SUPREME COURT OF INDIA

Shamim Akhtar

Vs

Iqbal Ahmad & Anr.

Civil Appeal No. 5968 of 2000

(M.B. Shah and D.P. Mohapatra, JJ.)

18.10.2000

JUDGMENT

D.P. Mohapatra, J.:- Leave granted.

The controversy raised in this case relates to eviction of the tenant from the premises described as House No. CK 48/200, Mohalla Harsha, Varanasi. The appellant, claiming to be the landlady of the said house filed a petition under section 20 of the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as 'the Act'), for eviction of respondent No. 1 - tenant from the house. The proceeding was registered as suit No. 457/80 in the Court of the Addl. Judge, Small Causes Court at Varanasi. In the petition, eviction of the tenant was sought on the ground that he had denied the title of the landlady and had defaulted in payment of rent. The appellant also sought recovery of arrears of rent from 18.10.1979 to 11.11.1980. Tracing her interest in the house in question the appellant stated that the house was initially owned by Fakia Bibi @ Fatti Bibi who made a gift (hiba) of the property to her sole surviving daughter Khairunnisa Bibi @ Kunno Bibi who was then living with her. Fakia Bibi's son Mohd. Ibrahim was permanently residing at Calcutta and her other children had died by then. After making the said gift in favour of her daughter, Fakia Bibi went to Calcutta and stayed with her son Mohd Ibrahim leaving behind her husband Shaikh Jumman and her daughter Khairunnisa Bibi at Varanasi. Fakia Bibi died in 1949 at Calcutta. Khairunnisa Bibi who was the sole owner of the suit premises allowed her father Shaikh Jumman to run his business on the premises in question. Shaikh Jumman died on 26th August, 1953. Khairunnisa Bibi after her marriage was residing in District Jaunpur. She had inducted the respondent Iqbal Ahmad as a tenant in1960 in the suit-house on rent at the rate of Rs. 15/- which was later enhanced to Rs. 25/- per month. During the subsistence of the said tenancy Khairunnisa Bibi gift the suit property in favour of the appellant Smt. Shamim Akhatar who is the daughter-in-law of her (Khairunnisa) deceased sister, in 1979, by a registered deed of gift and directed the respondent to pay the rent current and arrears to the appellant. However, the respondent-tenant did not pay any rent to the appellant. Thereafter the appellant served the notice dated 10.10.1980 on the respondent terminating his tenancy and asking him to deliver vacant possession of the premises and also to pay the arrear rent.

Respondent no.1 in reply to the notice admitted that Fakia Bibi was the original owner of the property. According to him in 1947, immediately after partition, Fakia Bibi had made an oral gift to Mohd. Ibrahim son of Mohd. Ishaq of Lahangpura, Aurangabad, Varanasi, and thereafter left for Pakistan in December, 1947. She died there. The respondent stated that he had been paying rent to the said Mohd. Ibrahim. He denied Khairunnisa Bibi's title to the property and clearly refused to

accept her as landlady of the suit-house in question. Thereafterr the appellant filed the suit No. 457/80 for eviction on the grounds noted earlier.

In the meantime the name of the appellant Shamim Akhtar had been mutated in the municipal records in place of the original owner of the property. After receipt of summons in the suit respondent No.1 approached the District Relief and Rehabilitation Officer-cum-Officer-in-charge of Enemy Property claiming that the suit property was enemy property. A notice was served on the appellants on the complaint lodged by the respondent no.1 and the appellant filed her reply to the said notice. After holding an investigation and hearing the parties, the Custodian, Enemy Property, came to the conclusion that there was no enemy interest involved in the suit - house and accordingly discharged the notice by the order dated 26.6.1981. The order having not been challenged attained finality.

Respondent no.1 filed his written statement in the suit denying the appellant's title to the suit-house and also denied the relationship of landlord and tenant between them. He raised the contention that the suit filed by the appellant was barred in view of section 8 of the Enemy Property Act, 1968. Subsequently, respondent No.1 sought an amendment of the written statement to introduce paragraph 29-A in which a plea was raised that since the real owner of the suit property had migrated to Dhaka in 1947 the property in question had become evacuee property".

