

Abdul Hamid

Vs

The VII Additional District and Sessions Judge, Kanpur and Others

Civil Appeal No. 522 of 1976

(P.N. Bhagwati, A.C. Gupta, P.N. Shinghal JJ)

18.10.1976

JUDGMENT

BHAGWATI, J. –

1. This appeal arises out of an application for release of premises made by respondents 4 to 6 under Section 21(1) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 13 of 1972. The application was made against one Ahmed Hasan who was admittedly the tenant in respect of the premises. Ahmed Hasan died on February 20, 1974 and one Mohammad Ayub was substituted as the legal representative of Ahmed Hasan by an order made by the prescribed authority on March 19, 1974. Within six days thereafter a compromise was arrived at between Mohammad Ayub and respondents 4 to 6 for release of the premises in favour of respondents 4 to 6 and the compromise was verified by the prescribed authority. But before an order could be passed by the prescribed authority in terms of the compromise, objections were filed by the appellant against the compromise on March 25, 1974 on the ground that the appellant and not Mohammad Ayub was the legal representative of Ahmed Hasan and also claiming that proceedings for perjury be taken against Mohammad Ayub. While these objections were pending, an application dated September 30, 1974 was purported to be made on behalf of the appellant praying that the objections filed by him on March 25, 1974 be withdrawn. The case of the appellant was that Shri A. S. Bajpai who filed this application on his behalf, had no authority to do so and the prescribed authority was, therefore, not entitled to act on this application. The prescribed authority however, proceeded to act on this application and passed release order in favour of respondents 4 to 6 in terms of the compromise, on the basis that the objections filed by the appellant on March 25, 1974 were withdrawn by his subsequent application dated September 30, 1974. The appellant preferred an appeal against the order of release before the District Judge but the appeal was dismissed. The order passed by the District Judge was then challenged by the appellant by filing a writ petition in the High Court but the writ petition was also unsuccessful and hence the appellant preferred the present appeal before us by special leave obtained from this Court.

2. It is not necessary to go into the various questions which arise in this appeal and which arise highly controversial issue of fact, because it has been agreed between the parties - and we must state that the attitude taken by respondents 4 to 6 is very fair and just - that the order of release passed by the prescribed authority should be set aside and the matter should go back to the prescribed authority for the purpose of determining, on the objections of the appellant dated March 25, 1974 as to who is the heir of Ahmed Hasan, Mohammad Ayub or the appellant and if Mohammad Ayub is found to be the heir of Ahmed Hasan, the prescribed authority should be a liberty to pass an order of release in favour of respondents 4 to 6 on the basis of the compromise arrived at between them and Mohammad Ayub, but if it is found that the appellant and not Mohammad Ayub is the heir of

Ahmed Hasan, then the appellant should be impleaded as legal representative of Ahmed Hasan and, if necessary, the abatement should be set aside and the prescribed authority should then proceed immediately to dispose of the release application.

3. We accordingly allow the appeal, set aside the order passed by the prescribed authority and send the case back to the prescribed authority having jurisdiction in the matter. The prescribed authority will proceed to dispose of the objections of the appellant dated March 25, 1974 by deciding as to who is the heir of the appellant, within one month from today. If Mohammad Ayub is found to be the heir of Ahmed Hasan, respondents 4 to 6 will be entitled to obtain the release order in their favour on the basis of the compromise with Mohammad Ayub but if, on the other hand, the appellant is found to be an heir of Ahmed Hasan, the abatement of the release application, if any, will be set aside and the appellant will be added as legal representative of Ahmed Hasan and after giving an opportunity to the appellant to file his written statement in answer to the release application within 15 days from the date of his being joined as party, the prescribed authority will proceed to dispose of the release application as expeditiously as possible and in any event not later than three months from the date of filing of his written statement by the appellant. There will be no order as to costs of the appeal.

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