

Court No. - 4

Case :- S.C.C. REVISION No. - 51 of 2023

Revisionist :- Manoj Kumar And 2 Others

Opposite Party :- Ram Khelawan Tiwari And 2 Others

Counsel for Revisionist :- Birendra Kumar, Ashish Kumar Singh

Counsel for Opposite Party :- Shiv Om Vikram Singh Chauhan

Hon'ble Prakash Padia, J.

Civil Misc. Substitution Application No.04 of 2023:-

1. This application has been filed with a prayer for substituting the heirs and legal representatives of the opposite party no.1, Ram Khelawan Tiwari, who is said to have died on 25.10.2023.
2. Counsel appearing on behalf of opposite parties have no objection.
3. For the reasons given in the accompanying affidavit, the substitution application is allowed.
4. Counsel for the revisionists is directed to insert the word deceased against the name of respondent no.1 namely Ram Khelawan Tiwari and substitute the name mentioned in paragraph no.2 of the affidavit accompanying the substitution application namely Anshul Tiwari and Ajay Tiwari as respondent nos. 1/1 and 1/2 in the cause title during the course of the day.

Order on S.C.C. Revision:-

1. The present S.C.C. Revision has been filed with the prayer to set aside the judgment and order dated 24.03.2023 passed by the Additional District Judge, Court No.15, Allahabad in Small Cause Court Suit No. 65 of 2008 (Ram Khelawan Tiwari vs. Mahesh Kahar and others) and with the further prayer to allow the application being Paper No. 92-7/1 filed by the revisionist.
2. By the aforesaid order, the application filed by the revisionist being Paper No. 92-7/1 which was filed for cross examination report with handwriting expert was rejected.
3. After hearing counsel for the parties at length, the following order was passed by me on 25.09.2023:-

"1. The application dated 02.02.2023 was filed by the defendant in the suit namely the present revisionist stating therein that there is no relationship of the landlord and

tenant so no rent receipts had ever been issued. In this regard it is further stated in the application that the documents submitted by the landlord are forged and fictitious, therefore, the said documents are required to be examined by a hand writing and signature expert for which the applicants herein are ready to bear the expenses. Copy of the application is appended as Annexure-10 to the affidavit filed in support of the revision. The aforesaid application are numbered as Application No.92-Ga/1. The said application was rejected by the court below vide its order dated 24.03.2023, hence the present petition.

2. It is argued by the counsel for the revisionists that for the first time certain papers and documents were filed by the landlord in the court below on 10.11.2022 and immediately thereafter the application in question has been filed. It is further argued that without recording any cogent reasons the application filed by them was rejected.

3. On the other hand it is argued by Shri Vishnu Gupta, learned Senior Counsel assisted by Shri Shiv Om Vikram Singh Chauhan, learned counsel appearing on behalf of opposite parties that order passed by the court below is absolutely perfect and valid order and application was wrongly filed in the suit in question. In this regard he placed reliance upon the judgment of the Hon'ble Apex Court passed in the Case of Fakhruddin vs. State of Madhya Pradesh reported in 1967 AIR(SC) 1326.

4. Heard counsel for the parties and perused the record.

5. From perusal of the record, the Court is of the prima facie opinion that order passed by the court below in the aforesaid application is without giving any cogent reasons.

6. After some arguments, it is admitted by the counsel for the parties that in case the report of the hand writing expert be called for without any further delay, they have no objection.

7. In this view of the matter, the direction is issued to the court below namely Additional District Judge, Court No.15, Allahabad to call for hand writing expert report in the matter on or before 28.09.2023. The report be submitted by the hand writing expert in the court below on or before 06.10.2023. The aforesaid report be submitted by the court below before this Court on the next date fixed in the matter.

8. Put up this matter as fresh on 10.10.2023.

9. Copy of this order be communicated by the Registrar (Compliance) to the Additional District Judge, Court No.15, Allahabad through District Judge, Allahabad within 24 hours."

4. Pursuant to the same, a report submitted by the Additional District and Session Judge, Court No. 15, Prayagraj dated 05.10.2023 is already on record. Along-with the said report, a report of finger print expert and handwriting expert Shri H.P. Khare dated 12.10.2023 is also appended.

5. In this view of the matter, it is argued that since the report has already been submitted by the handwriting expert, no further orders are required to be passed, insofar as the present revision is concerned.

6. In view of the aforesaid, a prayer has been made to dismiss the present revision as having become infructuous.

7. Accordingly, the present S.C.C. Revision is dismissed as having become infructuous.

Order Date :- 11.12.2023

Swati