On 14th October, 1982 respondent No.1 filed an application before the Trial Court for deciding the objection regarding maintainability of the suit in the Court in view of the provisions in the Evacuee Property Act, 1950 and the Enemy Property Act, 1968 as a preliminary issue. By the order dated 14.10.1982 the Trial Court held that under the U.P. Rent Act the denial of tile of landlord by the tenant is itself a ground for eviction of the tenant: in such a case the court was competent to go into the question of thie title incidentally and, therefore, it had jurisdiction to try the suit. Again the respondent No.1 filed an application under section 23 of the Provincipal Small Cause Courts Act, 1887 to decide the question of title as a preliminary issue. The Trial Court again rejected the objection vide order dated 5.4.1991. Yet another application was filed by respondent No.1 under section 23 of the Small Causes Court Act with a similar prayer which met with similar result. Ultimately, the suit was decreed by the Trial Court by the judgment and order dated 26.4.1993, holding inter alia, that Fakia Bibi had had gifted the suit house to her daughter Khairunnisa Bibi had let out the house to respondent No.1. The Trial Court accepted the case of the appellant that Khairunnisa Bibi had gifted the house in question to the appellant by the registered deed of gift. The Court also accepted the case of the appellant that respondent No.1 was liable to be evicted on the ground of denial of the title of the landlady and default in payment of rent.

Aggrieved by the order dated 26.4.1993 respondent No.1 filed the revision petition, C.R.R.No. 112/93, before the District Judge, Varanasi under section 25 of the Small Causes Court Act. During pendency of the Revision petition before the Fifth Additional District Judge, Varanasi, the officer-in-charge, Enemy Property moved an application to be impleaded as respondent in the case, which was allowed. The Vth Additional District Judge, Varanasi by order dated 20.8.1997 set aside the judgment/order of the Trial Court and remanded the case to it for deciding the suit afresh in the light of the directions contained in the judgment and in accordance with law. From the discussions in the said judgment it appears that the revisional court took note of the fact that the District Magistrate, Varanasi had sent two letter- one to the effect that a notice was sent to the plaintiff to file written statement and the other requesting the Small Causes Court to consider that fact while passing the judgment. The revisional court observed that the question of suit property being enemy property and its consequences are to be taken up and decided first, and also took note of the objections raised on

behalf of the appellant against accepting the letters sent by the District Magistrate, Varanasi and the papers filed by the State Counsel before it. The court felt that the issues raised before it could not be decided in the revisional proceding and, therefore, the court had no option but to remand the case back to the Trial Court to give an opportunity of hearing to the Custodian and decide it afresh. The revisional court opportunity of hearing to the Custodian and decide it afresh. The revisional court specifically mentioned that it has not made any discussion on the merits of the case because the finding of the fact has to be given by the Trial Court after considering the entire evidence and after giving opportunity of hearing to the Custodian of Enemy Property.

The Trial Court in compliance of the directions of the revisional court sent notice to the Custodian of Evacuee Property who in turn appeared through the State Counsel (DGC). The Trial Court by its order dated 24.10.1997 held that the Custodian of the Evacuee Property cannot be made a party in the suit. By the order dated 8.9.1998 the Trial Court exercising the power under section 23 of the Small Causes Courts Act returned the plaint with the direction to the plaintiff (appellant) that she may file a declaratory suit before competent Court for declration of her title to the property in question.

The appellant filed revision No. 51 of 1998 before the District Judge, Varanasi assailing the said order which was disposed of by the VIth Additional District Judge, Varanasi by order dated 28.7.1999, in which the revisional court allowed the revision and decreed the suit filed by the appellant.

Respondent No.1 filed Civil Misc. Writ Petition No. 33669/99 before the Allahabad High Court assailing the order of the revisional court. A single Judge of the High Court by the judgment and order dated 12.8.1999 quashed the revisional order dated 28.7.1999 of the VIth Additional District Judge, Varanasi and the order dated 8.9.98 passed by the Addl. Judge, Smaall Causes Court and remanded the case to the Trila Court for fresh decision. The said Judgment/order is under challenge in this appeal.

From the resume of the facts of the case stated in the foregoing paragraphs it is clear that the proceedings initiated by the landlady for eviction of the tenant has been pending in the courts over a period of nearly two decades. On perusal of the orders passed by the lower courts and the judgment of the High Court we find that time has been devoted to consideration of the objection against maintainability of the suit in the Small Causes Court. The basic fact which appears to have been lost sight of in the smoke-screen created over the jurisdictional issue is that the petition was filed under section 20 of the Act by the plaintiff claiming to be landlady of the house in question against the respondent who undisputedly was a tenant in occupation of the said premises. As noted earlier respondent No.1 has all through denied that the plaintiff-appellant had any title to or interest in the suit property and also denied that there was any relationship of landlord and tenant between them. He had also pleaded the case that one Mohd. Ibrahim was his landlord and he had been paying rent for the suit house to him. In the facts and circumstances of the case, the question to be determined was whether the case of the plaintiff that she was the landlaady of the respondent and she was entitled to a decree of eviction in her favour on the grounds of denial of her title by the later and non payment of rent by him. The learned single Judge has observed in the judgment under challenge and in our view rightly, the question of title to the suit property could be gone into incidentally while deciding the case of the plaintiff seeking a decree of eviction. The question of title to the property was not to be finally determined in the proceeding instituted under the Act. If this position is kept in mind it becomes clear that the issue of maintainability of the suit in the Small Causes Court loses its relevance aand consequentially, the objections raised on the basis of the provisions of the Evacuee

