

Neutral Citation No. - 2024:AHC-LKO:66150

Reserved
Court No. - 8

Case :- WRIT - A No. - 1000055 of 2013

Petitioner :- Azmatullah

Respondent :- A.D.J./Special Judge Ayodhya Prakaran Lucknow And Others

Counsel for Petitioner :- Govind Saran Nigam, Abhisht Saran, Ausaf Ahmad Khan, Mirza Shariq Aziz, Mohd. Zaid Khan, Mohiuddin Khan, Sandhya Bharti, Shahid Ali, Shashi Rawat, Vinod Kumar Pandey

Counsel for Respondent :- Manish Kumar, Mohd. Ateeq Khan, Nilish Anand, Yatish Gupta

Hon'ble Jaspreet Singh, J.

1. Heard Shri Mohd. Zaid Khan, learned counsel for the petitioner and Shri Mohd. Ateeq Khan, learned counsel appearing for the respondents.

2. This petition arises out of proceedings initiated by the private respondents no.3 and 4 who filed a suit bearing SCC No.133 of 1999 under the Provincial Small Cause Courts Act 1887 (hereinafter referred to as Act of 1887) seeking a decree of recovery of rent, damages for wrongful use and occupation and eviction which was decreed by the trial court on 07.01.2009 and the same was assailed by the petitioner in a SCC Revision No.8 of 2009 which came to be dismissed by means of judgment dated 13.03.2013 by the Special Judge (Ayodhya Prakaran/Additional District Judge, Lucknow).

3. The facts giving rise to the instant petition are being noticed hereinafter.

4. The private respondents no.3 and 4 filed a SCC Suit bearing No.133 of 1999 seeking a decree for arrears of rent, ejectment and

damages for wrongful use and occupation with the pleadings that the private respondents no.3 and 4, the plaintiffs, are the owner land ladies of House No.499, Nai Basti Murad Ali Lain, Barafkhana, Husainganj, Lucknow.

5. It was stated that Sharafatullah was the tenant of the premises in question as described in para-1 of the plaint on a monthly rent of Rs.50/-. It was further stated that the defendant Sharafatullah used to pay rent to the mother of the private respondents no.3 and 4 and after her death, he stopped the payment of rent with effect from 01.03.1981 and the defendant had also sublet the premises. The plaintiffs sent a notice terminating the tenancy and seeking arrears of rent which could not be served through post on account of connivance of the Postman and then later the notice dated 10.04.1999 was affixed on the tenant's accommodation on the same very day. Since the said notice was not complied with, hence the suit came to be filed in the month of May 1999.

6. Sharafatullah, the sole defendant contested the aforesaid suit and filed his written statement specifically stating that the plaintiffs of the suit were not the land ladies of the house in question. It was also stated that the correct number of the disputed premises as assessed in the municipal records, which was the ancestral property of the defendant, is House No.14/499. It was also stated that the defendant was not the tenant of the said premises nor he paid any rent either to the mother of the plaintiffs nor any notice for any demand of rent or

arrears was made by the plaintiffs from the defendant nor any notice was issued and no notice was served on the defendant. It was also stated that Azmatullah (the petitioner herein) is the real true owner of the disputed premises in question and he obtained the said property under a Will executed by Smt. Maqboola who was the grand mother of the petitioner (mother of Sharafatullah, the defendant who was impleaded in the suit).

7. Certain additional pleas were also taken in the written statement. In effect, the defendant denied the ownership as well as the relationship of landlord and tenant between the parties and set up title in favour of Azmatullah, who is said to have obtained the premises through a Will executed by Smt. Maqboola, who had purchased the property in question by means of a sale deed executed in her favour in the year 1969.

8. The record further revealed that the plaint came to be amended, though at a later stage, wherein the plaintiffs corrected the house number of the disputed premises in question from 499 to 14/499.

9. With the aforesaid pleadings, the matter went to trial and in the first round of the litigation, the suit of the plaintiffs was dismissed by the SCC Court by means of judgment dated 20.10.2005. This was assailed by the plaintiffs by filing a SCC Revision bearing No.73 of 2005 which came to be allowed by the Revisional Court by means of its judgment dated 04.05.2007 and the matter was remanded to the Judge Small Causes for decision afresh after affording an opportunity

of hearing to the parties and by making a fresh analysis of the evidence available on record.

10. The present petitioner Azmatullah preferred a writ petition bearing No.122 (R/C) of 2007 before this Court and the same was dismissed by means of order dated 30.08.2007 upholding the order passed by the Revisional Court and further directing that the trial court shall decide the disputes *inter se* the parties on the basis of material on record and in accordance with law.

