

SUPREME COURT OF INDIA

Smt. Syed Sughra Zaidi

Vs.

Laeq Ahmad

C.A.No.20915 of 2017

(Kurian Joseph and R.Banumathi,JJ.,)

06.12.2017

JUDGMENT

R.Banumathi,J.,

SLP(Civil)No.27765 of 2010

1. Leave granted.

2. This appeal arises out of the judgment dated 09.10.2009 passed by the High Court of Allahabad in Revision Petition No.543 of 1989 dismissing the revision petition filed by the original plaintiff/landlord thereby affirming the judgment of the trial court dismissing the ejectment suit of the plaintiff/landlord.

3. Brief facts of the case are that the suit property No.37(old), 17 and 18 (new numbers) situated at Beli Bazar, Meerut was let out by the original plaintiff/landlord (Nazar Mohammad Zaidi) to the original defendants (Abdul Qayuum and Hazi Anvaruul Haq) by way of registered rent agreement dated 12.08.1968 for a period of ten years at the rent of Rs.750/- per month. There was a specific term in the rent agreement which envisaged renewal of the rent agreement by execution of a separate registered agreement for a further period of five years at enhanced rent from Rs.750/- to Rs.800/- per month. After expiry of the original term of lease, landlord (Nazar Mohammad Zaidi) filed ejectment suit in SCC Suit No. 2 of 1981 for eviction of defendants/tenants inter alia on the pleas:- (i) that the period of lease has expired; the defendants/tenants have failed to get the fresh lease deed executed at the enhanced rent of Rs.800/- per month; (ii) the defendants/tenants have put up construction of shops in the suit premises and let out the same to third party in violation of the terms of the rent agreement; and (iii) default in payment of rent and municipal tax by the defendants.

4. Respondents-tenants contested the suit stating that they have taken every possible step to get the lease deed renewed for a further period of five years and also sent the rent @ Rs.800/- per month as per the terms of the lease deed dated 12.08.1968 to the original plaintiff who

refused to receive the same. The tenants further pleaded that the entire arrears of rent, damages along with interest etc. have been deposited in the court under Section 20(4) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short 'U.P. Act 13 of 1972') and the suit for eviction is liable to be dismissed.

5. Upon consideration of the pleadings and evidence, the trial court framed eleven issues and dismissed the suit on the ground that the plaintiff/landlord has not been able to establish any of the grounds for eviction specified under Section 20 of the U.P. Act 13 of 1972. Insofar as the issue of construction by defendants/tenants allegedly in violation of terms of rent agreement was concerned, the trial court held that the construction was in consonance with the terms of the rent agreement and there was nothing in the rent agreement which restricted the right of defendants/tenants to raise construction in the premises. So far as non-renewal of the rent agreement is concerned, the trial court held that there was reluctance on the part of the plaintiff/landlord to renew the rent agreement. The trial court further held that there was no default in payment of rent and the tenants continued paying the rent even after lapse of lease period at the enhanced rate of rent. Being aggrieved, the plaintiff/landlord approached the High Court by way of revision and the same came to be dismissed by the impugned order.

6. Mr. V. Shekhar, learned senior counsel for the appellant contended that the lease deed dated 12.08.1968 was for a fixed period of ten years and it can further be extended for five years on executing fresh deed and since the defendants-tenants failed to get any fresh deed executed, their continuance in possession had become illegal after service of legal notice for eviction. It was further contended that the courts below failed to appreciate that the respondents defaulted many times in payment of rent and payment of house tax to municipality and even on the plea under Section 20(4) of the U.P. Act 13 of 1972, the tenants defaulted in regularly depositing the admitted amount and therefore, the respondents-tenants are liable to be evicted.

7. Reiterating the findings of the High Court and the trial court, the learned counsel for respondents-tenants submitted that the courts below recorded concurrent findings that every possible step was taken by the respondents-tenants and it was the plaintiff-landlord who failed to renew the rent agreement and the concurrent findings so recorded cannot be interfered with.

8. Upon consideration of the rival contentions and materials on record, the question falling for consideration is whether after expiry of the lease period and the determination of the tenancy whether the respondents-tenants can continue in possession of the suit property, when the lease was not renewed?

9. The suit property was let out to the respondents-tenants by a registered rent agreement dated 12.08.1968 for a period of ten years on rent @ Rs.750/- per month. There was a specific term in the rent agreement which envisaged renewal of the rent agreement by execution of a separate rent agreement for a further period of five years at enhanced rent from Rs. 750/- to Rs.800/- per month. The lease was not renewed and thereafter the landlord

issued a notice to the respondents-tenants on 09.04.1979 seeking vacant possession of the suit property on account of determination of lease due to efflux of time.

10. The trial court was of the view that there was no violation of the terms of the lease deed as they had put in sufficient efforts in getting the rent agreement renewed. For arriving at such conclusion, the trial court and the High Court placed reliance upon Ex. A-18 (13.06.1978) a notice allegedly issued by the plaintiff's advocate Gulzar Mohd. intimating the tenants that they are willing to renew the lease as per the terms of the rent agreement provided the tenants pay enhanced rent @ Rs.800/- per month. This piece of evidence was categorically denied by the landlord. The trial court did not keep in view the denial of the appellant-landlord regarding issuance of Ex. A-18 notice (13.06.1978). In the light of denial of issuance of Ex. A-18 notice, it was necessary to adduce evidence to prove that Ex. A-18 notice was actually issued on instructions by the landlord. The burden was upon the respondents-tenants to prove that the said notice was issued by advocate Gulzar Mohd. on the instructions of the landlord. The trial court pointed out that the respondents-tenants had taken steps to examine the said advocate; but he had not appeared before the court. From the materials on record, it is not known as to what steps were taken by the tenants to examine the said advocate Gulzar Mohd. The trial court, in our view, could have very well exercised its power under Order XVI Rule 14 CPC and summoned the said advocate as witness. In the absence of examination of the said advocate Gulzar Mohd., the trial court ought not to have placed reliance upon Ex. A-18 notice alleged to have been issued on the instructions of the landlord.

