

Salim UddIn Ansari Vs. Additional District Judge and ors.

Salim UddIn Ansari Vs. Additional District Judge and ors.

SooperKanoon Citation : sooperkanoon.com/485520

Court : Allahabad

Decided On : Jul-24-2009

Reported in : 2009(4)AWC3571

Judge : Poonam Srivastav, J.

Appellant : Salim UddIn Ansari

Respondent : Additional District Judge and ors.

Advocate for Pet/Ap. : Sri. Arvind Srivastava

Judgement :

Poonam Srivastav, J.

1. Heard Sri Arvind Srivastava, learned Counsel for the petitioner-tenant and Sri Rahul Shripat for the landlord-respondent.
2. The petitioner-tenant challenged the judgment dated 5.5.2009 passed by the Special Judge, S.C./S.T. Act, Meerut confirming the judgment of the Judge. Small Causes Court, Meerut dated 26.4.2006.
3. The dispute relates to House No. 35, located at Kalka Ka Bagh, Khatikan, Shahpeer Gate, Meerut at a monthly rent of Rs. 18. A notice dated 10.1.1997 was served on the petitioner that he has not paid rent and consequently the tenancy stood determined from the date of expiry of notice. S.C.C. Suit No. 127 of 1997

was instituted. The respondent Nos. 3, 4 and 5, plaintiffs claimed to be heirs of late Jorawar Singh who used to collect rent during life time of Kalka Prasad. Kalka had executed a Will in respect of property No. 35 Kalka Ka Bagh, Khatikan, Shahpeer Gate, Meerut in favour of Jorawar Singh. After death of Jorawar Singh, the plaintiffs stepped in his shoes. The rent was due w.e.f. 1.1.1975 but despite demand by means of notice under Section 106, Transfer of Property Act, the suit was instituted for arrears w.e.f. 9.7.1994 to 1.3.1997, damages at the rate of Rs. 5 per day. A written statement was filed, which the petitioner claims to be a forged one denying the allegation of the plaintiffs. The submission is that late Subrati was the tenant and Jorawar Singh was only Munshi who was authorized to collect rent and, therefore, he was not entitled to institute the suit. The Will was a forged document. The contention on behalf of the petitioner is that written statement, affidavits etc. filed in the writ petition were all forged. However, the suit as decreed and a civil revision preferred against the decree stands dismissed by means of the impugned judgment.

4. The first submission is that there are separate accommodation in occupation of different tenants. The disputed accommodation was owned by Kalka Prasad and thereafter his heirs became the owner. The Will is forged document and the suit itself is not maintainable at the instance of the heirs of Jorawar Singh. In fact there were 10 suits instituted against all the tenants and in nine suits itself the Court had come to a conclusion that Jorawar Singh is not the owner/landlord save for the present one.

5. This contention on behalf of the petitioner has been vehemently opposed by Sri Rahul Sripat appearing on behalf of the contesting respondents who claimed their right on the basis of registered Will by Kalka Prasad in favour of Jorawar Singh. In the year 1989 Original Suit No. 1274 of 1989, Jorawar Singh v. Shital Prasad Mathur and Ors. was instituted, plaint thereof is annexed as Annexure-7 to the writ petition. The relief claimed in the said suit was that by a decree of declaration in favour of the plaintiffs against the defendants, it be declared that the registered Will dated 16.1.1968 registered on 13.2.1968 is a valid one and the plaintiffs have interest in the property. The claim of the petitioner that this suit was dismissed in default on 10.4.2007 by the Civil Judge (Junior Division), City Meerut and no

restoration has been filed till date, has been answered by Sri Rahul Sripat that in the written statement the heirs of Kalka Prasad had admitted the Will and claim of Jorawar Singh, therefore, the suit was not contested and got dismissed in default. The order dismissing the said suit in default is annexed as Annexure-10 to the writ petition.

6. Sri Arvind Srivastava placed reliance on two decisions of this Court; Hari Shankar Sharma v. Special Judge, Moradabad and Ors. 1983 (2) ARC 13 and Mandir Radha Krishan Ji Maharaj, through its Trustees v. Illrd Additional District Judge, Moradabad (2004) 2 SAC 366 : 2004 (5) AWC 3855 paragraph 13 in support of the contention that mere fact that some one collecting rent on behalf of the landlord would not make him a landlord under Section 3(j) of the Act for the purpose of issuing notice. On the basis of these two decisions, the emphasis is that the suit is not maintainable at the instance of heirs of late Jorawar Singh.

7. I have perused the impugned Judgment and documents brought on record in the instant writ petition. On perusal of the judgment dated 26.4.2006 passed in J.S.C.C. Suit No. 127 of 1997, it transpires that reliance was placed on two documents 67Ga and 68Ga which are plaint and written statement of the Original Suit No. 1274 of 1989 for declaration on the basis of Will filed by Jorawar Singh. The copy of plaint is annexed with the writ petition and copy of the written statement is placed before me by Sri Rahul Sripat. Paragraph 24 of the written statement as well as 25 of the additional pleas substantiate the argument of Sri Rahul Sripat that the defendant of the said suit had no objection and they had stated that the suit of the plaintiffs may be decreed but the defendants are not liable to pay any cost of the suit. For a ready reference, paragraphs 24 and 25 of the written statement, which is 68Ga, is quoted below:

24. That in reply to para No. 24 of the plaint it is submitted that the defendants have no objection if the suit of the plaintiff is decreed but the answering defendants are not liable to pay any cost of the suit to the plaintiffs.

25. That the registered Will dated 16.1.1968 is valid one and the answering defendant have never challenged the same and they shall never challenge the same.

It is apparent that in view of this admission by the defendants (heirs of late Kalka Prasad) the suit was dismissed in default and no effort was made to get the suit restored. This assertion on the part of the heirs of late Kalka Prasad, the original landlords have not changed their assertions which is part of the record of the instant suit giving rise to the writ petition. I am satisfied that the courts below did not commit any illegality in coming to the conclusion that the plaintiffs are the landlord on the basis of Will. Admittedly the tenant was in arrears and had committed default despite notice and also did not deposit any rent subsequently and. therefore, I am of the considered view that the suit was rightly decreed. There is no merit in the writ petition and it is accordingly dismissed.

8. In the end, learned Counsel for the petitioner made a request that the petitioner may be given some time to vacate the accommodation in dispute.

9. This request appears to be justified. The petitioner-tenant is permitted six months' time from today to vacate the accommodation in question and handover vacant possession to the landlord till 24.1.2010 provided he files an undertaking that he will handover vacant possession on or before 24.1.2010 and also deposits entire arrears of rent and also current rent up till 24.1.2010. In the event of default, this liberty shall stand discharged.