

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 6060 of 2023

Petitioner :- Abdul Aziz

Respondent :- Mohd. Khalid And 8 Others

Counsel for Petitioner :- Mithun Yadav, Nishank Rastogi, Sankalp Rastogi

Counsel for Respondent :- Vimal Kumar

Hon'ble Rajnish Kumar, J.

1. Heard Shri Nishank Rastogi, learned counsel for petitioner and Shri Mohd. Tariq, learned counsel for respondent no. 6.
2. This petition has been filed challenging the order dated 21.11.2023 passed by learned Prescribed Authority/Additional Civil Judge, Court No. 21, Lucknow in P.A. Ex./29/2021 (Old No.4/2011) (Muzzamil Husain Vs. Abdul Azeez) by means of which a writ of possession has been issued according to the municipal number.
3. Learned counsel for petitioners submits that the respondents had filed P.A. Case No. 10 of 2010 for vacation against the petitioner. The said case was contested by the petitioner denying the tenancy between the respondents and the petitioner on the ground that predecessor-in-interest of the petitioner had purchased the house in question, therefore, they had become the owner of the house. However, the sale deed executed in favour of the predecessor-in-interest of the petitioner was disbelieved on account of difference in the boundaries given in the plaint and the sale deed produced by the petitioner and the said P.A. Case No. 10 of 2010 was allowed by means of judgment and order dated 30.05.2011. The rent appeal against the same filed by the petitioner was also dismissed. Thereafter writ petition filed before this Court was also dismissed only on this ground.

4. He further submits that during pendency of the execution case, the petitioner had preferred an application showing the fraud committed by the petitioner in obtaining the aforesaid decree, which was registered as Misc. Civil Case No. 537 of 2023 but dismissed by means of the order dated 8.9.2023, which has been assailed by the petitioner in revision. He further submits that twice a writ of possession issued by the executing court was returned on the ground of boundaries of the house in question as the same were not traceable.

5. He further submits that thereafter the respondents moved an application for issuing a writ of possession alleging that if the boundaries are not traceable then the judgment and order may be executed as per the house number. The petitioner had filed an objection against the same on the ground that since the property is not identifiable in terms of the directions issued by this Court, therefore, it may be held that the judgment passed in P.A. case is un-executable because a direction was issued by means of judgment and order dated 30.05.2011 for possession of the house no. 89/180 (89/147), Suturkhana, Makboolganj, P.S. Kaiserbagh, Lucknow and in the tenancy of the petitioner, the boundaries of which have been given in the application. Therefore, if the boundaries are not traceable the judgment and order cannot be executed. Therefore, the impugned order is not sustainable and is liable to be set aside.

6. Per contra, learned counsel for the respondent no. 6 submits that the issue of boundaries was raised by the petitioner in the P.A. Case itself, which was rejected and he lost up-to this Court. This Court in petition Rent Control No. 106 of 2012 (Abdul Azeez and other Vs. Additional District Judge/T.E.C.P.-5, Lucknow and another) after considering the contentions of the petitioner recorded a finding that the Prescribed Authority and the Appellate Authority have rightly reached to the conclusion

that the petitioners have failed to prove that the sale deed relates to the disputed tenanted portion and names of the Police Station and Mohalla are also different, therefore, now at this stage, the petitioner cannot raise the said issue because that has become final and the judgement passed in the said case on 09.04.2013 has not been challenged by the petitioner. He further submits that in view of order VII, Rule 3 of C.P.C. the property can be identified by number or by boundaries and if it is identifiable by number, the judgment passed by the Prescribed Authority can very well be executed accordingly, therefore, there is no illegality or infirmity in the impugned order. He relied on the judgment of Full Bench of this Court in ***Ganesh Vs. Sri Ram Lalaji Mahraj Birajman Mandir and others; AIR 1973 Allahabad 116 Azizullah Khan Vs. Court of Wards; AIR 1932 Allahabad 587 and Jagat Narain Tiwari Vs. State of U.P.; 1999 All. L.J. 2437.***

7. Having considered the submissions of learned counsel for parties, I have perused the records.

8. It is borne out from the documents placed on record that P.A. Case No. 10 of 2010 was filed by the predecessor-in-interest of the respondent nos. 1 to 7 against the petitioner for vacation of the house no. 89/180 (89/147), Sutturkhana, Makboolganj, P.S. Kaiserbagh, Lucknow. The petitioner and the respondent nos. 8 and 9 had filed the objection claiming themselves to be the owner on the ground that the predecessor-in-interest of the petitioner and respondent nos. 8 and 9 had purchased the said property through two sale deeds dated 26.8.1986 and 28.11.1994. However, through a correction deed made after filing of the aforesaid P.A. case, the house number in the sale deed i.e. 147/79 was got corrected as 89/147 Sutturkhana, Makboolganj, P.S. Kaiserbagh, Lucknow on the ground of typing mistake in regard to which, the said P.A. Case was filed.

9. The Prescribed Authority considering the sale deed of the petitioner and the fact and circumstances in which the correction was got made after filing of P.A. Case and also the fact that after the alleged sale deed, the name of the predecessor-in-interest of the petitioner or the petitioner was never got mutated in the municipal records and they have never paid the municipal and other taxes, rejected the contention of the petitioner, and allowed the P.A. case by means of order dated 30.05.2011 and directed for vacation of the tenanted portion in house no. 89/180 (89/147), Sutturkhana, Makboolganj, P.S. Kaiserbagh, Lucknow boundaries of which has been given in the application.

