

A.F.R.

Court No. - 58

Case :- MATTERS UNDER ARTICLE 227 No. - 3737 of 2015

Petitioner :- Kanhaiya Lal Sharma

Respondent :- Dr. Sushil Kumar

Counsel for Petitioner :- Ram Sheel Sharma, Pankaj Kumar

Counsel for Respondent :- Shambhavi Nandan

Hon'ble Manoj Kumar Gupta, J.

1. SCC Suit No. 128 of 1997 was instituted by the plaintiff-respondent against the petitioner for recovery of arrears of rent and for ejection from a shop situated on the ground floor of building no. D 65/48 Lahartara, Varanasi, (hereinafter referred to as "the shop"). According to plaint case, building no. D 65/48 Lahartara, Varanasi belonged to one Kallan. He executed a registered will in favour of his wife Smt. Shivmurti Devi. The petitioner was a tenant in the shop on behalf of the Kallan. After death of Kallan, according to plaint case, the petitioner started paying rent to Shivmurti Devi. Shivmurti Devi is alleged to have executed an agreement in respect of northern portion of the building, which includes the demised premises, in favour of the plaintiff alongwith delivery of possession. Subsequently, in September, 1990 a sale deed was also executed by Shivmurti Devi in favour of the plaintiff-respondent. It is alleged that since September, 1990 the petitioner had not paid rent to the plaintiff. Consequently, by means of a notice dated 21.7.1997, arrears of rent was demanded and the tenancy was terminated on expiry of period of 30 days. It was alleged that, in spite of service of notice, the petitioner failed to tender rent to the plaintiff-respondent and hence, there is default in payment of rent, for which the petitioner is liable to ejection.

2. The suit was contested by the petitioner by filing a written statement. It is admitted that the petitioner was tenant in the shop on behalf of Kallan. It is alleged that after the death of Kallan, his widow Shivmurti Devi and daughter Pyari Devi inherited the property. It was denied that Kallan executed any will in favour of Shivmurti Devi. It was

alleged that Shivmurti Devi and Pyari Devi became landlord of the property and rent was paid to them. After death of Shivmurti Devi, rent was being realised by Smt. Pyari Devi. It was further alleged that Shivmurti Devi had not executed any sale deed, nor any agreement in favour of the plaintiff. He never became landlord of the property. The receipt of notice dated 21.7.1997, as well as default in payment of rent was denied. The plaintiff-respondent filed a replication and categorically denied the allegation that Smt. Pyari Devi is daughter of Late Kallan. It was also pleaded that the petitioner is in collusion with Smt. Pyari Devi. He paid rent to Smt. Shivmurti Devi and not to Smt. Pyari Devi.

3. The Judge Small Causes decreed the suit by judgment dated 20.5.2013. On point no.1, Judge Small Causes held that there exists a relationship of landlord and tenant between the parties. On point no. 2, it is held by the Judge Small Causes that the notice dated 21.7.1997 was duly served on the petitioner by registered post and the said notice also validly terminates his tenancy. On point no. 3, it is held that admittedly the petitioner had not tendered any rent to the plaintiff-respondent and thus, there is default in payment of rent at the rate of Rs. 20/- per month. On point no. 4, it is held that no intricate question of title is involved in the suit and the Judge Small Causes was competent to decide the same. With these findings, the suit was decreed for arrears of rent at the rate of Rs. 20/- per month since 1.10.1994, and for ejection of the petitioner. Aggrieved by the judgment of the Judge Small Causes, the petitioner filed SCC revision no. 9 of 2013, which has been dismissed by judgment dated 19.5.2015

4. The submission of learned counsel for the petitioner is that there was a specific plea in the written statement that Pyari Devi, whom counsel for the petitioner described as step daughter of Late Kallan, had also inherited the demised premises after the death of Kallan and rent was paid to her. It is urged that the alleged will executed by Kallan in favour of the Shivmurti Devi was not proved and as such, courts below erred in placing reliance on the sale-deed executed by Shivmurti Devi in

favour of the plaintiff. Consequently, the findings on Point No. 1, are erroneous in law. It is further urged that the petitioner had denied his signatures over paper no. 47-Ga and 48-Ga, but, the courts below erred in placing reliance on these documents.

