

Mahesh Chandra Vs. Additional District Judge and ors.

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Court : Allahabad

Decided On : Aug-06-2007

Reported in : 2008(1)AWC636

Judge : Rakesh Tiwari, J.

Appellant : Mahesh Chandra

Respondent : Additional District Judge and ors.

Disposition : Petition dismissed

Judgement :

Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.
2. This writ petition is directed against the judgment and decree dated 5.5.2007 in SCC Revision No. 7 of 2004, Mahesh Chandra v. Dinesh Kumar Porwal and Anr., passed by Additional District Judge, Fast Track Court No. 1, Etawah, as well as the judgment and decree dated 6.5.2004 in S.C.C. Suit No. 19 of 1994, Dinesh Kumar Porwal v. Mahesh Chandra, passed by the Civil Judge (Junior Division), Etawah.
3. Briefly stated the facts of the case are that respondent No. 3, is landlord of the shop in dispute in which the petitioner claims to be the tenant at the rate of Rs.

150 per month. The shop in dispute is said to have been purchased by respondent No. 3 from erstwhile landlord Laxman Singh son of Munai Singh by registered sale-deed dated 9.3.1994.

4. Landlord respondent No. 3, filed S.C.C. Suit No. 19 of 1994, Dinesh Kumar v. Mahesh Chandra, in the Court of Civil Judge (Junior Division), Etawah, on the ground that the petitioner had made default in payment of rent/damages for use and occupation of the tenement. It was averred in the plaint that a notice was sent to the petitioner on 13.7.1994 but no rent was paid by the petitioner inspite of service of notice under Section 20 of U. P. Act No. 13 of 1972.

5. The petitioner tenant contested the case by filing his written statement inter alia denying any service of notice as well as default in payment of rent. The case of the petitioner was that respondent No. 3, had neither given any notice/ information in respect of purchase of the shop in dispute nor had given any notice under Section 20 (2) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, read with Section 106 of the Transfer of Property Act, for termination of his tenancy from the said shop.

6. The petitioner claims that he has deposited all the admitted rent due and cost of the suit on the first date of hearing claiming the benefit of Section 20 (4) of U. P. Act No. 13 of 1972 and that it is also alleged that the petitioner has continued to pay further rent as per the provisions of Order XV, Rule 5 of the Code of Civil Procedure.

7. The contention of the counsel for the petitioner is that as soon as respondent No. 3, became aware that he would not succeed in view of the oral evidence as well as on basis of acknowledgment due in respect of service of the notice filed by him in the court below, he moved an amendment application in the suit for adding paragraph 4 in the plaint for setting up the claim of sub-tenancy. The amendment sought by the petitioner in paragraph 4 is as under:

4v- fnukad 2-3-1998 dks oknh dks ;g Hkh irk pyk gS fd izfroknh la0 1 us fookfnr nqdku es izfroknh la0 2 dks f[kykQ fdjk;snkjh voS/k o vukf/kdkj s es dkjksckj ljkZQk dk dj jgs gS vkSj nksusk gh izfroknhx.k nqdku ij dkfct gS bl vk/kkj ij Hkh izfroknhx.k

dh cs[n]kyh fookf[nr nqdku ls pkgh tkrh gS] izfroknhx.k }kjk tks mijksDr cstk dk;Z fd;k x;k] mles oknh dh dksbZ lgefr ugh jgh A

8. It is submitted by the counsel for the petitioner that it is the admitted case of the landlord that respondent No. 4 was sitting in the shop in dispute with the petitioner since before the purchase of shop by him and this fact was not disclosed in the so called notice of termination, hence it will be deemed to have been waived in the eyes of law and cannot be raised again by way of amendment.

9. It is urged that except the oral testimony of landlord there is no other independent witness or document from which the factum of sub-tenancy could be proved.

10. The court below by order dated 6.5.2004 dismissed the suit of the landlord with regard to default in payment of rent but decreed the suit on ground of sub-tenancy.

11. The petitioner challenged the judgment and decree of the trial court dated 6.5.2004 by means of Civil Revision No. 7 of 2004 in the Court of District Judge, Etawah on the ground that the findings of the trial court were perverse and without application of mind. However, the revisional court also confirmed the findings of the trial court by order dated 5.5.2007.

12. The counsel for the petitioner has vehemently urged that the revisional court has failed to consider that no notice regarding sub-tenancy was given to the petitioner hence subsequent pleading of the petitioner was not maintainable and his tenancy cannot be terminated on that basis without service of notice of termination of tenancy.