10. Admittedly, the said judgement was challenged by the petitioner and respondent nos. 8 and 9 in Rent Appeal No. 49 of 2011, which was dismissed by means of the judgment and order dated 29.11.2012, considering the grounds raised by the petitioner. The said judgment was further challenged by the petitioner before this Court in Petition Rent Control No. 106 of 2012; Abdul Aziz and others Vs. Additional District Judge/TECP-5, Lucknow and another, which was dismissed by means of order dated 9.4.2013 considering the plea of the petitioner and recording a finding that the learned Prescribed Authority as well as the learned Appellate Authority have rightly reached to the conclusion that the petitioners have failed to prove that the sale deed related to the disputed tenanted accommodation. It has also been observed that admittedly the petitioners have occupied the disputed premises as tenant since the time of their ancestors and it was incumbent upon them to prove that they have attained the status of owner by cogent evidence and that the relationship of landlord and tenant has come to an end. The relevant portion of the order dated 09.04.2013 order is extracted here-in-below:-

"Admittedly, the release application under Section 21 (1) (a) of U.P Act no. 13 of 1972 relate to house No. 89/180 (89/147), Shutur Khana, Maqboolganj, P.S.-Kaiserbagh, Lucknow. The tenants/petitioners took the plea of ownership that the disputed house was initially numbered as house No. 205, Maqboolganj, Kothakhana P.S.- Hazratganj, Lucknow which was owned by Ahmad Hussain who sold it to Lala Madhuri Saran whose sons Krishna Kant, Ganga Kant, and Rajni Kant sold the house to Ramzan Ali through registered sale deed dated 11.09.1967. That in the meantime, the father of the petitioners Hafiz Abdul Hamid entered into the house in question as tenant in 1950 on the first floor. But the learned Prescribed Authority as well as the learned Appellate Authority have rightly reached to the conclusion that the petitioners have failed to prove that the sale deed relate to the disputed tenanted accommodation. The names of Mohalla and Police Station are also different. There is no perversity in the discussions made and the conclusions arrived at by the learned Prescribed Authority as well as the learned Appellate Court. The petitioners have also filed regular Civil Suit No. 700/2011, which is pending in the Court of Civil Judge, Lucknow for declaration of ownership. The factum of ownership, as laid down by the two courts below, is foreign to the scope of application under Section 21 of U.P. Act No. 13 of 1972.

*Learned counsel for the petitioners relied upon the law laid down by this Court in the case of **Maharaj Kumari Vimla Devi vs. Rent Control & Eviction Officer, Mussorie and Anr. [ARC 1983 (3) Page- 225]** and **Smt. Hamidan vs. Vth Additional District Judge, Allahabad [ARC 1983 Page 405]**, which have no bearing to the controversy in question before this Court. Mere pendency of a Civil Suit for declaration of title cannot be treated to be a bar in deciding an application under Section 21 of U.P. Act No. 13 of 1972.*

The Learned Appellate Authority has rightly held that house Number can be changed but Mohalla cannot be changed and if Mohalla has been changed, it was incumbent upon the petitioners to prove the fact that the sale-deeds relied upon by them as documents of title relate to the tenanted property, which is in dispute before the learned Prescribed Authority. Admittedly, the petitioners have occupied the disputed premises as tenant since the time of their ancestors. It was incumbent upon them to prove that they have attained the status of owner, by cogent evidence and that the relationship of landlord and tenant has come to an end.

In result, the writ petition deserves to be dismissed and is accordingly dismissed."

11. In view of above, it has already been held by this Court that the petitioner has failed to prove that the sale deed, on the basis of which he is claiming right, is in regard to the disputed tenanted portion. The said order has not been challenged by the petitioner further, therefore, it has become final. Therefore, any

plea at this stage on the basis of the said sale deed cannot be accepted. It is also not in dispute that the property is not identifiable by the house number, rather admitted that it is identifiable by the municipal number.

12. On a query being put, learned counsel for petitioner informs that the petitioner has filed a suit for ownership, which is also recorded in the aforesaid order of this Court, in which there is no order in favour of the petitioner, therefore, the petitioner cannot claim ownership of the house in question as on date.

13. This Court in the Full Bench Judgment in the case of ***Ganesh Vs. Sri Ram Lalaji Mahraj Birajman Mandir and other*** (supra), has held that if independently of the boundaries of the property can be sufficiently identified, then any error or mis-description in the boundaries cannot affect either the suit or the decree passed in the suit. The relevant portion of the judgment is extracted here-in-below:-

"It will thus be seen that what the law requires is that the description of the property in suit given in the plaint must be sufficient to identify the property. If independently of the boundaries the property can be sufficiently, identified, then any error or mis-description in the boundaries cannot affect either the suit or the decree passed in the suit."

14. In view of above and considering the overall facts and circumstances of the case, this Court is of the view that the impugned order dated 21.11.2023 has rightly been passed by the executing court in accordance with law. There is no illegality or error in it. The petition is misconceived and lacks merits. Therefore, no interference is required by this Court.

15. The petition is, accordingly, **dismissed**. No order as to costs.

Order Date :- 2.12.2023

Virendra