5. On the other hand, learned counsel for the respondent submitted that Pyari Devi is in no way related to Kallan. It is further submitted that there is no evidence on record to demonstrate that any rent was paid to Pyari Devi. It is submitted that the finding recorded by the courts below on Point No. 1 is a finding of fact, and does not call for any interference in exercise of power under Article 227.

6. I have considered the submissions made by the learned counsel for the parties and perused the record.

7. The trial court has held that Smt. Shivmurti Devi had executed a sale deed in favour of the plaintiff-respondent in September, 1990. This finding has not been assailed before this court. As such, even if for argument sake, the agreement for sale (Paper No. 47-Ga) and the possession memo (Paper No. 48-Ga) are ignored from consideration, it would have no effect on the title of the plaintiff-respondent over the demised premises. It has been held by the Supreme Court in the case of **Mohar Singh v. Devi Charan**¹ that in view of section 109 of the Transfer of Property Act, 1882, the attornment takes place by operation of law. There is no need of consensual attornment. Same view has been taken by a three Judges bench judgment in **Pramod Kumar Jaiswal v. Bibi Husn Bano**². In **Sk.Sattar Sk.Mohd.Choudhari vs Gundappa Amabadas Bukate**³, the Supreme Court has held that liability to pay rent to the assignee landlord is postponed till the knowledge of transfer is gained by the tenant, but it does not have the effect of postponing the assignment or transfer of property. A specific finding has been recorded by the trial court that the petitioner came to know about assignment on service of notice upon him in January 1997 and again in July 1997. It

1 AIR 1988 SC 1365

2 (2005) 5 SCC 493

3 (1996) 6 SCC 373

was not necessary for establishing relationship of landlord and tenant that there should have been payment of rent by the petitioner to the plaintiff, as the attornment had taken place by operation of law. On gaining knowledge of the transfer, the liability to pay rent comes into existence and the petitioner should have tendered rent to the plaintiff. However, having failed to do so, inspite of notice of demand admittedly served upon him in January, 1997 and again in July 1997, which notice has also been held to be served on the petitioner, there was a clear default in payment of rent. Concededly, no rent was deposited by the petitioner under Section 30 or in the suit, on the date of first hearing. Thus, there was a clear default in payment of rent, within the meaning of Section 20 (2)(a) of U.P. Act XIII of 1972. The trial court was fully justified in decreeing the suit for arrears of rent and for ejectment.

8. As regards the contention of the petitioner that the will on the basis of which Shivmurti Devi claimed exclusive title over the properties of Late Kallan having not been proved, no reliance could have been placed on the sale deed executed by Shivmurti Devi in favour of the petitioner, it is to be noted that the petitioner does not dispute that Shivmurti Devi was the widow of Late Kallan, who inducted the petitioner as tenant in the demised premises. He also admits having paid rent to her, after death of Kallan. However, his case is that apart from Shivmurti Devi, the step daughter of Kallan, namely Smt. Pyari Devi, also became co-landlord to the extent of half share. Now, even if the will is ignored, Shivmurti Devi was empowered to execute sale deed with respect to her half share. It is not disputed that the plaintiff respondent, on the basis of sale deed in his favour, instituted Original Suit No. 331 of 1991 against Smt. Pyari Devi. By judgement dated 22.12.2007 (paper no. 50 Ga), she was restrained from interfering in the possession of the plaintiff respondent. It is not the case of the petitioner that Smt. Pyari Devi had challenged the said decree. It has thus attained finality. The claim of petitioner that Smt. Pyari Devi had inherited half share in the building, was not accepted by the civil court, in the suit filed by the

plaintiff against Smt. Pyari Devi. Consequently, even if the will is ignored, Smt. Shivmurti Devi being the widow of Kallan, and a class I heir, inherited the properties left behind by Kallan, and was competent to execute the sale deed.