13. It is stated that admittedly in this case no such notice was ever served upon the petitioner by respondent No. 3. hence suit regarding sub-tenancy was not maintainable.

It is also submitted that the document on the basis of which the courts below have given findings that the petitioner had sub-let the shop in dispute to respondent No. 4, Sodho Singh, son of Khyali Ram was not proved by any evidence and cannot be read in evidence, hence the courts below have committed manifest error and

illegality in believing the document while contradictory evidence was available on record by which it is proved that the shop in dispute is in possession of the petitioner and he is wholly carrying on his business therein.

14. On the basis of the pleadings of the parties the court below framed following 3 issues :

1- D;k izfroknh ij uksfVI dh rkehy i;kZlr gS A

2- D;k izfroknh us oknh dks fdjk;k nsus esa fMQk YV fd;k gS A

3- D;k izfroknh la0 2 izfroknh la0 1 dk f'kdeh fdjk;snkj gS A

15. The court below has found the only reason given by the witness for claiming the notice as 'farji' was because as according to him it was not served on him and no other reason has been given for discarding the notice. It has further found that the notice dated 13.7.2004 was sent by registered post A. D. at the address of Mahesh Chandra Saraf son of Sri Krishna Bihari r/o Nebilganj Bharthana, District Etawah, which was returned by the postman with the remark that he was avoiding to take notice. The receipt alongwith acknowledgment due of sending the aforesaid notice by registered post was also on the record (paper Nos. 7 Ga and 8 Ga). The court below has further found that another notice dated 30.3.94 was filed by which the petitioner has been informed about the purchase of the shop in dispute by the landlord which has been orally denied by the petitioner. The court below relied upon the case of Ram Nath and Ors. v. Angan 1984 ARC 290, in which it was held that if the notice sent at the correct address of the addressee has been received by refusal it would be presumed that it has been served upon the addressee and in that circumstances it was not necessary to examine the postman. The court below further relied upon the case of D. R. Qureshi u. Xth Additional District Judge, Meerut 1994 (2) ARC 467, in this regard and held that in the facts and circumstances of the case the notice shall be deemed to have been served upon the petitioner and answered issue No. 1 accordingly.

16. As regards issue No. 1 after noticing Section 20 (4) of U.P. Act No. ,3 of 1972, the court below found that there was evidence regarding payment of Rs. 500

towards rent by the subtenant Sadho Singh to the petitioner tenant, hence consideration of subtenancy was proved and that respondent No. 4, Sadho Singh is real maternal uncle of the petitioner tenant and no owner of the firm and not a Munim or servant or a person idly sitting in the shop as alleged in the varied stand taken by the tenant.

17. The court below relied upon paper No. 50-Ga, i.e., certificate issued by the Nagar Palika Parishad, Bharthana and has found that the proprietorship of Yadav Aabhushan 13handar has been shown of Sadho Singh and Mahesh Chandra, i.e., the petitioner and respondent No. 4 from which it is proved that both of them were running the shop in dispute as proprietor.

18. The relevant findings of the court below in this regard are as under:

oknh dh vksj ls i=koyh ij dkxt la0 5x uxj ikfydk ifj'kn HkjFkuk dk O;kikj @ vkthodk dj izek.k i= izLrqr fd;k gS ftles ;kno vkHkw'k.k Hk.M+kj ds izskijkbVj lk/kks flag egs'k pUnz ;kno n'kkZ;s x;s gS ftls izrhr gksrk fd mDr nqdku esa lk/kks flag ,oa egs'k pUnz nksuks dkjksckj pyk jgs gS ftldh iqf'V oknh ,oa mlds lk{k ds lk{; ls Hkh gksrh gS A blds vrfjDr izfrokn la0 1 izfrokn la0 2 dks viuk ukSdj crkrk gS vksj nqdku es lk>hnkj gksuk Lohdkj ugh djrk gS tcfv viuh izfrijh{kk esa lk/kks flag dks viuk lxx ekek gksuk dgrk gS lk/kks flag dks ukSdj dh gSfl;r ls nqdku ij cSBuk izfrokn vius lk{; ls fl) ugh dj ik;k gS ,DV 13 lu~ 1972 esa /kkjk 25 ds vUrxZr f'kdeh fdjk;snkj viuh fdjk;snkj ds v/khu lEiw.kZ Hkou dks f'kdeh fdjk;s ij ugh mBk;sxk A 2 fdjk;snkj Hkou dk dksbZ Hkkx edkunkj rFkk ftyk eftLVsV dh fof/kor vuqKk ls f'kdeh fdjk;s ij mBk ldrk gS A&&&&

