

Mohd. Ibrahim Alias Munna Vs. Mohd. Ahmed

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Court : Allahabad

Decided On : Aug-23-2006

Reported in : 2007(1)AWC368

Judge : Prakash Krishna, J.

Appellant : Mohd. Ibrahim Alias Munna

Respondent : Mohd. Ahmed

Disposition : Petition dismissed

Judgement :

Prakash Krishna, J.

1. This revision is under Section 25 of the Provincial Small Causes Court Act, at the instance of the tenant of a shop situate at MainBazar Qasba Amariya, Pergana Jahanabad, Tehsil and district Pilibhit, as described at the foot of the plaint on a monthly rent of Rs. 500.

2. The plaintiff opposite party, hereinafter described as 'landlord' instituted a S.C.C. Suit No. 4 of 1998 against the present applicant hereinafter described as tenant on the pleas inter alia that the disputed shop was let out on a monthly rent of Rs. 500 and has failed to pay the rent since April, 1995, in spite of the repeated demand, the tenancy has been determined by means of a registered notice dated

31.3.1998, which was served by refusal, determining the arrears of rent since April, 1995 and asking the tenant to vacate the disputed shop after expiry of 30 days from the date of receipt of the notice and hand over its vacant possession to the landlord alongwith the arrears of rent. It was further pleaded that a sum of Rs. 18,850 is due towards the arrears of rent and the provisions of U.P. Act No. 13 of 1972 are not applicable.

3. The suit was contested on the pleas inter alia that there has been a change of status of relationship of landlord and tenant between the parties and as a result of change of status the said relationship of landlord and tenant is extinguished since April, 1995. Neither the landlord is entitled to recover any rent after 1.4.1995, nor the tenant is liable to pay any rent thereafter.

4. The parties led evidence in support of their respective cases. The court below framed eight points for determination in the suit. Under issue No. 1 it was found that the suit was cognizable by the Judge Small Causes Court as it was for the recovery of arrears of rent and for ejectment. Under issue No. 2 it was found that admittedly there is no sale deed in favour of the defendant tenant and as such the question of title is not at all involved. Under issue No. 3 it was found that Section 53A of Transfer of Property Act does not bar the suit. Under issue No. 4 it was held that the present suit is not cognizable by the Revenue Courts and it rejected the contention of the tenant that Section 331 of U.P.Z.A. and L.R. Act bars such suit. It was found under issue Nos. 5 and 7 that jural relationship of landlord and tenant between the parties continues to exist and it has not come to an end in view of the document dated 1.4.1995, allegedly executed on behalf of the landlord. The service of notice by refusal was found to be sufficient. A presumption of valid service of notice determining the tenancy was drawn. The suit was decreed for recovery of Rs. 18,000 and also for ejectment of the defendant tenant with damages at the rate of Rs. 500 per month. Feeling aggrieved against the aforesaid judgment and decree the present revision has been filed.

5. Heard Shri Tej Pal, advocate alongwith Sukhendu Pal Singh, learned Counsel for the tenant (applicant). The learned Counsel for the tenant has assailed findings recorded by the court below, under the issue No. 4, 5 and 7 only. No attempt was

made to challenge the findings recorded by the trial court on other issues/point for determination. Therefore, the findings recorded by the trial court on other issues stand confirmed and need no consideration by this Court.