9. It is further noticeable that the entire claim of the petitioner is based on the pleading that Kallan left behind not only his widow Shivmurti Devi as his heir, but also Smt. Pyari Devi. At the time of oral submission, learned counsel for the petitioner pointed out that she is the step daughter of Kallan. The said claim was stoutly opposed by the counsel for the plaintiff-landlord. He submitted that she is in no manner related to Late Kallan. In such circumstances, it was incumbent upon the petitioner to have examined Smt. Pyari Devi as a witness in support of his case. This had become all the more necessary, as the petitioner claimed to have paid rent to her, after the death of Shivmurti Devi. However, she was not called in the witness box, nor even her affidavit was filed. There is also no rent receipt evidencing payment of rent to Smt. Pyari Devi.

10. In such view of the matter, this Court is of the opinion that the Judge Small Causes had rightly placed reliance on the registered sale deed executed by Shivmurti Devi in favour of the plaintiff-respondent and the petitioner who is merely a tenant, has no right to allege that Kallan had not executed such a will. It has been held by the Supreme Court in the constitutional Bench judgment in the case of **Waryam Singh v. Amarnath and another**⁴ that the supervisory jurisdiction under Article 227 of the Constitution is to be exercised sparingly and only in order to keep the subordinate courts within the bounds of their authority and it is not meant to correct errors of fact or even of law. Same view was taken in a subsequent constitution bench judgement in **State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela**⁵. In a more recent judgement in the case of **Shalini Shyam Shetty and another v.**

4 AIR 1954 SC 215

5 AIR 1968 SC 1481

Rajendra Shankar Patil⁶ arising out of a decree for eviction passed in a suit based on the ground of breach of terms of tenancy, the Supreme Court deprecated the growing tendency of entertaining petitions under Article 227 of the Constitution, in matters relating to disputes between private parties. It has been held as under :-

64. However, this Court unfortunately discerns that of late there is a growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in cases of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed questions of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.

*66. We may also observe that in some High Courts there is tendency of entertaining petitions under Article 227 of the Constitution by terming them as writ petitions. This is sought to be justified on an erroneous appreciation of the ratio in *Surya Dev Rai v. Ram Chander Rai*⁷ and in view of the recent amendment to Section 115 of the Civil Procedure Code by Civil Procedure Code (Amendment) Act, 1999. It is urged that as a result of the amendment, scope of Section 115 CPC has been curtailed. In our view, even if the scope of Section 115 CPC is curtailed that has not resulted in expanding High Court's power of superintendence. It is too well known to be reiterated that in exercising its jurisdiction, High Court must follow the regime of law.*

67. As a result of frequent interference by Hon'ble High Court either under Article 226 or 227 of the Constitution with pending civil and at times criminal cases, the disposal of cases by the civil and criminal courts gets further impeded and thus causing serious problems in the administration of justice. This Court hopes and trusts that in exercising its power either under Article 226 or 227, Hon'ble High Court will follow the time honoured principles discussed above. Those principles have been formulated by this Court for ends of justice and the High Courts as the highest Courts

6 (2010) 8 SCC 329

7 (2003) 6 SCC 675

of justice within their jurisdiction will adhere to them strictly.

68. For the reasons aforesaid, it is held that the High Court committed an error in entertaining the writ petition in a dispute between landlord and tenant and where the only respondent is a private landlord. The course adopted by the High Court cannot be approved. Of course, the High Court's order of non- interference in view of concurrent findings of facts is unexceptionable."

(emphasis supplied)

11. In the instant case, the courts below have held that relationship of landlord and tenant exists between the parties. It is a pure finding of fact, based on appreciation of evidence on record, which does not call for any interference in exercise of supervisory jurisdiction.

13. No other submission was made by learned counsel for the petitioner.

14. The petition lacks merit and is dismissed but without any order as to costs.

(Manoj Kumar Gupta, J.)

Order Date :- 28.7.2015

Arif