

itendra Kumar and Another Vs. Vikram Parmar

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Court : Allahabad

Decided On : Mar-24-2011

Judge : Rakesh Tiwari, J.

Acts : Uttar Pradesh Urban Buildings (Regulation Of Letting, Rent And Eviction) Act, 1972 - Section 21(1)(a); Constitution of India. - Article 226

Appeal No. : WRIT - A No. - 16381 of 2011

Appellant : itendra Kumar and Another

Respondent : Vikram Parmar

Advocate for Def. : R.K. Saini, Adv

Advocate for Pet/Ap. : Ajay Kumar Singh; Ashish Kumar Singh, Advs

Judgement :

1. Heard counsel for the parties and perused the record.

2. Plaintiff-respondent filed SCC Suit No. 39 of 2002, Vikram Parmar versus Jitendra Kumar and others in the Court of Judge Small Causes, Saharanpur for eviction of the petitioners on the ground of default in payment of rent. In the plaint it was averred that the provisions of Uttar Pradesh Urban Buildings (Regulation Of Letting, Rent And Eviction) Act, 1972 (hereinafter referred to as U.P. Act No. 13 of 1972) were not applicable as the property in question was assessed for the first time in the year 1996.

3. Defendants-petitioners contested the aforesaid suit by filing written statement inter alia, that the property in question is an old construction which is proved from the fact that erstwhile landlord had also filed release application under Section 21(1)(a) of U.P. Act No. 13 of 1972 and had deposed before the court below that the shop in question is in tenancy for the last 15 years prior to 1984. Issue no.2 regarding applicability of the provisions of U.P. Act No. 13 of 1972 was framed by the Court of Judge Small Causes, Saharanpur vide order dated 23.10.2010 holding that the provisions of U.P. Act No. 13 of 1972 are not applicable as the property was firstly subjected to assessment in the year 1986.

4. Aggrieved by the aforesaid order dated 23.10.2010, the petitioners preferred SCC Revision No. 62 of 2010, Jitendra Kumar and another versus Vikram Parmar in the Court of District Judge, Saharanpur.

5. The petitioners before the Revisional Court moved an application to the effect that the first assessment of the property in question was not made in 1986 and they relied upon paper no.26-Ga which was an extract of Municipal record. Objection was filed by the landlord and Court no.1 of Additional District Judge, Saharanpur rejected the application of the petitioners in which they had prayed for adding paragraph 8-A after paragraph-8 in the written statement to bring the aforesaid facts on record. It is against the order dated 9.2.2011 the present writ petition has been filed by the petitioners.

5. The contention of learned counsel for the petitioners is that the amendment was necessary in the interest of justice. The amendment sought by him is thus:-

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6. It is argued that this amendment is in the nature of legal plea and ought to have been permitted by the Revisional Court in the revision.

7. Per contra, learned counsel for the respondent has submitted that the question as to whether the provisions of U.P. Act No. 13 of 1972 are applicable or not, has been decided by the Judge Small Causes Court, Saharanpur in issue no.2. The petitioners had knowledge regarding the municipal record and he could have filed the same even in the trial Court. It is not the case that these facts were not in the knowledge of the petitioners and they cannot be permitted to bring these facts on record now in the garb of amendment in the revision.

8. After hearing learned counsel for the parties and on perusal of the record I am of the considered view that the petitioners have not pleaded these facts which they want to bring on record by way of amendment as paragraph 8-A after paragraph-8 in the written statement were not in their knowledge. The only point which has been argued is that this is a legal plea and therefore, it can be taken at any time. In my considered view, if the Revisional Court has rejected the application of the petitioners for incorporating paragraph 8-A in the written statement as stated above, a legal plea does not require amendment of facts therefore, for this reason the case of the petitioners is not prejudice by the rejection of the amendment application.

9. For all the reasons stated above, this court is not inclined to interfere in the matter in exercise of its extra ordinary powers under Article 226 of the Constitution of India.

10. The writ petition is accordingly, dismissed. No order as to costs.

11. The Revisional Court is directed to decide SCC Revision No. 62 of 2010, Jitendra Kumar versus Vikram Parmar within a period of two months from the date of production of a certified copy of this order.

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