11. Ex. A-18 notice (13.06.1978) is said to have been issued on the instructions of the landlord. As pointed out earlier, the landlord issued eviction notice on 09.04.1979 seeking vacant possession of the premises. If really Ex. A-18 notice dated 13.06.1978 was issued at the instance of the landlord offering to renew the lease, there was no requirement of issuance of eviction notice on 09.04.1979 calling upon the respondents-tenants to hand over the vacant possession of the suit property. The courts below erred in ignoring landlord's denial of issuance of Ex. A-18 notice (13.06.1978) and non-examination of advocate Gulzar Mohd. The High Court was not right in holding that the respondents-tenants have taken steps to get renewal of rent agreement and there was reluctance only on the part of the landlord. Be it noted, the tenants have not approached the court to get renewal of lease agreement beyond 12.08.1978.

12. As pointed out earlier, on 09.04.1979, the landlord issued a notice to the respondents-tenants seeking vacant possession of the demised premises on account of determination of lease due to efflux of time. After lapse of lease period, if a lessee continues in possession of the demised premises in absence of an assent by lessor, then he is a tenant by sufferance and exposes himself to be sued for ejectment at any time without any prior notice or demand of possession.

13. The term in the lease agreement for renewal of lease deed does not ipso facto extend the tenure or term of the lease. So far as the clause for renewal in the lease deed is concerned, it was held in *Delhi Development Authority v. Durga Chand Kaushish*¹ that such covenant only

entitled a lessee to obtain a fresh lease in accordance with and in due satisfaction of the law governing the making of leases. In the absence of renewal of rent agreement, in our considered view, the possession of the respondents-tenants in the demised premises has become unlawful and they are liable to be evicted.

14. Yet another ground for eviction is construction of shops in the suit premises by the tenants and sub-letting the same in violation of terms of rent agreement. Though, there is a clause in the rent agreement enabling the tenants to put up construction, there is no clause in the lease agreement permitting the tenants to transfer his interest of tenancy to third party. It is the case of the appellant that in violation of the rent agreement, Anwar Ul Haq who was one of the original tenants, transferred his interest of tenancy in favour of third respondent Mohd. Ilyas alias Chaman. The appellant-landlord specifically denied that such transfer of interest in the tenancy was with the consent of the original landlord. On the other hand, the respondents-tenants in support of their claim submitted that such transfer of interest in tenancy had taken place with the consent and knowledge of the original landlord, relied upon Exs. A1 to A7 which are the receipts said to have been signed by the original landlord issuing to Mohd. Ilyas alias Chaman as one of the tenants. In view of specific denial by the appellant-landlord that they have permitted such transfer of interest, the receipts Exs. A1 to A7 ought to have been proved by adducing evidence. The respondents-tenants, though relied upon the said documents, had not taken steps to prove those documents.

15. On those issues, the courts below recorded findings that the rent agreement nowhere prohibited any of the tenants from transferring their interest in tenancy and therefore, there was no violation of any of the terms of the rent agreement. In noting so, the trial court lost sight of the fact that in the rent agreement, parties specifically incorporated clause (9), permitting sub-letting by tenants. Had the parties agreed to create or transfer of interest in the tenancy in favour of third party, they would have added a specific term in that regard in the rent agreement. Though, sub-letting of the premises for commercial purpose was agreed to by the original parties, transfer of interest in tenancy leading to creation of third party interest in the suit property could not have been done in the absence of a specific term in the rent agreement. Thus, the respondents-tenants are liable to be evicted on the ground of violation of terms of rent agreement by transfer of interest in tenancy to respondent No. 3 - Mohd. Ilyas alias Chaman.

16. So far as the default in payment of rent and the deposit arrears of rent by the defendants and whether the respondents are entitled to the benefits of Section 20(4) of the U.P. Act 13 of 1972, the courts below recorded concurrent findings that Section 20(4) of the U.P. Act 13 of 1972 has been complied with. According to the appellant-landlord, the respondents have failed to regularly deposit the rent in the trial court and there was no compliance of Section 20(4) of the U.P. Act 13 of 1972. Since we have held that the respondents-tenants are liable to be evicted on the ground of non-renewal of rent agreement and determination of tenancy and transfer of tenancy right in violation of terms of rent agreement, we are not proposed to go into the ground of default in payment of rent and compliance of Section 20(4) of the U.P. Act 13 of 1972.

17. The courts below did not properly appreciate that after service of eviction notice on 09.04.1979 continuance of respondents' possession in the demised premises had become illegal. The High Court did not appreciate that the respondents have sub-let the property to third party and are earning huge profits by simply paying a meager rent of Rs.800/- per month. The respondents-tenants cannot squat on the property and make a profit for themselves at the cost of the appellant-landlord and the judgment of the High Court cannot be sustained.

18. In the result, the impugned judgment is set aside and this appeal is allowed. The respondents-tenants and the sub-tenants inducted by them and any other person claiming through them are directed to hand over vacant possession of the suit premises within a period of one year from today, failing which the respondents-tenants and their sub-tenants or other persons claiming through them shall be liable for contempt of Court in addition to other proceedings. No order as to costs.