6. It was submitted by the learned Counsel for the tenant that the present suit was not maintainable before the Judge Small Causes Court in view of Sections 143 and 164 read with the Section 331 of U.P.Z.A and L.R. Act. Elaborating the argument he submitted that on 1.4.1995, Mohd. Shabbir, brother of the landlord, sold away the disputed shop to him through an unregistered document and as such the status of the tenant applicant has been converted as that of owner and therefore the court below committed illegality in decreeing the suit for ejectment as also for recovery of arrears of rent and damages etc. in contra, the learned Counsel for the landlord submitted that the aforesaid Sections of U.P.Z.A. and L.R. Act have no application to the controversy involved in the case in hands. The alleged document dated 1.4.1995. is an unregistered document and no reliance can be placed upon it in view of Section 49 of the Registration Act. Elaborating the argument he submitted that even if there is no declaration as required under Section 143 of the U.P.Z.A. and L.R. Act, a tenant of a shop or a building cannot gain any advantage of non-declaration. Section 164 of U.P.Z.A. and L.R. Act deals with transfer by a bhumidhar to be deemed a sale--'any transfer of any holding or part thereof made by a bhumidhar by which possession is transferred to the transferee.... It was submitted that as the tenant was already in possession of the disputed shop and there has been no transfer of possession of any holding by landlord, Section 164 of U.P.Z.A. and L.R. Act does not apply to the facts of the present case.

7. in order to appreciate rival submission few decisions of Apex Court which throw beacon light on the issues involved need to be noted. The Apex Court has examined the said controversy with reference to the Entries in three legislative lists of Seventh Schedule of the Constitution of India.

8. Entry 18 of List II of 7th Schedule of the Constitution reads as follows:

18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and collection of rents; transfer and alienation of agricultural

land; land improvement and agricultural loans; colonization.

9. There was a conflict of opinion among various High Courts as to whether 'land' includes 'building'. Allahabad, Bombay and Nagpur High Courts were of the opinion that 'land' includes 'houses and buildings'. The Rajasthan and Patna High Courts, on the other hand held that the 'land' cannot be, though widely interpreted. The matter was examined in depth by the Apex Court in the case of *Indu Bhushan v. Rama Sundari* : [1970]1SCR443 , and has held that State Legislatures are empowered to legislate in respect of landlord and tenant building in Entries 6, 7 and 17 of List III and not in Entry of List II, because the expression 'land tenures' in Entry 18 of List would not cover tenancy buildings or house accommodations. The aforesaid judgment has been followed in a subsequent judgment by the Apex Court in *Account and Secretarial Services Pvt. Ltd. v. Union of India* AIR 1998 SC 1708. Hon'ble Mr. Justice Sabya Sachi Mukerjee while delivering a separate concurring judgment has observed as follows, in para 5 of the report:

Indu Bhushan Bose v. Rama Sundari Devi : [1970]1SCR443 , is a decision of five learned Judges of this Court affirming the Calcutta view which held that the legislation in question in that case was to be found in Entries 6, 7 and 13 of List III of the 7th Schedule of the Constitution and neither in Entry 18 of II Schedule nor in Entry 3 of II Schedule of the Constitution. It rejected the Bombay view expressed in *A.C. Patel v. Vishwanath Chada* : AIR1954 Bom204 , Respectfully, it has to be taken that the legislation in question must be understood in its pith and substance and so understood the Act in question in the instant case, is in respect of transfer of property other than agricultural land and, as such, falls in Entry 6 of List III of the 7th Schedule to the Constitution. It is clear from the said decision and the subsequent decision reaffirming the same view in *V. Dhanapal Chettiar v. Yesodai Ammal* : [1980]1SCR334 , that the subject matter of housing accommodation and control falls within the purview of concurrent list. In that view of the matter, it cannot in my opinion, be canvassed that the 1971 legislation in question was beyond the competence of the Legislature.

10. It is, therefore, reasonable to conclude that U.P.Z.A. and L.R. Act and U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, operate in

different fields. The U.P.Z.A. and L.R. Act has been enacted by the State Legislature in exercise of power conferred on it by virtue of Entry 18 of the State List of 7th Schedule of Constitution of India. The U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, has been enacted by the State Legislature under the concurrent List of the 7th Schedule of the Constitution of India in exercise of field of legislation as provided for vide Entries 6,7 and 13 of List III. The U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, received the assent of President of India on 2.3.1972, which came in to force from 15.7.1972. Keeping in mind the above the scope or field of legislation of aforesaid two enactments, it is crystal clear that the questions relating to the tenancy of a building shall be governed by the provisions of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act. 1972. the laws relating to tenancy of agricultural land being enacted under the Entry No. 18 of State List will have no applicability to the tenancy of building or house or an accommodation. The controversy having been set at rest by the aforesaid authoritative pronouncements of the Apex Court, it is not very necessary to deal with the cases relied upon by the learned Counsel for the tenant. But at the same time it would not be fair for them if the judgment does not notice the cases relied in support of their legal submissions.

