

Rajendra Kumar Agarwal and ors. Vs. Xith A.D.J. and ors.

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Court : Allahabad

Decided On : Aug-31-2006

Reported in : 2007(1)AWC390

Judge : Sanjay Misra, J.

Appellant : Rajendra Kumar Agarwal and ors.

Respondent : Xith A.D.J. and ors.

Advocate for Pet/Ap. : Sri. Sharad Malviya

Disposition : Petition dismissed

Judgement :

Sanjay Misra, J.

1. Heard Sri S.N. Verma, learned senior advocate assisted by Sri Sharad Malviya learned Counsel for the petitioners and Sri P. C. Jain, learned Counsel appearing on behalf of the respondents No. 3 to 10. The respondents No. 11 to 19 are alleged to be proforma respondents and therefore, notices need not be sent to them. With the consent of the learned Counsel for the parties, this writ petition is being decided at this stage itself.

2. The petitioners who are tenants seek quashing of the order dated 1.9.1998, passed by the Prescribed Authority/Civil Judge, Agra and the judgment and order

dated 14.8.2006, passed by the Additional District Judge, Agra, whereby the application made by the landlord under Section 21(1) (a) of U. P. Urban Buildings (Regulation of Letting, Rent and Eviction Act), 1972 (hereinafter referred to as the U. P. Act No. 13 of 1972) has been allowed. Facts of the case as brought forward are that Smt. Vidyawati Devi was owner of the property bearing No. 6/23 New situate in Gali Barah Bhai Belanganj, Agra. The said property was leased out to Sri Gopi Nath predecessor in interest of the petitioners and proforma respondents by means of a lease deed dated 14.4.1943 with effect from 1.2.1940 for a period of 30 years. There is no clause for renewal in the lease deed. Sri Gopi Nath died in the year 1945. The lease expired on 31.1.1970. The owner namely Smt. Vidyawati Devi sent two registered notices dated 9.3.1970 and 20.3.1970, requiring the respondent Nos. 3 to 10 to hand over vacant possession of the property. It is the case of the petitioners that neither any rent was demanded from them nor they paid any rent to the said Smt. Vidyawati Devi after expiry of the lease period. Smt. Vidyawati Devi is alleged to have executed a sale deed dated 15.6.1982 in favour of respondents Nos. 3 to 10 wherein possession of the petitioners was recorded. The respondent Nos. 3 to 10 filed a Suit No. 110/1988 against petitioners for their eviction and arrears of rent. In the aforesaid suit various pleas were taken by the petitioners to the effect that since after the expiry of the lease on 31.1.1970, the erstwhile owner of the property had not instituted any proceedings for eviction of the petitioners for more than 12 years and thus by virtue of provisions of Section 27 and Article 67 of the Indian Limitation Act, adverse possession of the petitioners had ripened and erstwhile owner Smt. Vidyawati Devi had no title left with her and hence the sale deed dated 15.6.1982, was executed without her having any right or title. The suit was contested by the predecessor in interest of the petitioners who deposited the amount as required for claiming benefit of Section 20 (4) of U. P. Act No. 13 of 1972. The petitioners filed two applications, one under Order VII, Rule 11, Civil Procedure Code and another application to the effect that suit was time barred. Both the applications were dismissed by the Judge, Small Causes Court and the revisions filed against the aforesaid orders was also dismissed. The petitioners have filed Civil Misc. Writ Petition No. 34145 of 1997 against the aforesaid orders which is still pending. Subsequently the suit proceeded and by the judgment and order dated 28.2.1998 the suit was decreed

for arrears of rent and ejectment against the petitioners. The revisions filed by the petitioners were also decided on 24.2.2002, whereby the judgment and decree of the trial court was confirmed. The petitioners have filed a Civil Misc. Writ Petition No. 17371 of 2000 against the aforesaid judgment and orders wherein an interim order dated 18.4.2000, has been passed by this Court in favour of the petitioners. The writ petition is still pending. During the pendency of the aforesaid proceedings, the respondents No. 3 to 10 have made an application under Section 21 (1) (a) of the U. P. Act No. 13 of 1972 before the Prescribed Authority, Agra, on the ground that the accommodation is needed for their residence. The matter was contested between the parties on the ground of bona fide need and other grounds but the prescribed authority by its order dated 1.9.1998, allowed the application of the respondent landlord against which the petitioners filed two appeals before the learned District judge, Agra. The said appeals have been dismissed by the impugned judgment and order dated 14.8.2006.

3. Learned Counsel for the petitioners Sri S. N. Verma, senior advocate has submitted that on the plea of bar by virtue of Article 67 of the Limitation Act, the petitioners had acquired the status of being tenant at sufferance and therefore, there being no relationship of landlord and tenant between the parties, the said application of the landlord was not maintainable. He has stated that the impugned orders are illegal and liable to be set aside on the aforesaid ground alone. It has been stated that on the question of bona fide need and comparative hardship the courts below have recorded concurrent finding of fact against the petitioners.

