

Surendra Kumar Dwivedi, Vs. the Vth Additional District Judge,

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Court : Allahabad

Decided On : Oct-24-2005

Reported in : 2006(2)AWC1318

Judge : S.U. Khan, J.

Appeal No. : Civil Misc. Writ Petition No. 674 of 1986

Appellant : Surendra Kumar Dwivedi, ;mahendra Kumar Dwivedi, ;devendra Kumar Dwivedi, Sons of Late Sri Sunder La

Respondent : The Vth Additional District Judge, ;The Judge Small Causes (Munsif Viith) and Bhani Ram Son of Sri N

Advocate for Def. : Haider Husain and ;Rajendra Prasad Tiwari, Advs. and ;S.C.

Advocate for Pet/Ap. : S.M. Chaturvedi and ;Satish Chandra Srivastava, Advs.

Judgement :

S.U. Khan, J.

1. Respondent No. 3 Bhani Ram filed a suit against Sundar Lal Dwivedi since deceased and survived by the petitioners being SCC suit No. 450 of 1978 on the file of JSCC/Munsiff, Jhansi. In the suit it was stated that defendant was tenant on a room of house No. 130 at the rent of Rs. 15/- per month, he was defaulter in payment of rent and had not paid the rent inspite of notice of demand and

termination of tenancy. The defendant Sundar Lal Dwivedi filed written statement stating therein that initially he was the tenant of the entire house on behalf of custodian evacuee property, that thereafter one Sindhi purchased the said house and on his request defendant vacated half of the house and rent was reduced from Rs. 10/- to Rs. 5/- per month, that thereafter respondent No. 3 Bhani Ram alongwith his brother purchased the house in dispute, that the son of defendant Sundar Lal was in the service of firm of respondent No. 3 Bhani Ram hence Respondent No. 3 persuaded the defendant to vacate the entire portion of house No. 130 in his tenancy occupation and retain only one room without payment of rent. It was further pleaded that defendant agreed to the said proposal and delivered possession of the tenanted portion except one room i.e. the room in dispute in the suit hence neither he was tenant of the said room nor he was liable to pay any rent thereof. It was specifically pleaded by the defendant that when he was permitted to retain one room in lieu of surrender of the remaining tenanted portion, it was agreed that he would not be required to pay any rent. Defendant also pleaded that he did not receive any notice. Tenant also denied the landlordship of respondent No. 3.

2. Trial court/JSCC/Munsiff VIIth Jhansi found that tenant was defaulter since 12.11.1975, that the rate of rent was Rs. 15/ per month and that tenant had also denied the title of the landlord. Trial court also found that defendant was tenant of the disputed room and plaintiff landlord thereof. Trial court therefore decreed the suit for eviction and recovery of rent/damages for use and occupation pendentelite and future at the rate of Rs. 15/- per month. The suit was decided on 9.8.1984.

3. Against judgment and decree dated 9.8.1984 petitioners filed SCC revision No. 115 of 1984. VI th A.D.J., Jhansi through judgment and order dated 14.8.1985 substantially dismissed the revision. However, revisional court modified the decree for recovery of arrears of rent etc. Revisional court awarded the arrears of rent and mesne profit at the rate of Rs. 5/- per month instead of Rs. 15/- per month which had been awarded by the trial court. Revisional court also granted one year's time to vacate. This writ petition is directed against the aforesaid judgment and decree of the trial and judgment and order of the revisional court.

4. Before the revisional court it was seriously contended by the petitioners that plaintiff respondent No. 3 could not prove that he was the owner of the property in dispute or that there was relationship of landlord and tenant in between him and the revisionists. As far as ownership of respondent No. 3 is concerned, petitioners could not question that, as in the written statement of original defendant it had clearly been admitted that the plaintiff alongwith his brother had purchased the house of which accommodation in dispute is a part and as one of the sons of defendant i.e. Mahendra Kumar Dwivedi who is now petitioner No. 2 was in employment of the firm of plaintiff hence on the persuasion of the plaintiff defendant vacated the tenanted accommodation except one room which he was permitted to occupy without payment of any rent. After this admission it was not at all open for the petitioners to question the ownership or landlordship of the plaintiff. Trial court also held that tenants were liable to eviction on the ground of denial of title. However, revisional court in this regard held that as denial of title had taken place after filing of the suit hence in that suit itself decree for eviction could not be granted on the ground of denial of title. According to the revisional court if denial of title had taken place prior to filing of the suit and it had been made a ground of eviction in the plaint then decree on that ground also could be awarded. As far as default is concerned defendant himself admitted that he had not paid any rent. The version of the defendant that he was permitted to retain one room as his son was in employment of the plaintiff (or the firm Manghi Lal Nank Chand of which plaintiff was either proprietor or partner) was not accepted by the courts below. I do not find any error in the findings recorded by the courts below.

