

Radha Devi (Smt.) Vs. Additional District Judge and ors.

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Court : Allahabad

Decided On : Oct-29-2004

Reported in : 2005(1)ARC11

Judge : Vikram Nath, J.

Acts : Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21, 21(1), 22 and 24

Appeal No. : C.M.W.P. No. 7357 of 1985

Appellant : Radha Devi (Smt.)

Respondent : Additional District Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : P.K. Singhal, Adv.

Disposition : Petition allowed

Judgement :

Vikram Nath, J.

1. This petition has been filed challenging the order dated 8.5.1985 passed by the Additional District Judge, Rampur in Rent Appeal No. 77 of 1984 Smt. Mithilesh Kumari and five Ors. v. Dharam Pal and Anr. whereby the preliminary objection of

the petitioner regarding the maintainability of the appeal has been rejected and date was fixed for hearing of the appeal on merits.

2. I have heard Sri P.K. Singhal, learned Counsel for the petitioner and the learned Standing Counsel.

3. A counter-affidavit has been filed by Smt. Ramo Devi Gupta, Advocate appearing for the respondent Nos. 2 to 7, however, even in the revised list no one is present to press the counter-affidavit on behalf of the respondent Nos. 2 to 7. Since the same is on record it is being examined.

4. The facts of the case are that application for release under Section 21 (1) (a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act No. 13 of 1972 (in sort the Act), was filed by Smt. Yashoda Devi (mother of the petitioner) for release of the premises in dispute. During the pendency of the release application, Smt. Yashoda Devi died and thereafter the petitioner applied for substitution being her sole heir and legal representative. .

5. Another application was filed by Krishna Murari claiming his right on the basis of the Will. Prescribed Authority, vide order dated 2.8.1984 rejected the Application 43-A filed by Krishna Murari and allowed the Application 18-C of the petitioner for substitution. Against the said order the heirs of Krishna Murari filed Rent Appeal No. 77 of 1989. In the said appeal preliminary objection was raised that an appeal under Section 22 of the Act lies only against an order of revision or refusal to evict under Section 21 of the Act and not against any other order passed in the proceedings. This question was decided by the respondent No. 1 by the impugned order dated 8.5.1985 against the petitioner holding that the appeal was maintainable. The present petition has been filed against the said order.

6. Sri P.K. Singhal, has contended that Section 22 of the Act only envisages an appeal to be filed against an order under Section 21 or Section 24 of the Act. In the present case the order under challenge is relating to the substitution and not finally deciding the application for eviction, therefore, no appeal would lie. In support of his argument Sri Singhal has relied upon two judgments namely in the case of Lalji Tandon v. Union of India, 1976 (2) ALR 216, wherein this Court has

specifically held that an appeal under Section 22 of the Act will lie only against an order of eviction or refusal to evict and not otherwise. In the said case the application for setting aside the ex-parte eviction order has been allowed. The appeal was filed. The High Court held that no appeal would lie against the said order. Another decision in the case of Smt. Ghooran alias Dhooran v. District Judge, Kanpur and Ors., 1982 (1) A.R.C. 797. In this decision also the Court held that an appeal under Section 22 of the Act against an order rejecting application for setting aside the ex-parte eviction order would not lie. The High Court upheld the said decision and held that appeal being a creation of statute no further inference can be drawn relating to any other order being challenged in appeal unless and until specifically provided by the Statute. Since the statute provides an appeal against an order of eviction passed under Section 21 of the Act any other order passed in the proceedings under Section 21 of the Act cannot be challenged in appeal.

7. In the result the writ petition succeeds. The order dated 8.5.1985 passed by the respondent No. 1 (Annexure-4 to the petition) is set aside. The appeal being not maintainable is dismissed. The prescribed authority will proceed to decide the case in accordance with law.

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