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Court : Allahabad

Decided On : Aug-04-2005

Reported in : 2006(1)AWC60

Judge : S.U. Khan, J.

Acts : [Specific Relief Act, 1963](#) - Sections 6; Uttar Pradesh Rent Regulation Act, 1972; Code of Criminal Procedure (CrPC) - Sections 145

Appeal No. : C.M.W.P. No. 595 of 1986

Appellant : Ramesh and anr.

Respondent : iird Addl. Distt. Judge and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.A. Shah, Adv.

Disposition : Petition dismissed

Judgement :

S.U. Khan, J.

1. Respondent No. 3 Smt. Bhagwan Devi filed (original suit) Suit No. 424 of 79 against petitioner Nos. 1 and 2 Ramesh and Prem who are son and father. The suit was filed under Section 6 of Specific Relief Act according to which a person

can sue for possession only and only on the basis of prior possession without any proof of title. In the suit the case of the plaintiff was that she was tenant of the shop in dispute, that landlord had filed suit for eviction against her which was decreed but revision was filed by the plaintiff and in the revision compromise was entered into in between her, landlord and another person Laxman Prasad who was rival claimant to the landlordship, however, the said compromise even though filed before the revisional court was not verified until filing of the Suit No. 424 of 79. In the said plaint it was further alleged that the plaintiff had gone to Bombay hence she employed the petitioner No. 1 as her servant to look after the shop in her absence in July, 1979, however, when in August she returned, petitioner No. 1/defendant No. 1 refused to handover possession of the shop to her and stated that petitioners had entered into contract of tenancy with the landlord. Some proceedings under Section 145, Cr.P.C. had also taken place, which were mentioned in the plaint. The suit was filed on 21.12.79 and the date of dispossession was mentioned as 2.8.79. In paragraph dealing with cause of action 2.8.79 was mentioned as the date on which cause of action arose due to dispossession of the plaintiff.

2. XIIth Addl. Munsif, Agra, decreed the suit for possession on 21.12.81. Against the said judgment and order petitioners filed Civil Revision No. 11 of 82, IIIrd A.D.J., Agra, through judgment and order, dated 17.12.85 substantially dismissed the revision. However, the learned A.D.J. set aside that part of the judgment and decree passed by the trial court through which mesne profit had been awarded to the plaintiff holding that in proceedings under Section 6 of Specific Relief Act mesne profit could not be awarded but decree of eviction was maintained. This writ petition is directed against the aforesaid judgment, decree and order passed by the courts below

3. The main point argued by learned Counsel for petitioner is that trial court had not recorded finding to the effect that plaintiff had been dispossessed within six months from date of filing of the suit hence revisional court should have remanded the matter to the trial court for decision on the said point. According to the learned Counsel for petitioner revisional court had no jurisdiction to decide the said question by itself. Even though it is correct that the trial court did not say that

plaintiff was dispossessed within six months of the date of filing of suit, however, the revisional court rightly in its judgment held that plaintiff was dispossessed on 2.8.79 and this date is within six months from date of filing of suit, i.e., 21.12.79. Copy of plaint has been filed along with supplementary-affidavit. 'Dispossession within six months from date of filing of the suit' are not magical words to be used in the plaint and judgment in this very form without any variation of words. Clear cut finding regarding date of dispossession has been recorded by the trial court and the said date is within six months from the date of filing of the suit. It is merely a question of adding two and two to make four. For such an ultra technical purpose cases are not remanded. Both the courts below particularly the revisional court discussed all the aspects in great detail and arrived at the finding of dispossession of plaintiff by the petitioners.

4. Learned Counsel for the petitioner has also vehemently argued that in fact an agreement of subletting took place in between plaintiff and petitioner No. 1 on 28.5.79 and plaintiff sublet the shop to the petitioner on a monthly rent of Rs. 100 per month. Rent required to be paid by the plaintiff to the landlord was only Rs. 12 per month, which was enhanced to Rs. 45 per month through compromise filed in revision arising out of suit filed by the landlord against plaintiff tenant Smt. Bhagwan Devi. According to the petitioner the plaintiff signed a receipt after receiving Rs. 2,500 from the petitioner, which was paper No. 74-Ka. Learned Counsel for the petitioner has vehemently argued that plaintiff admitted his signature on the said receipt. Both the courts below have discussed this aspect of matter in detail and held that plaintiff comprehensively denied execution of any such receipt. A slip of tongue of the witness or a writing error by deposition writer cannot be held to be an admission of the witness. In this regard there is one more aspect to be considered. Sub-letting is prohibited under U. P. Rent Regulation Act (U. P. Act No. 13/72). If illegal subletting takes place the transaction is kept secret. No tenant is expected to illegally sublet after boldly signing the receipt for consideration of illegal subletting. What petitioners pleaded was an illegal agreement of subletting on the basis of which they could not get any relief. The fact that landlord supported the petitioners is of no consequences. The revisional court rightly held that proceeding of ejectment in between the landlord and plaintiff were going on before the revisional court and the revisional court on 11.11.80,

allowed the revision and set aside the order passed against the petitioner by J.S.C.C. The revisional court has rightly inferred that effect of the said judgment was that plaintiff was legally tenant till then. The Supreme Court in S.R. Ejaz v. Tamil Nadu Handloom Weavers Cooperative Society Ltd. : [2002]2SCR31 , has held that if tenant is forcibly dispossessed by the landlord during pendency of eviction proceeding initiated by the landlord against the tenant then tenant is entitled to recover possession under Section 6 of the Specific Relief Act. In the said case High Court had remanded the matter to the trial court. The Supreme Court did not approve the remand and set aside the judgment of the High Court and restored the decree for restoration of possession which had been passed by the trial court. Accordingly in my opinion the findings recorded by both the courts below are perfectly in accordance with law and based upon correct appraisal of evidence requiring no interference. Writ petition is dismissed with Rs. 5,000 cost.

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