

Kamla Devi and ors. Vs. Xith Additional District Judge and ors.

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Court : Allahabad

Decided On : Apr-13-2007

Reported in : 2007(3)AWC2711

Judge : Prakash Krishna, J.

Appellant : Kamla Devi and ors.

Respondent : Xith Additional District Judge and ors.

Judgement :

Prakash Krishna, J.

1. These two writ petitions are connected one and the arguments were advanced only with reference to the facts in Writ Petition No. 23116 of 1989 and it was agreed that the fate of the Writ Petition No. 23116 of 1989 would decide the fate of the Writ Petition No. 30665 of 1999.

2. The present Writ Petition No. 23116 of 1989 arises out of an application for allotment filed on 3rd of November, 1981 by Shri Santosh Kumar Srivastava who is respondent No. 3 herein, for allotment of three rooms, latrine, bathroom plus verandah of a House No. D-52/96A, situate at Varanasi. The application was moved on the ground that earlier Shri Vijay Kumar Tandon was the tenant of the said accommodation who has constructed his own house within the municipal limits of Varanasi and thus the disputed accommodation would be deemed to have

been vacant. A report from Inspector was called for who submitted his report dated 4th of January, 1982 to the effect that Ma Anand Mai Kali Trust is the owner of the house and one Smt. Sukhmai Devi is the Sewait thereof. An application for release of the disputed accommodation was filed on behalf of Ma Anand Mai Kali Trust under Section 16(1)(b) of the U.P. Act No. 13 of 1972 on the ground that the property in dispute was surrendered by Smt. Sukhmai Devi and a trust was created in favour of Damodar, Shalig Ram and Laxmi Govind (names of Deities). One Chitamber alias Deepankan Chatterjee claiming himself as Sewait, filed an affidavit in support of the release application. The said release application was opposed by Santosh Kumar, the applicant for allotment on the ground that the release application should have been filed in the name of deities. Another application was filed on 29th of November, 1993 by present petitioners (hereinafter called as Smt. Kamla Devi) on the ground that she has purchased the disputed accommodation through registered sale-deed on 13th of November, 1982 and prayed that the accommodation in dispute be released in her favour as she bona Jidely requires it looking to the strength of her family members. The applicant for allotment, Santosh Kumar Srivastava, the respondent No. 3 herein contested the application filed by Kamla Devi on the ground that the property in dispute is a trust property and Smt. Sukhmai Devi who had created the trust had no right of title to execute the sale-deed dated 13th of November, 1982 in favour of Kamla Devi. The Rent Control and Eviction Officer by the order dated 16th of May, 1983 allotted the house in question to the respondent No. 3, Santosh Kumar Srivastava. The said allotment order was set aside in Revision No. 162. Against the said order two revisions were filed being Revision Nos. 162 of 1983 and 163 of 1983. The rent Revision No. 162 of 1983 was filed by Smt. Kamla Devi while the rent Revision No. 163 of 1983 was filed by Vijay Kumar, the sitting tenant as he then was. The Revision No. 162 of 1983 was allowed by the First Additional District Judge, Varanasi on the finding that the Rent Control and Eviction Officer was not competent to examine the validity of the sale-deed standing in favour of Smt. Kamla Devi. The matter was remanded by the revisional authority for fresh consideration in the light of the observations made therein to the Rent Control and Eviction Officer. The Revision No. 163 of 1983 was dismissed. However, the revisional court upheld that vacancy exists as the sitting tenant Vijay Kumar has

built his house at Varanasi. This order is dated 7th of November, 1983 and was subject-matter of challenge in the Writ Petition No. 14828 of 1983 filed by Santosh Kumar Srivastava, the respondent No. 3 herein. This Court allowed the writ petition in part and set aside the order dated 7th of November, 1983 so far as it treats the respondent Nos. 3 to 11 therein, i.e., Smt. Kamla Devi as landlady of the accommodation in question with the direction that the Rent Control and Eviction Officer shall determine the question as to who was the landlord of the accommodation in dispute on the date when it was deemed to have been vacated on account of a fact that Shri Tandon the erstwhile tenant has constructed his own house. In pursuance of the aforesaid order of this Court the matter was re-examined by the Rent Control and Eviction Officer who by its order dated 27th of July, 1989 found that the sale-deed in favour of Smt. Kamla Devi, the petitioner herein is invalid as Smt. Sukhmai had endowed the property in question. The allotment made in favour of the respondent No. 3 was confirmed. Smt. Kamla Devi unsuccessfully challenged the said order in Civil Revision No. 104 of 1989 which is impugned in the present writ petition.

