

**Siya Ram Vs. District Judge (incharge ) Barabanki and ors.**

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**Court : Allahabad**

**Decided On : Apr-08-2011**

**Judge : Anil Kumar, J.**

**Acts :** Code of Civil Procedure (CPC) (C.P.C.) - Order 11 Rule 1; U.P. Act no. 13 and Rule 22 of the Rules 1972 - Section 34; U.P. Urban Building ( Regulation of Letting , Rent and Eviction ) Act ,1972 - Rule 15(2), Section 21 (1) (a)

**Appeal No. :** RENT CONTROL No. - 4 of 2011

**Appellant :** Siya Ram

**Respondent :** District Judge (incharge) Barabanki and ors.

**Advocate for Def. :** Manish Kumar,P.S.Bajpai

**Advocate for Pet/Ap. :** Ravindra Pratap Singh

**Judgement :**

1. Heard Sri R.P. Singh , learned counsel for the petitioner and Sri P.S. Bajpai, learned counsel appearing on behalf of opposite parties.

2. By means of present writ petition, the petitioner has challenged the order dated 26.11.2010 passed by District Judge ( Incharge) Barabanki/opposite party no.1 and the order dated 20.7.2010 passed by Civil Judge ( Junior Division ) Court no.13 Barabanki/opposite party no.2 as contained in annexure nos . 1 and 2 respectively.

3. Controversy in the present case relates to a shop situated Mohalla Naka Pergana & Tehsil Nawabganj district Barabanki . Further Siya Ram petitioner is a tenant of the aforesaid shop since 1995 .

4. In respect to the said shop owned by landlord/ respondent no.3 a release application under Section 21(1) of the Act no. 13 of 1972 moved on 7.2.2007 . Accordingly , P.A. Case no. 2 of 2007 registered before the prescribed authority/ Civil Judge ( Junior Division) Barabanki .

5. On 15.12.2007 a written statement filed and on 11.5.2010, an application under Order 11 Rule 1 CPC read with Section 34 of U.P. Act no. 13 and Rule 22 of the Rules 1972 moved inter alia stating therein that other co-owners/landlords of the shop in question not impleaded as a party in the matter in question so release application moved by respondent/ one of the landlord is not maintainable and by the said application permission was sought to give certain query / interrogatrise. Landlord filed an2 objection to the aforesaid application on 3.7.2010. The said application moved by the tenant on 11.5.2010 registered as Paper no. GA-58. After considering the matter on merit , rejected vide order dated 20.7.2010. Aggrieved by the same , petitioner/tenant filed a revision , dismissed vide order dated 26.11.2010 hence, the present writ petition filed.

6. Sri R. P. Singh learned counsel for the petitioner while assailing the impugned order submits that the order in question passed by respondents no. 1 and 2 are illegal and arbitrary in nature , the courts below fell error in not appreciating that as per admitted fact rather not disputed can one landlord without impleading other. Landlord even release application not signed by other landlord is not maintainable in view of the provisions as provided under Rule 15(2) of the U.P. Urban Building ( Regulation of Letting , Rent and Eviction ) Act ,1972 and in this regard query / interrogatrise has been asked by the petitioner necessarily for disposal of the controversy involved in the present case .

7. Accordingly, orders passed by courts below are per si illegal and liable to be set aside.

8. Sri P.S. Bajpai, learned counsel for the respondents while defending orders which were challenged in the present writ petition submits that as per settled proposition of law when an application moved by co-landlord for release under Section 21 (1) (a) of the Act no.13 of 1972 without impleading others he is competent enough to initiate release proceedings alone without even impleading co-owners. Accordingly, there is neither any illegality or infirmity in the orders passed by the courts below and the present writ petition filed by the petitioner liable to be dismissed. In support of his arguments he placed reliance on the following judgments :-

(1) Ram Gopal Sharma v. Ist Additional District Judge, Meerut and others 1993 (11) LCD 372.

(2) Sarika Kedia v. Additional District Judge, Deoria & 3 others, 2010(1) JCLR 307 (All) I have heard the learned counsel for the parties and gone through the record.

9. Undisputed facts of the present case, petitioner is a tenant of the shop situated in Mohalla Naka Pergana & Tehsil Nawabganj district Barabanki and in respect to which respondent no.3/ landlord moved an application for release registered as P.A. Case no .2 of 2007 before opposite party no.2. On 11.5.2010 an application under Order 11 Rule 1 CPC read with Section 34 of U.P. Act no. 13 and Rule 22 of the Rules 1972 was moved inter alia stating therein that other co-owner of the shop in question is not impleaded as party and further certain query/ interrogatories asked, registered as paper no. Ga-58, rejected by order dated 20.7.2010 passed by prescribed authority. Revision filed, dismissed by the revisional authority vide order dated 26.11.2010. In view of the factual background, the only question which has to be considered in the instant case whether an application moved by one of the co-owner of the property in question even their release application is maintainable without impleading the other co-owner of the said property or not in view of the provisions as provided under Rule 15(2) of the Rules, 1972 quoted hereunder:-

15. Application for release of building under occupation of tenant:-

[Section 21(1)]

(1).....