11. After remand the matter came back to the Judge Small Causes who then after hearing the parties and analyzing the evidence afresh decreed the suit by means of judgment dated 07.01.2009 and the petitioner was granted 60 days time to vacate the premises.

12. This time it was the petitioner who filed a SCC Revision bearing No.8 of 2009 which also was dismissed on 13.03.2013 as such the judgment passed by the SCC Court dated 07.01.2009 was affirmed.

13. It is in the aforesaid backdrop that Azmatullah preferred the instant petition assailing the two judgments passed by the Revisional Court dated 13.03.2013 by which it affirmed the judgment of the Judge Small Causes dated 07.01.2009. A Co-ordinate Bench of this Court while entertaining this petition passed an interim order dated 27.05.2016 by means which it stayed the eviction of the petitioner.

14. Shri Mohd. Zaid Khan, learned counsel for the petitioner has submitted that in light of the defence taken in the written statement,

two core issues were to be determined: **(i)** The relationship of landlord and tenant between the plaintiffs and the defendant; **(ii)** Whether the notice issued under Section 106 of the Transfer of Property Act dated 10.04.1999 was duly served or not?

15. It is urged that unless the findings on these two issues are returned in favour of the private respondents, the suit could not have been decreed.

16. Elaborating his submissions, it was urged by Shri Mohd. Zaid Khan that there was no worthy evidence led by the private respondents which could establish the relationship of landlord and tenant between the parties. In absence of the such relationship, the suit could not have been decreed and that too by a court exercising its powers under the Act of 1887. Moreover, the private respondents had failed to establish the service of the composite notice of demand and ejectment as provided in law, hence the findings recorded by the two courts are patently perverse.

17. It is further submitted that what has been done by the two courts is, that it, entered into the ancillary issue of title and giving a finding in this regard it went on to assume that there was a relationship of landlord and tenant. It is further submitted that even if at all the title may have been in favour of the private respondents (though not conceded) yet in absence of relationship between the parties that of landlord and tenant, the suit could not have been decreed.

18. Similarly, even if at all by any stretch of imagination the

relationship of landlord and tenant may be assumed even then without proving that the composite notice of demand and ejectment was served, the suit could not have been decreed. Thus, in either situation since the two core issues have wrongly been decided by the two courts, consequently, the judgment and decree passed by the two courts suffer from patent illegality and as such the same deserves to be set aside after allowing this petition.

19. Shri Mohd. Ateeq Khan, learned counsel appearing for the private respondents urged that the private respondents are the owner landladies of the property in question. The defendant Sharafatullah was the tenant and he used to pay rent to the mother of the private respondents. Upon the death of the mother of the private respondents, the defendant Sharafatullah stopped paying the rent from 01.03.1981. Despite several demands made from the defendant who refused to pay, later the plaintiffs sent a notice terminating the tenancy and for demand and ejectment but since it could not be served through post, hence the said notice was affixed on the disputed premises in presence of two witnesses, hence the same was served. However, the defendant did not pay the outstanding rent nor vacated the premises, hence in the aforesaid circumstances, the suit came to be filed in the month of May 1999.

20. It was urged that in order to prove its case the plaintiffs examined two witnesses before whom the composite notice of demand and ejectment was affixed at the disputed premises of the

tenant. The private respondent entered into the witness box to support its claim and since the defendant had raised an issue of title; inasmuch as it was denied by the defendant that the plaintiffs are the owners hence the plaintiffs examined the vendor, namely, Ehsan Ali as P.W.4. The evidence of all these witnesses was carefully considered by the trial court and thereafter findings were returned in favour of the private respondents by means of judgment dated 07.01.2009 and the same has been affirmed by the Revisional Court by means of judgment dated 13.03.2013.

21. It was urged that both the issues i.e. the relationship of landlord and tenant as well as the issue relating to service of notice are pure questions of fact and since both the courts have concurrently upheld the said findings hence the same are not susceptible to challenge before this Court in terms of Article 226/227 of the Constitution of India. Accordingly, the petition deserves to be dismissed.

22. The Court has heard the learned counsel for the parties at length and also perused the material on record.

23. At the outset, it may be noticed that the instant petition has been nominated to this Court by means of order dated 09.09.2022 passed by Hon'ble the Chief Justice and in this context, the Court has proceeded to hear the learned counsel for the parties.

