

Vasudha Srivastava and other

Vs

Kamla Chauhan and another

Civil Appeal No. 243 of 1992

(L. M. Sharma, V. Ramaswami, B. P. Jeevan Reddy JJ)

24.01.1992

JUDGEMENT

SHARMA, J.:-

1. Special leave is granted.

2. The appeal arises out of a suit for eviction of the respondents from a building in the city of Allahabad. The premises belonged to one G. D. Srivastava, who on his death was succeeded by his two daughters Smt. Shashi Srivastava, the sole original plaintiff since dead (substituted by her legal representatives) and the appellant No. 6 Smt. Sarojini. According to the case of the appellants the property remained under the management of Shashi Srivastava on her own behalf as well as her sister Sarojini Sinha, who was not residing in Allahabad. The house was let out to the respondent No. 2 Harpal Singh Chauhan, a Government servant, in 1968. In 1978 Harpal Singh Chauhan was transferred outside Allahabad, and certain strangers initiated a proceeding under S. 12(3A) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the 'Act) with a prayer to declare the premises vacant. Harpal Singh contested the case on the ground that his wife, respondent No. 1 Smt. Kamla Chauhan and not he was the tenant. It is not necessary to set out the details relating to the said proceeding except stating that Rent Control Officer as well as the appellate authority rejected the case of tenancy in favour of Smt. Kamla Chauhan and held that Harpal Singh was the tenant. It is said on behalf of the appellants that the proceeding, however, has not finally terminated in view of a remand order by the appellate authority on another issue. In the meantime Shashi Srivastava instituted the present suit for eviction of Harpal Singh without Sarojini Sinha joining as a coplaintiff, as according to the appellant's case she was not available in Allahabad, on the ground of non-payment of rent. Although the action was opposed, the defendants did not take a plea of non-maintainability of the suit on the ground of non-joinder of Sarojini Sinha as a plaintiff. The defence was once more the same plea which was taken in the proceeding under S. 12(3A) that Smt. Kamla Chauhan was the tenant who had deposited the rent under S. 30 of the Act. The Judge, Small Cause Court, rejected the defence and decreed the suit. The defendants challenged the decree before the Allahabad High Court under S. 25 of the Small Cause Courts Act. The High Court has, by the impugned judgment, reversed the decree and dismissed the suit on the ground of non-joinder of Sarojini Sinha.

3. The learned counsel for the appellants was right in relying upon the definition of 'landlord' in S. 3(j) of the Act in support of the appeal. The expression "landlord" is not limited to denote the owner of the house but it has to be, for the purposes of the Act understood in the wide sense to include a person to whom the rent is payable as also his agent. As has been stated earlier, according to the case of Shashi Srivastava she was entrusted with the management of the house as her sister was

staying with her husband outside Allahabad and it was Shashi Srivastava who had inducted the tenant-respondent in the premises as a tenant. It was, therefore, not open to the tenant-respondent to question the authority of Shashi Srivastava. If he was desirous of contesting the factual aspect pleaded by Shashi Srivastava, it was essential for him to have raised the issue of non-maintainability in his written statement which was not done. In reversing the decree passed by the trial Court the High Court committed a serious error in not appreciating this position. The impugned judgment has, therefore, to be set aside.

4. It has been strenuously contended by Mr. Manoj Swarup, appearing on behalf of the respondents that in view of the facts and circumstances of the case Smt. Kamla Chauhan must be held to be the tenant and not her husband. We are not inclined to go into this issue of fact afresh, as both the courts below have categorically recorded their findings against them.

5. Mr. Swarup, next, argued that in any event the suit is fit to be dismissed as Smt. Kamala Chauhan has deposited the arrears of rent under S. 30 of the Act. Stress was laid on the close relationship of husband and wife and it was suggested that it will be highly technical to hold the husband defaulter when the wife had already offered to pay the rent. We have considered the matter closely and held that whatever be the weight given to this argument in an ordinary case, much significance cannot be attached to this aspect in view of the importance of the issue in the proceeding under S. 12 of the Act. In that background the parties went to trial and led their full evidence on the point and the trial Court dealt with the dispute thoroughly and recorded a finding in favour of the appellant which has been confirmed by the High Court. The respondent, in the circumstances, cannot be allowed to reopen this question.

6. In the result the impugned judgment of the High Court is set aside and the decree passed by the trial Court is restored. The appeal is accordingly allowed, but there will be no order as to costs of the High Court and this Court. Appeal allowed.

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