

Harish Chandra and Another

Vs

Mohd. Ismail and Others

Civil Appeal No. 3395 of 1981

(N. D. Ojha, M. H. Kania JJ)

31.08.1990

JUDGMENT

M. H. KANIA, J. -

1. This is an appeal by special leave from the judgment and order of a learned Single Judge of the Allahabad High Court in Second Appeal No. 1482 of 1981, summarily dismissing the said second appeal.
2. The appellants before us are the tenants or lessees and the respondents, the landlords in respect of certain shop premises. The said shop was conducted under a tin shade resting on a wall of the respondents' building. The land under the shade belonged to the respondents.
3. The suit for eviction was filed in the Court of the learned Munsif Hawali, Rarriljibad and not before the Prescribed Authority as provided under the U.P. Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the U.P. Rent Act"). It is common ground that if the premises leased constitute a "building" within the meaning of that word as defined under clause (i) of Section 3 of the U.P. Rent Act, then the suit ought to have been instituted before the Prescribed Authority who was the competent court to decide disputes between a landlord and tenant as provided in the U.P. Rent Act. The trial court, namely, the court of the learned Munsif held that the said premises in which the shop was conducted constituted a building within the meaning of the U.P. Rent Act and it passed an order rejecting the plaint. In appeal, the learned Additional District Judge pointed out that the shop was being conducted under a tin shade supported by wooden pillars and, following the decision of a learned Single Judge of the Allahabad High Court in Narayan Chand Dass v. Panna Lal (1969 AII LJ 229) came to the conclusion that the said construction in which the shop was being conducted could not be said to be a building under the U.P. Rent Act, and hence, the court of the learned Munsif had jurisdiction to entertain and adjudicate upon the case. There was one other issue which arose in that case and that was whether the tin shade in question had been constructed by the appellants/tenants or the respondents/landlords. The Additional District Judge did not enter upon the consideration of this question at all in view of his conclusion that the tin shade was not a building within the meaning of that expression under Section 3(i) of the U.P. Rent Act. He further held that in view of the other findings given by the learned Munsif, the appeal should be allowed and decree for eviction be passed. Accordingly, he passed a decree for eviction against the appellants. In the second appeal, the High Court held that there was no ground for interference and dismissed the same.
4. In our opinion, the question whether the said tin shade falls within the connotation of the term "building" within the meaning of the said term as used in clause (i) of Section 3 of the U.P. Rent

Act, is a matter involving considerable controversy. The decision of the Allahabad High Court relied upon by the Additional District Judge, namely, *Narayan Chand Dass v. Panna Lal* (1969 AII LJ 229), in our opinion, has no application to the case before us because in the case before the learned Single Judge of the Allahabad High Court, the letting was of an open piece of land on which the tenant had been permitted to build a tin shed. The agreement between the parties in that case provided to build a tin shed. The agreement between the parties in that case provided that when the tenant left the land, he would be entitled to take away the material used in the construction of the tin shed. In such a case the lease would be obviously of open land which admittedly does not constitute a building within the meaning of the said term in Section 3 (i) of the U.P. Rent Act. In the present case, however, what has been let is a piece of ground over which there is a tin shade as aforesaid and there is no finding as to whether the tin shade was put up by the landlord or the tenant.

5. Even if we take the view that the said tin shade is a building within the meaning of the said term in the U.P. Rent Act, it would be still necessary to consider whether the landlord or the tenant had put up the said construction because if it is found that it was the tenant who had put up the said construction, there was no question of any lease being granted in respect of the same and the lease would really be of the open land which would admittedly not be a "building" within the meaning of the said expression in Section 3(i) of the U.P. Rent Act. We are of the view that the issue whether the said construction was put up by the landlord or the tenant should be first determined and the question of eviction could be considered thereafter.

6. In the result, we set aside the judgment of the High Court as well as of the learned Additional District Judge and remand the matter to the learned Additional District Judge for determination of the aforesaid issue and fresh determination of the appeal on merits according to law. The appeal is allowed as aforesaid with no order as to costs.

</html