

Deep Chand Vs. Sunder Lal and Others

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Court : Allahabad

Decided On : Aug-31-2000

Reported in : 2000(4)AWC2826

Judge : R.H. Zaidi, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 36180 of 2000

Appellant : Deep Chand

Respondent : Sunder Lal and Others

Advocate for Def. : A.K. Gupta, Adv.

Advocate for Pet/Ap. : V.K. Gupta and ;M.K. Gupta, Adv.

Judgement :

R.H. Zaidi, J.

1. By means of this petition filed under Article 226 of the [Constitution of India](#), petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the judgment and decree dated 5.9.1997 passed by the trial court in S.C.C. Suit No. 79 of 1985 and the judgment and order dated 31.7.2000 passed

by the revisional court in S.C.C. Revision No. 62 of 1997.

2. Relevant facts of the case giving rise to the present petition, in brief, are that Shri Sunder Lal, respondent No. 1 filed a suit for ejectment and recovery of rent and damages against respondent Nos. 2 and 3 and the petitioner Shri Deep Chand, pleading that the building in dispute was let out to the respondent Nos. 2 and 3 at a monthly rent of Rs. 90 who have defaulted in payment of rent for 33 months. A notice of demand and termination of tenancy was served upon them on 22.7.1984 but they failed to pay the rent. On the other hand, they have sub-let the premises in question to the petitioner without the consent of the respondent and started realising Rs. 375 per month as rent from the petitioner, hence the suit for the above mentioned reliefs. By means of amendment, plea of material alternation, diminishing the value of the building in question was also taken. Respondent Nos. 2 and 3 filed their written statement admitting the relationship of landlord and tenant denying the rent of the allegations. It was also pleaded that the petitioner was permitted to manage their business of Ice-Candy who committed irregularities in accounts. On the other hand, petitioner also filed a written statement pleading that respondent Nos. 2 and 3 were acting in collusion with respondent No. 1. He claimed that he was the tenant of the premises in dispute in his own right and had been carrying Ice-Candy business in the name of Parle Ice-Candy. He, with the consent of plaintiff respondent, carried out renovation of the premises in dispute, in which substantial amount was spent which was liable to be adjusted in the future rent. The suit as framed and filed was legally not maintainable and was liable to be dismissed,

3. Trial court on the basis of pleading of the parties, framed issues. Issue No. 1 related to structural alternations diminishing the value of the building in question, issue No. 2 related to sub-letting to defendant-petitioner ; Issue No. 3 related to the validity of notice ; Issue No. 4 to related to the default in payment of rent and Issue No. 5 to the relief. The trial court held that the petitioner was the sub-tenant of respondent Nos. 2 and 3 in the building in question. While dealing with Issue No. 1, it was held that although, alternations in the building in question were made but by the same, the value of the building was not diminished, the notice under Section 106 of the Transfer of Property Act was held valid and it was also held that

it was not necessary to give any notice to terminate the subtenancy of the petitioner. Issue No. 4 was decided in affirmative observing that the respondent Nos. 2 and 3 committed default in payment of rent and that it was not necessary to record any finding with respect to the default committed by the petitioner who was inducted as a sub-tenant by respondent Nos. 2 and 3. Fifth and last issue was decided in affirmative and the suit filed by the respondent No. 1 was decreed for ejectment and for recovery of arrears of rent amounting to Rs. 3,020 with damages pendente lite and future by judgment and order dated 5.9.1997. Respondent Nos. 2 and 3 did not challenge the validity of the judgment and decree passed by the trial court. A revision against the said decree was filed by the petitioner. The revisional court affirmed the findings recorded by the trial court, it was held that the trial court took into consideration the entire evidence, oral and documentary on the record, thereafter recorded findings on the issues involved in the case in accordance with law, which did not suffer from any jurisdictional error. The revisional court, having recorded the said findings dismissed the revision by its judgment and order dated 31.7.2000. hence the present petition,

4. Learned counsel for the petitioner, Shri V. K. Gupta, vehemently urged that the Courts below have misread, misconstrued and ignored the material evidence on the record and erred in law in holding that the petitioner was merely a subtenant. He asserted that from the material on the record, it was conclusively proved that the petitioner was the tenant of the building in question in his own right. The Courts below acted illegally in holding to the contrary and in decreeing the suit filed by respondent No. 1 and dismissing the revision filed by the petitioner. It was also urged that petitioner had no order of allotment in his favour, therefore, his status was that of an unauthorised occupant. Therefore, the suit as framed and filed was legally not maintainable and the decree passed by the trial court which had no jurisdiction to pass the said decree was a nullity. In execution of the said decree, the petitioner cannot be ousted from the building in question. In support of the said submission, reliance was placed by learned counsel for the petitioner upon the decision in *Nootan Kumar and others v. IInd Additional District Judge, Banda and others*, 1993 (2) ARC 204 (FB).