11. Great emphasis was Laid by Shri Tej Pal, advocate, that there being no declaration as required under Section 143 of the U.P.Z.A. and L.R. Act, the suit in the court below was not maintainable. The said argument is wholly misconceived and even does not arise out of the pleadings of the parties. To consider the said plea the necessary fact that no such permission was obtained by a tenure holder has necessarily to be pleaded in the pleadings. The pleading of the defendant tenant is totally silent on this point. The said plea is conspicuously absent in the written statement. Be that as it may the said plea does not appear to have been raised or pressed before the trial Judge as the same does not find place even in the judgment. He advanced the said plea on the assumption that there was no declaration as required under Section 143 of the U.P.Z.A. and L.R. Act, and thus the suit is barred. Without laying the factual foundation in pleadings and evidence, the said point cannot be permitted to be raised for the first time in revision, otherwise also the learned Counsel could not point out the consequences, if any,

of not obtaining the declaration as required under Section 143 of the U.P.Z.A. and L.R. Act, which may effect the relationship of landlord and tenant between the parties. The next section relied upon by him is Section 164 of U.P.Z.A. and L.R. Act. On a plainreading of the aforesaid section it is clear that it has no application whatsoever. For the sake of convenience the said section is reproduced below:

164. Transfer with possession by a bhumidhar to be deemed a sale.--'Any transfer of any holding or part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money advanced or to be advanced by way of loan, and existing or future debt or the performance of an engagement which may give rise to a pecuniary liability, shall, notwithstanding anything contained in the document of transfer or any law for the time being in force, be deemed at all times and for all purposes to be a sale to the transferee and to every such sale the provisions of Sections 154 and 163 shall apply.

12. The crux of the argument is that since by means of the document dated 1.4.1995, the possession has been transferred to the tenant in violation of Section 164 of U.P.Z.A. and L.R. Act, therefore, the said transfer would be deemed as a 'sale' within the meaning of Section 164 of U.P.Z.A. and L.R. Act and the suit for possession would lie under Section 209 of the U.P.Z.A. and L.R. Act and the Revenue Court would have exclusive jurisdiction to entertain the said suit in view of Section 331 of the aforesaid Act which bars the cognizance of such suits by other Courts. The whole argument is in the nature of rigmarole and tangent to the real point presently involved in the revision and proceeds on the footing that 'land' in Entry 18 would also include 'houses and buildings'.

13. It is admitted case of the parties that the defendant tenant came in to possession of the disputed shop as a tenant and had been continuing as tenant of the shop in dispute for the last more than 12 years and had been paying rent regularly. It is also not in dispute that the rent has been paid by the defendant tenant for the period up to March, 1995. A dispute has been sought to be raised in the written statement vide paragraphs 11 and 12 that the shop in question being on an agricultural plot No. 288, the said plot continued to be recorded in the

Collector's Register as 'Revenue paying land' and is situate in rural area, the suit is barred by Section 331 of U.P.Z.A. and L.R. Act. As demonstrated above in view of the judgment of the Apex Court in the case of in du Bhushan and Ors. (supra) the rights and liabilities of the parties with regard to the building under tenancy shall be governed by the U.P. Act No. 13 of 1972 and not by the U.P.Z.A. and L.R. Act. in this revision the learned Counsel for the tenant has tried to give a new dimension to the said controversy with the help of Sections 143 and 164 of the U.P.Z.A. and L.R. Act without realizing the basic difference that the said provisions are applicable with respect to an agricultural holdings of a tenure holder namely bhumidhar, sirdar or asami. Neither the said provisions nor the U.P.Z.A. and L.R. Act has any application with regard to the dispute relating to landlord and tenant relationship. in view of the above discussion, the argument that the suit before Judge Small Causes Court was not maintainable and should have been filed before the revenue court, i.e., S.D.M. or Collector is wholly misconceived and cannot be accepted.