Property Act, 1950 and the Enemy Property Act, 1968 which were introduced subsequently by the respondent lose their significance for the purpose of disposal of the proceedng. Our attention has not been drawn to any material on record to show that in any duly constituted proceeding under any of the aforementioned Acts the competent authority has declared the suit property to be either evacuee property or enemy property. From the discussions in the orders passed by the lower courts it also appears that an attempts was made by the tenant to initiate a proceeding before the District Magistrate, Varanasi-cum-Custodian of Enemy Property which ultimately did not succeed. It appears to us that these questions were belatedly introduced in the proceeding by the tenant with a view to prolong the proceedings so that he could continue in possession of the premises for a long a period as possible. To an extent his attempt appear to have succeeded resulting in repeated remands of the proceeding to the Trial Court for disposal of the question of jurisdiction as a preliminary issue or for determining merits of the case. It is unfortunate that the learned single Judge of the Hig Court could not analyse the case properly to reach at the core question which, as stated earlier, was whether the plaintiff was entitled to a decree of eviction against the tenant.

The Trial Court in the facts and circumstances of the case clearly errerd in returning the plaint to the plaintiff-appellant under Section 23 of the Small Causes Court Act. Section 23(1) provides that when the right of a plaintiff and the relief claimed by him in a court of small cause depends upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the tile. The power vested under sub-section (1) in the Court is discretionary . It is to be exercised only when the relief claimed by the plaintiff in the proceeding before the Small Causes Court depends upon the proof or disproof of a title to the immovable property and the relief sought cannot be granted without determination of the question. In the present case, as noted earlier, the plaintiff filed a petition for eviction under Section 20(2)(f) alleging that she was the landlady of the house and she had inducted respondent no.1 as tenant of the premises. The question was whether that case was to be accepted or not. Indeed the Trial Court, at the first instance, had accepted the plaintiff's case holding, inter alia, that she had got the property by a registered deed of gift from Smt. Khairunnisa Bibi who in turn had been gifted the property by her mother Fakia Bibi who, indisputedly was the original owner of the property. The question of title of the plaintiff to the suit house could be considered by the Small Causes Court in the proceedings as an incidental question and final determination of the title could be left for decision of the competent Court. In such circumstances, it could not be said that for the purpose of granting the relief claimed by the plaintiff it was absolutely necessary for the Small Causes Court to determine finally to title to the property. The tenant-respondent by merely denying the relationship of landlord and tenant between himself and the plaintiff could not avoid the eviction proceeding under the Rent Control Act. This is neither the language nor the purpose of the provisions in Section 23(1) of the Small Causes Court Act.

On perusal of the records and on consideration of the admitted facts and the findings of fact recorded by the Trial Court it is our considered view that the learned VIth Additional District Judge, Varanasi rightly passed the judgment/order dated 28.7.1999 decreeing the suit for eviction filed by the appellant and the High Court erred in quashing the said order in exercise of jurisdiction under Article 226 of the Constitution of India. The direction of the High Court for remand of the case to the Trial Court for fresh disposal, in our view, is unnecessary in view of the finding recorded by the Trial Court which had not been disturbed on merits by the revisional court, that the appellant was the over of the suit house and she had inducted the respondent No.1 as a tenant in the house. The Respondent-tenant having denied the title of the landlady was liable to be evicted under Section 20(2) of the Act. This Court ordinarily does not interfere with an order of remand passed by High

Court but in the facts and circumstances of the present case we feel that a simple proceeding for eviction of the tenant under the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction), Act 1972, which is to be disposed of expeditiously has dragged on for nearly two decades. It is time that the proeeding is concluded.

Accordingly the appeal is allowed. The judgment of the High Court under challenge is set aside and the judgment/order of the VIth Additional District Judge, Varanasi in Revision No. 51 of 1998 is confirmed. The suit No. 457/80 is decreed with costs. Hearing fee is assessed a Rs. 10,000/-.