

Harold William Vs. Xth Additional District Judge and ors.

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Court : Allahabad

Decided On : Sep-16-2003

Reported in : 2004(1)AWC132

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(2) and 20(4); [Transfer of Property Act, 1882](#) - Sections 111; [Evidence Act, 1872](#) - Sections 116

Appeal No. : C.M.W.P. No. 25346 of 1994

Appellant : Harold William

Respondent : Xth Additional District Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : MA. Qadeer, Adv.

Judgement :

S.U. Khan, J.

1. This is tenant's writ petition against whom suit for ejectment has been decreed by both the courts below mainly on the ground of denial of title as provided under Section 20 (2) (f) of U. P. Act No. 13 of 1972. The suit was registered as S.C.C.

Suit No. 147 of 1986 and was decreed by Additional J.S.C.C., Bareilly on 27.2.1991. Revision filed by the tenant petitioner numbered as S.C.C. Revision No. 10 of 1991 was dismissed by Xth Additional District Judge, Bareilly, through judgment and order dated 8.7.1994. This writ petition is directed -against the aforesaid judgment and decree.

2. According to the plaint, which is Annexure-3 to the writ petition the defendant was allottee of the house in dispute through an allotment order dated 28.3.1980 obtained in collusion with the previous tenant Ram Chandra who is close relative of the defendant. It has further been stated in the plaint that father of the plaintiff Albert Singh filed a suit for specific performance of an agreement for sale executed by previous owner of the house in dispute in his favour being Original Suit No. 20 of 1981 which was decreed through compromise dated 12.1.1984 on 1.2.1984 and the Court executed the sale deed in pursuance of the said decree on 17.5.1984. In para 10 of the plaint it was asserted that defendant in various proceedings denied the title of the plaintiff however, no detail of the proceedings was given in said para. In para 11 of the plaint it was stated that on 18.9.1986 plaintiff sent notice to the defendant determining the tenancy. In reply which was dated 18.10.1986 defendant denied the title of the plaintiff. It has not been stated in the plaint whether any notice intimating about the sale deed dated 17.5.1984 was given to the defendant before 18.10.1986 or not. In para 6 of the reply to the notice it was stated by the defendant that he had deposited the rent under Section 30 as he had no knowledge of the forged agreement or collusive suit for specific performance. It was further stated in the plaint that rate of rent was Rs. 20 per month and the rent had not been paid to the plaintiff. The notice is Annexure-1 to the writ petition and its reply is Annexure-2 to the writ petition. In para 6 of the reply noticed it was stated :

'The theme of your notice suggests that some sale deed had been obtained by you hence my client is not concerned with the past history of collusion or otherwise and is prepared to pay the amount of rent accrued due to the rightful persons and so in order to create attornment, i.e., relationship of landlord and tenant in between you and my client, you should please arrange to send copy of the sale deed if at all is in your possession so that my client may study the same and remit the rent of

the premises. In the notice under reply full particulars of the sale deed are not available hence you are required to send the copy of my client, if you require the amount of rent which is lying unpaid. Neither my client had ever asserted title in anybody else nor he was in a position to deny your title if at all you had got any sale deed of the house in possession and tenancy of my client so please arrange to send copy of the sale deed.'

3. As stated earlier in para 11 of the plaint the case of denial of title was based on para 6 of reply notice itself and the earlier part of para 6 of the said reply notice was noted in inverted commas in the said para 11 of the plaint.

4. Both the courts below have found that the assertion of the tenant amounted to denial of title.

5. In a recent authority in AIR 2002 SC 1264, it has been held that :

'Questioning the derivative title of the transferee landlord does not amount to denial of title.'

6. In fact, Section 20 (2) (f) of the Act and Section 111(g) of Transfer of Property Act are to be read along with Section 116 of Evidence Act according to which tenant is estopped from denying the title of the person who inducts him as tenant. If the tenant denies the title of the landlord, who inducted him as tenant, then he is liable to ejectment under Section 20 (2) (f) of the Act and under Section 111(g) of T, P. Act. It was not stated by the plaintiff in the plaint that he ever supplied copy of the sale deed to the tenant. Hence, in my opinion, the assertion in the reply notice does not amount to denial of title as mentioned under Section 20 (2) (f) of the Act. In this regard, reference may also be made to the following four authorities of Hon'ble Supreme Court :

(1) AIR 1982 SC 1213 ;

(2) AIR 1990 SC 636 ;

(3) AIR 2002 SC 1061 ; and

(4) AIR 2002 SC 2171.

As far as default is concerned, the J.S.C.C. under issue No. 3 held that:

'Depositing rent under Order XV Rule 5, C.P.C. in Court does not mean that defendant has not committed default.'

7. It appears that after holding the defendant to be liable to ejectment on the ground of denial of title, the trial court did not consider it necessary to decide the applicability of Section 20 (4) of U. P. Act No. 13 of 1972 according to which tenant is not liable to ejectment if on first date of hearing he deposits the entire rent etc. in terms of the said sub-section. The lower revisional court also did not say anything with regard to applicability of Section 20 (4) of U. P. Act No. 13 of 1972. As far as the question of validity of allotment in favour of the tenant petitioner is concerned it was not subject matter of decision hence the courts below rightly refrained from expressing any opinion with regard thereto.

8. Accordingly, findings of the courts below that respondent No. 3 was landlord of the premises in dispute are confirmed. However, findings of the courts below that tenant denied the title of the landlord and was liable to ejectment on that ground is set aside. The matter is remanded to the trial court to consider the question of applicability of Section 20 (4) of U. P. Act No. 13 of 1972 after framing an additional issue in that regard. As this point is to be decided on the basis of deposits already made by the petitioner, hence there is no need to permit any of the parties to lead fresh/additional evidence.

9. The writ petition is accordingly allowed.

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