

Ramesh Chandra Vs. Iird Additional District Judge and ors.

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Court : Allahabad

Decided On : Aug-09-2007

Reported in : 2008(1)AWC231

Judge : S.U. Khan, J.

Appellant : Ramesh Chandra

Respondent : Iird Additional District Judge and ors.

Disposition : Petition allowed

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the parties.

2. This is tenant's writ petition arising out of S.C.C. Suit No. 39 of 1985, filed by landlord Arjun Singh-respondent No. 3, in this writ petition against petitioner-the main tenant and respondents No. 4 to 6-the subtenants. Eviction was sought on the ground of default, material alteration and sub-letting. Additional J.S.C.C. Agra, decided all the issues in favour of the tenant and dismissed the suit on 29.7.1997. Against the said judgment and decree, landlord respondent filed civil revision (ought to be S.C.C. Revision) No. 193 of 1999. Iird Additional District Judge, Agra, through judgment and order dated 6.4.2000, allowed the revision and

decreed the suit for eviction only on the ground of sub-letting. In respect of default, both the courts below gave benefit of Section 20 (4) of U. P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, to the tenant as on the first date of hearing the tenant had deposited entire arrears of rent etc. Revisional court permitted the landlord to withdraw the said amount. Rent/damages @ Rs. 600 per month (as against the agreed rent of Rs. 220 per month) were also awarded by the revisional court pendente lite and future till eviction. This writ petition by the chief-tenant is directed against order dated 6.4.2000.

3. Revisional court affirmed the findings of the trial court in respect of benefit of Section 20 (4) of the Act to the tenant as well as in respect of material alteration. Accordingly, the only question to be decided in this writ petition is that of sub-letting.

4. Sub-letting is admitted to the petitioner-chief-tenant, however his case is that under the written agreement sub-tenancy was permitted.

5. The tenancy in between the ancestors of the petitioner-chief-tenant and landlord respondent is continuing since before 1958. In the year 1958, Rameshwar Nath, advocate, was appointed as receiver over the property of the then landlord owner including property in dispute. On 30.5.1958, receiver entered into an agreement of tenancy with the ancestors of the chief-tenant, i.e., M/s. Babulal Gauri Shanker, true copy of the said agreement is Annexure-1 to the writ petition. In the agreement, it is mentioned that by virtue of order dated 26.10.1957, passed by the Civil Judge and with the consent of all the parties, who are joint owners of the premises, the said agreement was being executed by the receiver on behalf of the owners-landlords. In the said agreement, it was mentioned that tenants had made constructions over the premises from their own money and cost of the said construction amounting to Rs. 6,000 would be deducted from the monthly rent, which was agreed to be Rs. 100 per month. It was also agreed that at the time of eviction, tenants would not be entitled to remove any of the constructions made by them. It was also mentioned that tenants would be entitled to make any further addition and construction in the tenanted premises. Under Clause 6, it was specifically provided that tenants should not be entitled to sub-let the premises to

any one else.

6. Thereafter, on 9.11.1973, another agreement took place in between Bihari Lal father of plaintiff, respondent No. 3, Arjun Singh and Ramesh Chandra petitioner tenant in chief. When second agreement of 1973 was executed, receiver was no more there over the property in dispute. In the said agreement, it was mentioned that since time of ancestors of Behari Lal, the ancestors of Ramesh Chandra were continuing as tenants of the property in question and that in between the ancestors of both the parties, it was agreed that the tenants could induct any partner in their business or could sub-let the tenanted property or part thereof and that at the time of eviction, tenant would handover the constructions made by him after receiving the market value and tenant would vacate alongwith sub-tenants. Thereafter, it was mentioned that ancestors of both the parties had left for their heavenly abode, however the conditions agreed between them, which were mentioned in the earlier part of the said agreement were acceptable to both the parties and none had any objection to the said conditions. It was further agreed that rent would be enhanced to Rs. 220 per month w.e.f. 14.5.1973, it was also agreed that landlord would be entitled to evict the tenant only on the ground of default in payment of rent and on no other ground.