4. Learned Counsel for the petitioner has placed reliance on a decision of the Hon'ble Supreme Court in the case of R. V. Bhupal Prasad v. State of Andhra Pradesh and Ors. : AIR 1996 SC140 . It was held that under Section 111 of the Transfer of Property Act a lease of immovable property determines inter alia by efflux of time limited. If a lessee remains in possession after determination of the lease and the lessor accepts rent from the lessee or otherwise assents to his continuing in possession, then in the absence of an agreement to the contrary, the lease is renewed year to year or month to month according to the purpose for which the property is leased. A tenant at sufferance is one who comes into possession by lawful title, but who holds it by wrong after the termination of the

term or expiry of lease by efflux of time. He is a person who continues in possession after the lease has been determined without consent of the lessor. In such a situation the relationship of landlord and tenant is not created.

5. It has been contended that by virtue of Article 67 of the Limitation Act, 1963, a suit for eviction of the tenant could be filed within 12 years from the date the tenancy is determined. Reliance has been placed on the decision of the Hon'ble Supreme Court in case of *Shakuntala v. Hem Chand* : [1987]3SCR306 and in a Division Bench decision of this Court in the case of *Ram Nath and Ors. v. Angan* 1984 (2) ARC 290.

6. The submission on behalf of the petitioner is that since the lease term expired on 31.1.1970 and the erstwhile lessor did not demand any rent nor any rent was paid although a notice was given on 9.3.1970 and 20.3.1970, asking the petitioner to hand over vacant possession, no suit or proceeding was brought against the petitioner for eviction within the prescribed period of limitation under Article 67 and therefore after expiry of 12 years the suit was barred. Consequently it has been argued that since the petitioner became a tenant at sufferance therefore there existed no relationship of landlord and tenant between the parties. That being so the application under Section 21(1) (a) of U. P. Act No. 13 of 1972 was not maintainable and the courts below have illegally held to the contrary. It has also been contended that upon expiry of the period of 12 years the lessor having not brought a suit for eviction, the possession of the petitioner ripened into a title and adverse possession under Section 27 of the Indian Limitation Act and hence the lessor having lost her title to the property she had no right to transfer after 31.1.1982 and therefore no title passed in favour of the respondents 3 to 10 by virtue of the registered sale deed dated 15.6.1982.

7. Learned Counsel for the respondents 3 to 10 has submitted that the U. P. Act No. 13 of 1972 shall have overriding effect over the Transfer of Property Act by virtue of Section 38 of the U. P. Act. He has argued that when eviction of the tenant is sought under the State Rent Act then giving notice under Section 106 of the Transfer of Property Act was not necessary. His contention is that eviction under the State Rent Act is on the grounds mentioned therein and the tenant has

protection from eviction on all other grounds, therefore, even if the lease is determined under any of the modes under Section 111 of the Transfer of Property Act the landlord cannot exercise his right of re-entry due to the restriction under the provisions of the State Rent Act and he cannot get the tenant evicted even after determination of the lease by efflux of time or otherwise. It is submitted that with the enforcement of U. P. Act No. 13 of 1972, the petitioners who remained in possession even after determination of the lease by efflux of time on 31.1.1970, they were protected from eviction by the provisions of the Act and hence they did not cease to be tenant but acquired the status of a statutory tenant. For the aforesaid submissions he has relied upon the decisions of the Hon'ble Supreme Court in the cases of V. Danapal Chettiar v. Yesodai Ammal : [1980]1SCR334 and Vasu Deo v. Balkishan : [2002]1SCR171 . He therefore, contends that the tenancy did not stand terminated since it was protected by the enforcement of the U. P. Act No. 3 of 1947 and thereafter U. P. Act No. 13 of 1972 and it would terminate only on the passing of a decree of eviction.

8. Having considered the submission of learned Counsel, this Court finds that the decision in the case of R.V. Bhupal Prasad (supra) cannot apply to the facts of the present case. In that case the provisions of the State Rent Act were admittedly not applicable . and therefore, the tenant at sufferance had no relationship of landlord and tenant with the lessor. He was a person who came in possession by virtue of a lease and upon determination of the lease he continued in possession without consent of the landlord. On the facts of the present case, the law laid down by the Hon'ble Supreme Court in the case of V. Dhanpal Chettiar (supra) and Vashu Deo (supra) is clearly applicable. With the enforcement of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U. P. Act No. 13 of 1972) the tenants continued to hold the status and the relationship of landlord and tenant did not snap by service of a notice dated 9-3.1970 and 20.3.1970, particularly when the protection was available under the earlier State Rent Act being U. P. Act No. 3 of 1947 (United Provinces (Temporary) Control of Rent and Eviction Act, 1947). The petitioners predecessor-in-interest was a lessee by virtue of a lease deed dated 14.4.1943 and the lease period was from 1.2.1940, for a limited period of 30 years upto 31.1.1970. The petitioners continued in possession even thereafter without the written consent of the landlord inspite of a notice to quit. The

U. P. Act No. 3 of 1947 was in force at the time. Under Section 3 the permission of the District Magistrate was required for instituting a suit for eviction of a tenant and he had. an unfettered discretion to allow eviction on any ground whatsoever. The restrictions for evicting a tenant were therefore provided under the Act. Since the provisions of the State Rent Act were applicable to the property in issue the tenancy stood protected therein and would not come to an end only by virtue of the terms of the lease deed or by a notice under the Transfer of Property Act. The petitioners being statutory tenants cannot therefore claim benefit of the bar of Article 67 of the Indian Limitation Act.

9. For the reasons aforesaid no error can be found in the impugned orders passed by the courts below. The writ petition has no merit and is accordingly dismissed. No order is passed as to costs.

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