eviction Officer and anr.

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Court : Allahabad

Decided On : Dec-01-2003

Reported in : 2004(1)AWC4

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 16

Appeal No. : C.M.W.P. No. 49640 of 2003

Appellant : Smt. Ribha Devi and ors.

Respondent : Rent Control and Eviction Officer and anr.

Advocate for Def. : M.S. Haq and ;T. Haq, S.C.

Advocate for Pet/Ap. : Arvind Srivastava, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

S.U. Khan, J.

1. Dispute of title in between petitioners and respondent No. 2 is sought to be resolved in release proceedings under Section 16 of U. P. Act No. 13 of 1972.

Admittedly, late Raj Nath was owner of the house of which the property in dispute is a portion. The four petitioners are his daughters. Respondent No. 2 has purchased the entire house from Pyare Lal and Ram Dulare who are nephews of late Raj Nath. Pyare Lal and Ram Dulare claimed that Raj Nath had gifted the house in dispute to them in the year 1952. Dispute regarding the said gift deed had arisen in between Raj Nath and his nephews during the life time of Raj Nath. The parties litigated before municipal corporation authorities in mutation proceedings. However, said proceedings and orders passed therein are not at all relevant for deciding the question of title. Pyare Lal sold northern portion of the house to respondent No. 2 through sale deed dated 24.2.1987 and his brother Ram Dulare sold southern portion to respondent No. 2 through sale deed dated 20.9.1996. Regarding northern portion, respondent No. 2 filed release application under Section 16 (b) of the Act against some of the petitioners. A lot of litigation took place in between the petitioners and respondent No. 2 regarding release application of northern portion. The matter came to this Court several times in the form of writ petitions numbered as W. P. No. 26025 of 1997, 7956 of 2000, 54678 of 1999 and 7932 of 2001. Against the decision of the last writ petition a S.L.P. was also filed before the Supreme Court which was dismissed. Details of these proceedings regarding northern portion have been given in paragraphs 13 to 20 of the writ petition. In the aforesaid proceedings the northern portion was released in favour of respondent No. 2.

2. Thereafter respondent No. 2 filed similar release application regarding southern portion which she had purchased from Ram Dulare through sale deed dated 20.9.1996. In these proceedings which was registered as Case No. 116 of 2001 on the file of R.C. & E.O./A.D.M. (Civil Supplies), Varanasi vacancy has been declared through order dated 16.10.2003, annexed as Annexure-17 and impugned in the instant writ petition.

3. In my opinion, the validity of the gift/gift deed alleged to have been made by Raj Nath in favour of Pyare Lal and Ram Dulare can be determined neither in mutation proceedings before municipal corporation nor in proceedings under Section 16 of U. P. Act No. 13 of 1972. If the gift is valid then sale deeds obtained by respondent No. 2 are also valid otherwise not. The dispute in between petitioners and

respondent No. 2 is a pure and simple dispute of title for which proper remedy is regular civil suit before the civil court. Even orders passed by Rent Control and Eviction Officer under Section 16 of the Act is subject to decision of regular civil suit on question of title. In this regard reference may be made to AIR 1991 SC 884.

4. Accordingly, writ petition is dismissed. However, petitioners may file regular civil suit before civil court seeking declaration of their title along with ancillary reliefs including application for temporary injunction. If such a suit is filed the same must be decided on merit and on the basis of evidence adduced therein without taking into consideration findings recorded in the impugned order.

5. In fact for such a suit no permission by the Court is necessary.

6. For a period of four months further proceedings in pursuance of Impugned order dated 16.10.2003 declaring vacancy passed by R.C. & E.O./A.D.M. (Civil Supplies), Varanasi in Case No. 116 of 2001 shall remain stayed.

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