izLrqr ekeys es izfrokn la0 1 izfrokn la0 2 dks viuh fdjk;snkj dh nqdku ij ukSdj dh gSfl;r ls cSBuk rks Lohdkj djrk gS fdUrq izLrqr lk{; ls mldk ukSdj gksuk fl) ugh dj ik;k gS dgh ij mls viuk lxx ekek crkrk gS rks dgh ij 500 :0] 1]000 :0 osru nsuk crkrk gS blds vykok mlds }kk osru Hkqxrku dk dksbZ ys[kk ;k bUnzkt dks izLrqr ugh fd;k x;k foijhr blds oknh dh vksj ls dk;kZy; uxjikfydk ifj'kn HkjFkuk dh IR; izfrfyfi esa izfrokn lk/kks flag ,oa egs'k pUnz ;kno dks vkHkw'k.k Hk.M+kj dk izskijkbVj n'kkZ;k x;k gS A ftlds [k.M+u esa izfrokn dh vksj ls izLrqr ckV eki IR;kiu izek.ki= O;olk; dj jlhn ,oa E;wfuflyfV ds ykblsUI esa Jh egs'k dks mDr nqdku dk Lokeh n'kk;kZ x;k gS ftles ykbZlsUI 1980&81 dk gS A rFkk ckV eki IR;kiu izek.ki=ksa es

rFkk uxjikfydk dh jln esa dgh Hkh izfroknh la0 1 dh QeZ ;kno vkHkw'k.k Hk.M+kj vafdr ugha gS u gh mles fdlh dh izksijkbVjf'ki fn[kkbZ x;h gS fti dkj.k mDr vfHkys[k fdl nqdku ls IEcfU/kr gS ;g Li'V ugh gksrk gS A

19. The court below also relied upon the cases of *Guru Dayal Khanna and Ors. v. Smt. Malli Devi* 1993 ALJ 181, *Harish Tandon v. Additional District Magistrate, Allahabad and Ors.* 1995 (1) ARC 220 : 1995 (1) AWC 106 (SCI and *Shahjade and Ors. v. IXth Additional District Judge, Bareilly*, in which it was held that if the accommodation in dispute is in possession of a person who is not tenant of the aforesaid accommodation in dispute it would be presumed that he is a sub tenant.

20. Considering the facts and circumstances of the case and the aforesaid case laws the court below decreed the suit in favour of the landlord vide order dated 6.5.2004 and directed the petitioner tenant to handover vacant and peaceful possession of the premises in suit to the landlord within a period of two months from today and it was further directed that the petitioner tenant would pay rent at the rate of Rs. 150 per month of the disputed shop till the date of termination of tenancy and would also pay damages at the rate of Rs. 150 per month for use and occupation from the date of possession till the date of termination of tenancy.

21. The revisional court confirming the findings of the trial court has held that the landlord has not been able to prove his case on the question of default in payment of rent. As regards question of sub-tenancy it has been found by cogent evidence adduced before the court below that the petitioner had inducted respondent No. 4 Sadho Singh his real maternal uncle as sub-tenant and both of them were in possession of the shop in dispute and were jointly doing the business in the name and style of Yadav Aabhushan Bhandar.

22. The revisional court believed the paper No. 50-Ga and came to the conclusion that the court below has not committed any illegality in holding that respondent No. 4 Sadho Singh was a sub-tenant.

23. Both the courts below have given concurrent findings of facts regarding sub-tenancy. Even before this Court the counsel for the petitioner has not been able to make out a case for discarding the public document paper No. 50-Ga and failed to

establish that respondent No. 4 was not a sub-tenant. From the records it is apparent that respondent No. 4 was a sub-tenant for consideration. He not only paid rent of the shop to the petitioner but also was established to be joint proprietor of the shop with petitioner in possession thereof and doing business therein. The varied stand taken by the petitioner that respondent No. 4, Sadho Singh, was only sitting in the shop in dispute and was his servant and Munim etc. has therefore, been rightly disbelieved by the court below.

24. For the reasons stated above, the writ petition is dismissed. No order as to costs.

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