3. Heard the learned Counsel for the parties and perused the record.

4. The learned Counsel for the petitioner submits that the matter was remanded back by this Court to determine as to who was the landlord on the relevant date when the vacancy in respect of the disputed accommodation occurred. According to him the Rent Control and Eviction Officer has misdirected himself in examining the question of validity of the sale-deed in favour of the present petitioner as also permitting the respondent No. 3, the applicant for allotment to contest the proceedings. In response, Shri Krishnaji Khare, the learned Counsel for the respondent No. 3 submits that it has come on the record that the property in question is a trust property and in this view of the matter, the sale-deed in favour of Kamla Devi is of no legal consequence and the allotment order issued in favour of the respondent No. 3 is perfectly justified.

5. I have given careful consideration to the respective submissions of the learned Counsel for the parties. It may be noted here that the Additional District Judge while allowing the Revision No. 162 of 1983 filed by Smt. Kamla Devi in its

judgment held that the Rent Control and Eviction Officer fell in error while he started examination of the validity of the sale-deed. The said approach of the learned Additional District Judge finds approval of this Court while disposing of the Writ Petition No. 14828 of 1983 in the following words:

Having considered the matter carefully, I am of the opinion that the approach adopted by the revisional court was correct, however, in my opinion, the revisional court failed to record any finding as to who was landlord recognized by the Rent Control and Eviction Officer on or before 13th of September, 1982, the date on which the sale-deed was executed.

6. After remand, it may be noted here that the Rent Control and Eviction Officer again committed the same mistake and examined the validity of the sale-deed standing in favour of the petitioner and held that in view of the registered deed dated 26.5.1981 whereby the original Sewait Smt. Sukhmai Devi appointed her nephew Shri Badal Kant Chatterjee son of Shri Chitamber Chatterjee as Sewait, From this document an inference was drawn by the Rent Control and Eviction Officer that Smt. Sukhmai Devi had executed a deed of endorsement dedicating the property to the deities. He was of the view that the property in question is a trust property. He has also drawn an adverse inference from certain remarks made by the then District Supply Officer. According to him, it appears that the paper No. 29 which was counterfoil has been misplaced one from the file from which it is clear that Shri Chitamber used to give the rent receipt to Vijay Kumar Tandon, the erstwhile tenant.

7. The finding recorded by the Rent Control and Eviction Officer is based on assumptions and presumptions and conjecture. From the reading of the order of the Rent Control and Eviction Officer, it does not appear that there is any deed of dedication or endowment on the record. Only a registered document dated 26th of May, 1981 appointing Badal Kant Chatterjee as a Sewait is on the record. In absence of any document of dedication or endorsement of trust, the inference drawn by the Rent Control and Eviction Officer on the basis of remarks made by the District Supply Officer that some paper is not on the record and therefore Chitamber Chaterjee used to issue the rent receipts to Vijai Kumar Tandon, is not

justified on the face of registered sale-deed standing in favour of Kamla Devi, the petitioner. There is no documentary evidence by way of rent receipts etc. to show that the alleged trust ever realized any rent from the outgoing tenant.

8. Shri Krishna Ji Khare, the learned Counsel for the petitioners during the course of the arguments admits that it is Smt. Kamla Devi along with the other petitioners, was in occupation of the disputed accommodation in pursuance of the interim order dated 4th of December, 1989 and the respondent No. 3 in whose favour allotment order has been issued is not able to get the possession.

9. There is another aspect of the case that Shri Chitamber Chatterjee, the alleged Sewait on behalf of the deities has not come forward to contest the allotment proceedings. It does not lie in the mouth of the applicant for allotment to say that the person who is holding a registered sale-deed in respect of the property which is subject-matter of the allotment is not owner but somebody else is owner who has not come forward. It may be noted that earlier some application was filed by Shri Chitamber alias Deepankan Chatterjee claiming himself as Sewait but at the subsequent stages of that proceedings, he did not appear to contest the proceeding or claim of Smt. Kamla Devi. It is very strange thing that Chitamber, the alleged Sewait, is not coming forward to stake claim being Sewait but his cause is being espoused by the respondent No. 3, the applicant for allotment.