14. Repeatedly during the course of argument, document dated 1.4.1995, filed as Annexure-6 to the affidavit was relied upon by the learned Counsel for the tenant applicant in support of his submission that there has been a change of jural relationship of landlord and tenant. It was also submitted that the court below has exceeded in its jurisdiction in recording a finding that the said document is a forged and fictitious document by adopting a task of handwriting expert and comparing the signatures on the documents with the admitted signature of Shabbir Ahmed. He submitted that it would be hazardous if a Court assumes role of handwriting expert and reaches to a conclusion different than the report of the handwriting expert on the record. For this broad proposition, strong reliance was placed by him on a decision of the Apex Court in State of Maharashtra v. Sukhdev Singh AIR 1992 SC 211, which on a close reading, runs counter to his submission. It says that it would not be fair to approach the opinion evidence with suspicion. Correct approach would be to weigh the reasons on which it is based. The quality of expert opinion would depend on the soundness of the reasons on which it is founded. The Court cannot afford to overlook the facts that the science of identification of handwriting is an imperfect and frail one as compared to the science of identification of finger print. No hard and fast rule can be Laid down in this regard

and the Court has to decide in each case on its own merits what weight it should attach to the opinion of the expert. In this view of the matter, broad argument that the report of the handwriting expert should be treated as sacrosanct cannot be accepted. However, the fate of the case does not depend upon it even if for the sake of argument it is accepted that the said document dated 1.4.1995 was executed, as stated by the tenant, by Shabbir Ahmed. The said document indisputably has not been executed by or on behalf of the plaintiff landlord who is the owner of the shop in question. The fact that Shabbir Ahmed is the brother of Mohd. Ahmed, the plaintiff landlord who is the owner of the disputed property will not make any difference. The execution of the document by Shabbir Ahmed on his own accord in respect of the disputed property being totally unauthorized act, will not confer any right, title or interest on the tenant. Moreover, the said document being an unregistered document cannot be looked in to in evidence in view of Section 49 of the Registration Act, as rightly pointed by Shri K.K. Arora, advocate.

15. Apart from the above, the said document is titled as Iqarnama meaning thereby it is an agreement to sell, which requires registration in the State of U.P. There is no evidence worth the name on record that the tenant offered or paid a sum of Rs. 20,000 representing the balance amount under the deed in question. The said document has been treated as an agreement to sell even by the tenant in his own pleadings vide para 12 and more specifically in para 13 of the written statement. In other words, when the tenant treated the document as an agreement to sell, he cannot urge that the document is a sale deed. It is an acknowledged legal position that 'agreement to sell' and 'sale' are two different and distinct things, vide Section 54 of the Transfer of Property Act. It would not in any manner affect the jural relationship of landlord and tenant as existed between the parties prior to the 1.4.1995.

16. It is difficult to find any application even remotely of *Gangeshwar Ltd. v. State of U. P.* 1996 RD 5: 1996 (1) AWC 7 (SC); *Deoki Nandan v. Suraj Pal* 1996 RD 70 and *Chandrika Misir v. Bhai Lal* 1973 RD 366, wherein the Apex Court has laid down that the jurisdiction of civil court to decide question of title of land is barred. By no stretch of imagination it can be said that the question relating to title of land is involved in the present case.

17. in view of the above discussion there is no merit in the revision. The learned Counsel for the tenant did not press any other point in support of the revision. The revision is dismissed summarily.

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