7. Plaintiff respondent No. 3-Arjun Singh asserted that in the year 1970, a family partition had taken place and in the said partition property in dispute had fallen in his share, hence his father had no authority to execute the agreement of 9.11.1973. The chief-tenant petitioner asserted that partition took place in 1974. The revisional court did not decide this controversy. Revisional court held that even if version of the tenant petitioner regarding family partition having taken place in the year 1974 was accepted still the agreement of 1973 could not be treated to be binding upon the plaintiff after family partition in 1974. I do not agree with this finding. This finding is erroneous in law. If before family partition any agreement has taken place in between the family and a third party then after partition, the said agreement is binding upon that member of the family in whose share property in question falls after partition.

8. Revisional court further held that sub-tenancy was admitted by the chief-tenant-petitioner, who stated that he had sub-let, after 1974, different portions of property in dispute. According to the revisional court, chief-tenant-petitioner was liable to eviction on the ground of sub-letting as it was without the consent of title landlord and without the consent of the District Magistrate as required by Section 25 of the Act. Revisional court gave much importance to the absence of permission of p. M.

9. I have already held that agreement of 1973 was binding upon the plaintiff. Under the said agreement, sub-letting was expressly permitted (even if it is assumed that prior to the agreement of 1973 there was no permission of sub-letting still the recital of the said fact in the said agreement and further recital that the said term was agreeable to both the parties gave fresh right of creating sub-tenancy.)

10. In view of the above, the only question to be decided is regarding absence of permission of D. M. Learned Counsel for the chief-tenant-petitioner has argued that agreement of sub-tenancy entered into in between the landlord and tenant is binding upon the parties and sub-tenancy if created without the permission of D. M. will be valid as far as the landlord and chief tenant are concerned and binding upon them. According to the learned Counsel, the only effect of absence of permission of D. M. would be that D. M. or his delegatee would be entitled to treat the building vacant, however, landlord cannot seek eviction of the chief-tenant on the ground of sub-letting. In this regard, reliance has been placed upon *Nutan Kumar v. Ind Additional District Judge* : [2002]SUPP2SCR686 . In the said authority, the Supreme Court held that agreement of tenancy is binding in between the landlord and tenant, however, D. M. can ignore that and allot the building to a third person. In my opinion, the principle laid down in the Supreme Court Authority of *Nutan Kumar* can very well be applied to the agreement in between the landlord and tenant permitting the tenant to sub-let.

11. Under Section 25 (2) of the Act, it is provided that tenant may with the permission in writing of the landlord and of the D. M. sub-let a part of the building. In the instant case, written consent of the landlord was there. However, admittedly no permission of the D. M. was sought.

12. Accordingly, the finding of the revisional court that tenant was liable to eviction on the ground of subletting is erroneous in law and are quashed hereby.

13. I have held in *Khursheeda v. A.D.J.* 2004 12) ARC 64 : 2004 (1) AWC 851, that while granting relief against eviction to the tenant in respect of building covered by Rent Control Act, writ court is empowered to enhance the rent to a reasonable extent. In the instant case, tenanted accommodation is quite big in area and situate in Agra, which is a very important city of U. P. Chief tenant has sub-let different portions of the property in dispute on high rent. In this scenario, rent Rs. 220 per month is virtually as well as actually no rent. It is rather ridiculous. Accordingly, it is directed that w.e.f. September, 2007, chief-tenant shall pay rent to the landlord @ Rs. 5,000 per month including water tax etc. No further amount shall be payable by the tenant. However, it is clarified that in spite of rent being more than Rs. 2,000 per month U. P. Rent Control Act should continue to apply to the building in dispute. Supreme Court in *Lachoo Mal v. Radhey Shyam* : [1971]3SCR693 , has held that benefit of clause of exemption from operation of Rent Control Act can be waived by the landlord. Similarly, the Court while enhancing the rent to more than Rs. 2,000 per month can waive the application of exemption clause provided under Section 2(1) (g) of the Act.

14. Writ petition is accordingly allowed as above.