10. Looking to the fact that the petitioner Kamla Devi has purchased the property by means of the registered sale-deed in her favour and the application for allotment was filed as early as on 3rd of November, 1981 and thus, about 26 years are going to pass, it is desirable that the allotment proceedings be dropped and the allotment application be rejected as it would amount to travesty of justice to dispossess a person from the property in question in whose favour a registered sale-deed is still standing and the real owner if any has not come forward to challenge the said sale-deed and the proceedings are being taken out by a person who is merely an applicant for allotment. Whether the sale-deed standing in favour of Smt. Kamla Devi is valid or not can be adjudicated upon by a civil court of competent jurisdiction and not in these collateral proceedings specially when the said sale-deed is not being questioned who may be the ultimate beneficiary, but by

a third party having no proprietary interest in the proceedings.

11. The Apex Court in *Smt. Ramti Devi v. Union of India* : (1995)1SCC198 , has held that a duly registered document remains valid and binds the parties until the document is avoided or cancelled by proper declaration. The aforesaid observation was made in connection with the plea raised by the appellant therein to have the document avoided or cancelled which necessarily, a declaration has to be given by the Court in that behalf, so is the case here.

12. There is one more infirmity in the impugned order allotting the disputed accommodation in favour of the contesting respondent. The allotment order was cancelled in the earlier proceeding by the revisional court and the said order was confirmed by this Court while allowing the writ petition partly. The Rent Control and Eviction Officer without considering the case of the contesting respondent on merits and inviting applications from the public that the accommodation is open for allotment, has straight way allotted the accommodation to the respondent No. 3. This course of action of the Rent Control and, Eviction Officer is not in accordance with law. Therefore, the allotment order in favour of the contesting respondent is bad on this ground also. So far as the release application of the petitioner is concerned, the same was filed in the year 1982. The said release application was rejected not on the ground that petitioner's need for the disputed accommodation is not bona fide but on the other ground that she is not owner of the property in question. It has been held above that so long as the sale-deed stands in favour of Smt. Kamla Devi, she is owner of the property in question. Thus, the ground on which the release application was rejected stands set aside. As about 25 years is passed after filing of the release application and indisputably the petitioners are in occupation of the disputed accommodation, no useful purpose is going to be served by restoring the matter back to the Rent Control and Eviction Officer to decide the release application of Kamla Devi afresh. It is an acknowledged legal position that in a release proceeding under Section 16(1)(b), an applicant for allotment or any other person has no right to contest the release application of the landlord. Time has come that this litigation should come to an end. Therefore, the release application filed by Smt. Kamla Devi stands allowed.

13. The present writ petition also arises out of release proceedings in respect of a different portion releasing it in favour of Smt. Usha Devi, Jata Shanker etc. These persons claims that they have purchased the property in question from Smt. Sukhmai. Before the Rent Control and Eviction Officer the present petitioner claimed that they are the owners and landlord of the disputed accommodation and Smt. Sukhmai was not entitled to execute the sale-deed. The Rent Control and Eviction Officer by the impugned order released the disputed accommodation. It has been held by me in the connected writ petition that so long as the sale-deed executed by Smt. Sukhmai stands in favour of vendees, the Rent Control and Eviction Officer is not competent to examine the question of title. Moreover, the present proceedings arises out of release order and the grievance of the petitioner, if any cannot be adjudicated upon by the Rent Control and Eviction Officer, as it relates to the question of title qua immovable property and the validity of the registered sale-deed etc. The proper course for the petitioner is to seek cancellation of sale-deed from a civil court of competent jurisdiction or from any other forum as it may be advised. There is no merit in the Writ Petition No. 30665 of 1999. The writ petition is dismissed.

14. In view of the discussion made above, it is clear that there is no force in the writ petition. The impugned orders dated 27.7.1989 and 20th of November, 1989 are hereby quashed. The Writ Petition No. 23116 of 1989 succeeds and is allowed and the Writ Petition No. 30665 of 1999 is dismissed.

No order as to costs.