

Allah Rakha and ors. Vs. NizamuddIn Alias Jammu and ors.

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SooperKanoon Citation : sooperkanoon.com/485019

Court : Allahabad

Decided On : Nov-21-2003

Reported in : 2004(1)AWC400

Judge : Prakash Krishna, J.

Acts : Uttar Pradesh Buildings (Regulation of Letting, Rent and Eviction) Act, 1972
- Sections 14

Appeal No. : Second Appeal No. 2154 of 1979

Appellant : Allah Rakha and ors.

Respondent : NizamuddIn Alias Jammu and ors.

Advocate for Def. : K.B.L. Gaur, ;Naresh Chandra Rajvanshi, ;K.M. Dayal, ;Manoj Kumar Rajvanshi and ;D.V. Jaiswal, Advs.

Advocate for Pet/Ap. : G.C. Sharma, ;K.L. Grover, ;G.N. Verma and ;A.N. Verma, Advs.

Disposition : Appeal dismissed

Judgement :

Prakash Krishna, J.

1. This is defendant's appeal. It arises out of Original Suit No. 263 of 1976 filed by the plaintiff respondent for mandatory injunction directing the defendants to deliver possession of the disputed house. The suit has been decreed by both the courts below.

2. The plaintiff is the son of Ali Bux. Sri Ali Bux had purchased the property by means of registered sale deed dated 5th January, 1930. He constructed a house after taking permission from the Municipal Board in the year 1935. After the death of Sri Ali Bux the plaintiff being the son inherited the property. The father of the defendants was the brother of Ali Bux. Ali Bux permitted his brother to live in the house as he was living in a tenanted house. Ali Bux gave a licence to the father of the defendants to live in the disputed house. The said licence has been revoked by the plaintiff by means of a registered notice dated 21.6.1976. A suit was filed for mandatory injunction directing the defendants to hand over possession to the plaintiff.

3. The suit was contested on the pleas, inter alia, that the plaintiff is not son of Ali Bux and that after death of Ali Bux the defendants being the heirs have inherited the property in question. The theory of licence was denied and it was pleaded that possession of the defendants was in accordance with law. The defendants also pleaded that they have acquired the title by adverse possession.

4. The trial court framed seven issues and came to the conclusion that the plaintiff is the owner of house in dispute and the defendants are licensees. It was also held that the plaintiff is the son of Ali Bux and the defendants have not perfected their title by adverse possession. This decree of the trial court dated 22.7.1978 has been confirmed in Civil Appeal No. 211 of 1978. The appellate court has also found that the plaintiff is son of Ali Bux. Aggrieved against the aforesaid judgments and decrees present appeal has been filed by the defendants. At the time of admission of second appeal this Court framed following substantial questions of law :

'Whether the appellants were occupying house as licensee or in adverse possession after the death of father Bundu. The further question would be whether the licence initially granted by Ali Bux in favour of Bundu had been revoked by Ali

Bux in his life time. The third question would be whether the appellants have proved their case of being in adverse possession of house in dispute for more than 12 years after the expiry of period of licence.'

5. At the time of final hearing of the present appeal learned counsel for the appellant did not press any of the aforesaid substantial questions of law in the argument. His attention was drawn towards the aforesaid substantial question of law as framed by this Court at the time of admission. He submitted a new point as substantial question of law at the time of final hearing of the appeal. According to his submission the defendants have become tenant in view of Section 14 of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act and Rules, 1972.

6. The aforesaid question was raised for the first time during the course of hearing of appeal. No such ground has been raised in the memo of appeal. However according to learned counsel for the appellant the above is the only substantial question of law involved in the appeal.

7. Having heard him at a considerable length I do not find any merit in the said submission.

8. Section 14 of the Act reads as under :

'14. Regularisation of occupation of existing tenants.--Notwithstanding anything contained in this Act or any other law for the time being in force, any licensee (within the meaning of Section 2A) or a tenant in occupation of building with the consent of the landlord immediately before the commencement of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) (Amendment) Act, 1976, not being a person against whom any suit or proceeding for eviction is pending before any court or authority on the date of such commencement shall be deemed to be an authorised licensee or tenant of such building.'

Emphasis was that the said provision regularises the occupation of a tenant or of any licensee of the building with the consent of landlord and, therefore, defendants have become the tenant and are not liable to be ejected except in accordance with the provisions of the said Act. Section 14 of the Act was there in the Statute book

with the commencement of the Act, i.e., with effect from 15.7.1972. It was substituted by U. P. Act No. 28 of 1976. The unamended Section 14 reads as under :

'14. Regularisation of occupation of existing tenants.--Notwithstanding anything contained in any general order made under Sub-section (2) of Section 7 of the old Act, any tenant in occupation of a building with the consent of the landlord immediately before the commencement of this Act, not being a person against whom proceedings under Section 7A of the old Act are pending immediately before such commencement, shall be deemed to be in authorised occupation of such building.'

9. A bare perusal of the said provision shows that it was applicable only in the case of any tenant in occupation of building with the consent of landlord immediately before commencement of the Act. Therefore, under original Section 14 of the Act there was no provision for regularisation of the occupation of any licensee. The suit giving rise to the present appeal was filed on 21.7.1976. It was open for the defendants to raise the said plea. The defendants having failed to raise any such plea in the courts below as well as in the Memo of Second Appeal cannot be permitted to raise fresh plea during the course of final hearing of the Second Appeal. Besides the above there is no merit in the said plea. One of the conditions for the applicability of Section 14 both under amended or unamended section is that against such tenant or licensee any suit or proceeding for eviction should not have been pending before any court or authority on the date of commencement of the Act. Indisputably, the proceedings have commenced in the year 1976 itself before insertion of Section 14 of the Act as amended. The dispute having been arisen between the parties and the suit having been instituted before insertion of amended Section 14 of the Act, the appellants are not entitled to get benefit of the said provision.

10. Both parties have filed their written arguments. In the written arguments filed on behalf of the appellant no other point has been raised.

11. In view of the above the appeal is dismissed.

