

Mohd. Ashhaq Vs. 1st Additional District Judge and anr.

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Court : Allahabad

Decided On : May-14-2009

Reported in : 2009(4)AWC4123

Judge : S.U. Khan, J.

Appellant : Mohd. Ashhaq

Respondent : 1st Additional District Judge and anr.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. List revised. No one appears for tenant-respondent No. 2. Heard learned Counsel for the petitioner landlord.

2. This is landlord's writ petition arising out of S.C.C. Suit No. 3 of 1985 filed by him against respondent No. 2, Naseem Ahmad for eviction from the tenanted property in dispute, which is a house containing one room, on the ground of default and for recovery of arrears of rent. The allegation in the plaint was that initially Mohd. Yamin father of defendant-respondent No. 2 was tenant and after his death, defendant-respondent No. 2 became tenant, that after the death of father of the defendant-respondent No. 2, rent was enhanced to Rs. 30 per month,

which was accepted by the defendant, that rent had not been paid since January, 1972. J.S.C.C., Najibabad, district Bijnor accepted the case of the petitioner and decreed the suit through judgment and decree dated 14.5.1985. Suit was decreed for eviction and recovery of arrears of rent and pendente lite and future damages @ Rs. 30 per month.

3. Against the said judgment and decree, defendant-respondent No. 2 filed Civil Revision No. 25 of 1985. First A.D.J., Bijnor allowed the revision through judgment and order dated 6.5.2008, set aside the judgment and decree passed by the trial court and dismissed the suit. Through this writ petition, said order of the revisional court has been challenged.

4. The defendant had questioned the title of the plaintiff, however the said point was decided by the revisional court in favour of plaintiff-petitioner. Findings with regard to rate of rent recorded by the trial court were set aside by the revisional court. Plaintiff landlord petitioner had himself pleaded that earlier he had filed suit for possession and recovery of arrears of rent against father of the defendant in the form of Suit No. 95 of 1965. In the said suit, plaintiff had asserted that rate of rent was Re. 1 per month while defendant of the said suit had asserted that rate of rent was 6 aana and per month and the case of defendant had been accepted in respect of rate of rent. Against the said judgment, appeal (Appeal No. 44 of 1966) was filed by the father of the defendant-respondent No. 2. In the said appeal, plaintiff had filed cross-objections challenging the findings of the trial court regarding rate of rent. Appeal and cross-objection, both were dismissed.

5. In the plaint of the suit giving rise to this writ petition, plaintiff asserted that rate of rent of Rs. 30 per month had been decided in between him and defendant-respondent No. 2 after the death of his father. However, in his oral statement plaintiff stated that rent had been enhanced to Rs. 30 per month through agreement between him and original tenant Mohd. Yamin. In view of this, the revisional court held that rate of rent was 6 aana (37 paise) per month and not Rs. 30 per month. In my opinion, this finding is perfectly in accordance with law. The contrary finding recorded by the trial court was against the oral statement of the plaintiff and ignoring the material contradiction in between the averments made in

the plaint and oral statement of the plaintiff. However, even the rent @ 6 aana per month had not been paid by the tenant.

6. Suit for possession was dismissed by the revisional court only on the ground that the original tenant Mohd. Yamin had left behind two sons, i.e., defendant-respondent No. 2 and Mohd. Yaseen. Mohd. Yaseen was examined as witness of the defendant (D.W. 2). Lower appellate court held that after the death of the original tenant Mohd. Yameen, both of his sons, i.e., Mohd. Naseem, defendant-respondent No. 2 and his brother Mohd. Yaseen inherited the tenancy and both became tenants and as notice for termination of tenancy was only given to respondent No. 2 and suit was also filed only against respondent No. 2, hence suit for eviction could not be decreed. For the said proposition, reliance has been placed upon some authorities of this Court. However, afterwards Supreme Court in *Harish Tandon v. Addl. District Magistrate, Allahabad, U.P.* : AIR 1995 SC 676 : 1995 (1) AWC 106 (SC) and *A. C. Juker v. K. P. Mantri* : AIR 2001 SC 2251, has held that after the death of tenant, all of his heirs inherit the tenancy jointly. In case of joint tenancy, notice of termination of tenancy given to one or some of the joint tenants is sufficient. Similarly, suit for eviction can be filed against one or several joint tenants and decree of eviction if passed is binding upon other joint tenants also.

7. Accordingly, the view of the revisional court that suit was bad for non-joinder of Mohd. Yaseen is patently erroneous in law.

8. Writ petition is therefore allowed. Judgment and order passed by the revisional court is set aside in part. Findings regarding rate of rent being 37 paise per month recorded by revisional court are affirmed. However, finding regarding non-maintainability of the suit are set aside. Judgment of the trial court is also modified accordingly.

9. The net result is that suit for eviction stands decreed. However, suit for recovery of arrears of rent stands decreed only @ 37 paise per month.

10. Writ petition is accordingly allowed.

11. However, it is directed that since the date of filing of execution application till actual eviction, tenant shall be liable to pay damages @ Rs. 100 per month. It is further directed that as no one appeared at the time of arguments in this writ petition, hence before proceeding further with the execution application which may be filed by the landlord, executing court shall issue notice to the tenant.

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