(2) The application or its reply shall be signed and verified in the manner prescribed under Rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure , 1908. If there are more than one landlords, the application shall be signed by all the co-landlords.

(3) .....

10. A full Bench of this Court in the case of Gopal Dass and another v. Ist Additional District Judge, Varanasi and others , 1987 (1) Allahabad Rent Cases,281 after considering the Rule4 15(2) of the U.P. Urban Buildings ( Regulation of Letting , Rent and Eviction) Rules, 1972 has held as under:-

So far as the applicability of this Rule to the present case is concerned, there is not problem. Murlidhar Sah who has brought the action for eviction of the premises in question is undoubtedly the landlord. He was signed the application . He alone is competent to sign the application. However, we may point out that the requirement of Rule 15(2) that an application for release of premises owned by co-owners should be signed by all co-owners would be invalid. One co-owner is competent to maintain an action for eviction of the tenant of the entire premises, since he can be considered as a landlord within the meaning of Section 3 (j) of the Act. One co-owner alone would be competent to sign such an application.

11. Moreover prior to said full Bench, Hon'ble the Apex Court in the case of Sriram Pasricha v. Jagannath and others, 1977 Allahabad Rent Cases 83 has held as under :-

It is therefore, clear that the rule that a coowner may maintain an action to eject a trespasser without joining other co-owners in such action can have no application where a coowners in such actin can have no application where a co-owners seek to evict a tenant who is in possession of the property after determination of the lease.

12. Thereafter in the case of Laxmi Devi v. lind Additional District Judge, Varanasi and others , 1988(1) Allahabad Rent Cases, 463 this Court has held as under:-

In a Full Bench case of Gopal Dass and others v. Ist Addl. District Judge, Varanasi , reported in 1987(1) ARC 281, it was held : In view of these decisions, there can, therefore, be little doubt as to the maintainability of the action of eviction brought by one coowners without impleaidng the other co-owner. it was also observed that -

However , we may point out that the requirement of Rule 15(2) that an application for release of premises owned by co-owners should be signed by all co-owners would be invalid. One5 co-owner is competent to maintain an action for eviction of the tenant of the entire premises , since he can be considered as a landlord within the meaning of Section 3(j) of the Act . One co-owner alone would be competent to sign such an application.

13. In Ram Paricha v. Jagannath and others , reported in AIR 1976 SC 2335 it was observed at 2339 as follows:

Jurisprudentially it is not correct to say that a co-owner of property is not its owner, he owns every part of the composite property alone with others and it cannot be said that he is only a partowner or a fractional owner of the property . The position will change only when partition takes place. It is , therefore, not possible to accept the submission that the plaintiff who is admittedly the landlord co-owner of that premises is not the owner of the premises within the meaning of Section 13(1) as long as he is a co-owner of the property being at same time the acknowledged landlord of the defendants.

In Rang Nath V. State of U.P. and others , reported in 1984 ALJ 455: 1984(1) ARC 642 it was held that a suit for eviction filed under Section 21 of the Act by one of the co-owner -landlord along is maintainable . The same view has also been taken in the case of Smt. Vatsala Nayar Vs.Vandana Tandon and others reported in 1988 (1) ARC 57. Thus, in view of the decision above, it is amply clear that the application filed by the petitioner Smt. Laxmi Devi for the release of the accommodation under Section 21 (1) (a) is clearly maintainability.

14. Same view again reiterated by this Court in the cases of Ram Gopal Sharma v. Ist Additional District Judge, Meerut and others , 1993 (11) LCD 372 and Vijay

Bhatt v. Shri Julian Abraham and another , 2004 (3) ARC 519.

15. Recently by this Court in the case of Sarika Kedia (Supra) after placing reliance of the Full Bench Judgment of Gopal Dass ( Supra) held as under:-

The primary question regrading release application by one of the co-landlords is concerned in a proceeding under Section 21 of the Act , is competent enough to institute the release application all alone impleading other-co-landlords<sup>6</sup> as proforma opposite parties as it is the instant case . One perusal of the Full Bench decision , it is clear that a release application filed by one of the co-owners is maintainable even if the other coowners are not impleaded . Secondly requirement of Rule 15(2) of U.P. Urban ( Regulation of Letting, Rent and Eviction ) Act ,1972 was held to be invalid.

16. In view of the above-said facts, I do not find any illegality or infirmity in the impugned orders dated 26.11.2010 passed by opposite party no.1 and order dated 20.7.2010 passed by opposite party no.2 thereby holding that the release application moved by a co-owner/ landlord without impleading other co-owner/landlord of the shop under the tenancy of the petitioner/ tenant is maintainable.

17. For the foregoing reasons, the writ petition lacks merits and is dismissed as such.

18. No order as to costs.

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