5. On the other hand, learned counsel appearing for the respondent Nos. 2 and 3, Shri A. K. Gupta supported the validity of the judgment, orders and decree passed by the Courts below. It was urged that the findings recorded by the Courts below are concurrent findings of fact which are based on relevant evidence on the record and do not suffer from any illegality or infirmity. It was also urged that before the Courts below, the petitioner never claimed that he was an unauthorised occupant. He, on the other hand, has contended that he was the tenant of the building in question in his own right. At this stage, therefore, he cannot be permitted to contend that he was unauthorised occupant or a trespasser and the suit filed by the respondent No. 1 was legally not maintainable or that the trial court has no jurisdiction to entertain and decide the suit. Alternatively, it was submitted that an unauthorised occupant has got no right enforceable in law, therefore, the petitioner has got no right to file the present petition under Article 226 of the [Constitution of India](#). Reliance in support of this submission is being placed upon the decision in Rakesh Kumar Vatsa v. District Judge, Saharanpur. 2000 (38) ALR 575. It was urged that the writ petition was concluded by findings of fact and was liable to be dismissed with costs.

6. I have considered the submissions made by learned counsel for the petitioner.

7. Learned counsel for the petitioner has utterly failed to demonstrate any misreading of any material evidence by the Courts below. He also could not show that any material evidence was ignored by the said Courts. The Courts below have taken into consideration and critically examined the entire evidence on the record, oral and documentary and thereafter, recorded findings on the issues involved in the case. Learned counsel for the petitioner failed to show from the record any material evidence on the basis of which it could be held that the petitioner was the tenant of the building in question. On the other hand, from the evidence, oral and documentary, it was conclusively proved that the respondent Nos. 2 and 3 were tenants-in-chief of the building in question who, without any permission in writing of the respondent No. 1, sub-let the same to the petitioner. Petitioner was, thus, a sub-tenant of the building in question. The status of the person is a question of fact. In exercise of power under Article 226 of the [Constitution of India](#), this Court cannot go into the questions of fact, cannot appraise or re-appraise the evidence,

cannot reverse the findings recorded by the Courts below and cannot substitute its own findings in place thereof. The findings recorded by the Courts below are based on relevant evidence on the record. I do not find any illegality or infirmity in the said findings. So far as the question of maintainability of the suit filed by respondent No. 1 and the jurisdiction of the trial court [Judge Small Causes Court] is concerned, the said plea was not taken by the petitioner in his written statement nor it was otherwise asserted before the Courts below. At this stage, therefore, petitioner cannot be permitted to change his case and to assert that he was the unauthorised occupant, as he did not have any order of allotment in his favour. The suit was filed on the basis of relationship of landlord and tenant between the parties. It is well-settled in law that the sub-tenant is neither a necessary party to such a suit nor it is necessary to serve a notice under Section 106 of the Transfer of Property Act. Therefore, petitioner cannot claim any benefit of ratio of the decision of Full Bench in the Nootan Kumar's case (supra). The contesting respondent is right in his submission that an unauthorised occupant possesses no right enforceable in law and is legally not entitled to file and maintain a petition under Article 226 of the [Constitution of India](#) as held by this Court in Rakesh Kumar's case (supra).

8. In view of the aforesaid discussion, no case for interference under Article 226 of the [Constitution of India](#) is, at all, made but. The writ petition deserves to be dismissed.

9. Lastly, learned counsel for the petitioner submitted that some reasonable time may be granted to the petitioner to vacate the building in question, as at once it will not be possible for him to arrange another accommodation to carry on the business which is being carried on in the building in question. On the other hand, learned counsel appearing for the contesting respondents submitted that the petitioner being only a subtenant of the building in question, is legally not entitled to any leniency in the matter. He is to be ejected at once but with a view to end the litigation between the parties, he stated that he will have no objection if 8 months' time is granted to the petitioner to vacate the building in question subject to the condition petitioner furnishes an undertaking in writing before the trial court within a period of 15 days from today to the effect that immediately on expiry of the

aforesaid time, he shall hand over the vacant possession to the respondent No. 1 and shall also pay the amount of damages for the period he remains in occupation of the same, at the rate he was paying to the respondent Nos. 2 and 3.

10. In view of the aforesaid facts and circumstances, it is hereby directed the petitioner shall not be ejected from the building in question for a period of 8 months from today subject to the condition he furnishes an undertaking in writing within 15 days from today before the trial court that he shall vacate the building in question and hand over the vacant possession to the respondent No. 1 and also pay the amount of damages for the period he remains in occupation of the same at the rate he was paying to the respondent Nos. 2 and 3, failing which this order shall stand automatically vacated and law will take its own course.

Subject to what has been stated above, the writ petition fails and is hereby dismissed, but no order as to costs.

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