5. However, there is one aspect of the matter which requires consideration. Both the courts below in their judgments observed that tenant had raised the plea of non-service of notice. Unfortunately none of the courts below said anything regarding service of notice. In respect of notice of termination of tenancy before filing suit for eviction on any of the grounds mentioned under Section 20(2) of UP. Act No. 13 of 1972 Supreme Court in Shanti Devi Nigam v. M.L. Gupta 2004 (2) A.R.C. 118 has held that such notice is not necessary. However, suit was filed on the ground of default in payment of rent as provided under Section 20(2)(a) of the Act. Under the said provision it is necessary that tenant must have failed to pay the arrears of rent inspite of service of notice of demand. In order to pass the

decree for eviction on the ground of default it is necessary that there must be notice of demand.

6. However, I am not inclined to set aside the impugned judgments on the ground that there is no finding regarding service of notice on the following grounds.

(1) Defendant Sundar Lal himself took the case that one of his sons i.e. Mahendra Kumar was in the employment of the plaintiff and by virtue of the said employment he was permitted to retain the room in dispute. Sundar Lal died during the pendency of the suit and was substituted by his three sons including Mahendra Kumar and his widow who are now petitioners. Mahendra Kumar did not file any other written statement and contested the suit on the written statement filed by his father Sundar Lal. The other petitioners i.e. brothers and mother of Mahendra Kumar also did not file any other written statement and contested the suit on the grounds mentioned in the original written statement. In view of this it becomes the admission of the defendants that tenant was allowed to occupy the building as part of his contract of employment under the landlord. Under Section 20(2)(g) of the Act it is provided that the tenant is liable to eviction and suit for eviction may be instituted on the ground that the tenant was allowed to occupy the building as part of his contract of employment under the landlord and his employment has ceased. After cessation of the employment which, admittedly took place much prior to filing of the suit, tenancy stood determined and no notice of termination of tenancy or of any other kind was necessary before filing suit for eviction. If the version taken in the written statement that accommodation in dispute was given to Mahendra Kumar as part of his contract of employment is taken to be correct, then the only defect in the suit was that Mahendra Kumar was not made defendant in the suit. The said defect stood cured when after the death of original defendant, Mahendra Kumar along with his brothers and mother was substituted as defendant.

(2) Tenant illegally denied the title of the landlord. Even though it could not be a ground for eviction as denial of title took place during pendency of the suit and not prior to that however, this can be a ground to dismiss the writ petition which is a discretionary remedy.

(3) Tenant petitioners clearly denied their liability to pay any rent. This disentitles them to invoke the discretionary remedy of writ jurisdiction. If a party takes an extremely unjust stand then he is not entitled to invoke the extra ordinary writ jurisdiction of the High court even though impugned orders may be erroneous in law.

(4) The rate of rent at which decree has been passed by the revisional court is Rs. 5/- per month. This is actually as well as virtually no rent. Allowing the writ petition would result in extremely unjust position of permitting the tenant to continue to occupy the room in dispute either for no rent or at meager rent of Rs. 5/- per month which is actually no rent.

7. Accordingly, writ petition is dismissed.

Tenants petitioners are granted six months time provided that

(1) Within one month from today they file an undertaking before the JSCC to the effect that on or before the expiry of aforesaid period of six months they will willingly vacate and handover possession of the accommodation in dispute to the landlord-respondent.

(2) Within one month from today entire arrears of rent due till date are deposited by tenant-petitioners before the JSCC for immediate payment to landlord.

(3) For this period of six months which has been granted to the petitioners to vacate they are required to pay Rs. 3,000/- (at the rate of Rs. 500/- per month) as damages for use and occupation. This amount shall also be deposited within one month before the JSCC and shall immediately be paid to the landlord-respondent.

In case of default in compliance with any of these conditions, petitioner shall be evicted through process of court after one month.

8. It is further directed that in case undertaking is not filed or Rs. 3000/- not deposited within one month then tenant petitioners shall be liable to pay damages at the rate of Rs. 2,000/- per month since after one month till the date of actual vacation.

9. Similarly if after filing the aforesaid undertaking and depositing Rs. 3,000/- within one month the accommodation in dispute is not vacated after six months then damages for use and occupation shall be payable at the rate of Rs. 2,000/- per month since after six months till actual vacation.

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