24. From the perusal of the material on record, it indicates that the plaintiffs while filing the suit in May 1999 clearly stated that the plaintiffs are the owners and the landladies of House No.499, Nai

Basti, Murad Ali Lain, Barafkhana, Husainganj, Lucknow. The boundaries of the said house was also mentioned in para-1 of the plaint. It was also stated that Sharafatullah, the original tenant was a tenant on a monthly rent of Rs.50/- and he failed to pay rent from 01.03.1981. It is also stated in paragraph-5 of the plaint that several notices were sent to the defendant terminating the tenancy but the same were not served as the defendant evaded service of notice in connivance with the Postman and faced with such circumstances the plaintiffs served the notice dated 10.04.1999 by affixing it at the rented premises of the defendant. The plaintiffs sought the arrears of rent from 01.05.1996 till 09.05.1999 (for the period 01.03.1981 upto 13.05.1996 had become time barred) and decree for eviction was sought alongwith damages for wrongful use and occupation.

25. As noticed above, the said contention came to be disputed and denied by the defendant who denied not only the relationship of landlord and tenant but also denied the title of the private respondents and claimed that the property belonged to the son of the defendant who is its true owner. It was stated that Smt. Maqboola was the owner of the property and that she had purchased it by way of a registered sale deed in the year 1969. Thereafter Smt. Maqboola had executed a Will in favour of her grand son Azmatullah and thus upon her death, it was Azmatullah who was its true owner.

26. It was further urged that Smt. Maqboola in her life time had let-out some part of the premises to tenants and in so far as the plaintiffs

are concerned, neither they are the owners nor the land ladies and the entire case set up by the plaintiffs was based on falsehood. The record would further indicate that even though the issue of title was raised by the defendant yet the suit was not remitted to the competent court for deciding the issue of title, as provided under Section 23 of the Provincial Small Cause Courts Act but the suit was tried by the SCC Court.

27. The record further indicates that the petitioner Azmatullah instituted a title suit bearing No.773 of 2007 before the Civil Court in the year 2007 i.e. at the time when the petitioner was faced with the judgment, of the Revisional Court in the first round of litigation, passed in SCC Revision No.73 of 2005 which was decided on 04.05.2007.

28. A specific query was put to the learned counsel for the parties, ascertaining the status of the said title suit and it was informed that the Suit No.773 of 2007 was dismissed by the trial court on 01.08.2009 against which an appeal was preferred bearing No.151 of 2009 and the said appeal was allowed and the matter was remanded. After remand the suit was dismissed for want of prosecution and as of today the restoration application for reviving the said suit is still pending.

29. Apparently, the private respondents claiming themselves to be the owner land ladies of the premises in question had filed a suit for arrears of rent and ejectment. It is not disputed between the parties that the suit premises was governed by the provisions of the U.P.

Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act No.13 of 1972).

30. From the perusal of the relevant provisions of the U.P. Act 13 of 1972, it would indicate that the landlord is entitled to file a suit against a tenant for eviction on occurrence of certain contingencies. Illustratively, in case if the landlord requires the premises for his personal need or that the building in question is dilapidated, then a petition under Section 21 (1)(a) or (b) of the Act of 1972 could be preferred before the Prescribed Authority. The landlord also has an alternate of filing a petition seeking eviction of the tenant on the grounds as enumerated in Section 20 of the Act 1972. The suit which is preferred on the grounds as mentioned in Section 20 of the Act of 1972, is governed by the provisions of the Act of 1887.

31. In the instant case, since the ground for eviction was default in payment of rent and sub-letting of the disputed premises and both these grounds inter alia are covered under Section 20 of the Act of 1972. Accordingly, the suit came to be filed before the Judge Small Causes.

32. In a suit of such a nature in order to succeed the landlord/the plaintiffs has to establish the relationship of landlord and tenant and also the service of notice of demand and ejectment. It is in this regard that the submissions of the learned counsel for the petitioner relating to the relationship of landlord and tenant service of composite notice for demand and ejectment whether served gains significance as unless

the said findings are returned in favour of the landlord, the suit cannot be decreed.

33. It is in this context, if the submissions of the learned counsel for the parties are noticed and the record placed before the Court is examined, it would reveal that in so far as the relationship of landlord and tenant is concerned, there is no evidence which has been considered by the two courts to arrive at such a findings. If the decision of the trial court dated 07.01.2009 is seen, it would reveal that a specific issue to this effect was framed. However, while dealing with the said issue no.1, the trial court had considered the issue of title and relying upon the statement of the P.W.4, Ehsan Ali, who was the son of the vendor, who had sold the property to the mother of the plaintiffs. Smt. Samar Jahan examined herself as P.W.2 and on the basis of her statement, the trial court has held that the plaintiffs were the owners as well as the land ladies of the disputed premises and the relationship of landlord and tenant was found established.

34. At this stage, it will be relevant to notice the manner in which the said findings have been returned by the trial court and the relevant portion of the said judgment dated 07.01.2009 is being reproduced hereinafter for ready reference:-

"प्रश्नगत मकान के मालिक होने के सम्बन्ध में वादिनी ने ग-
26/2 बैनामा की सत्यप्रतिलिपि दाखिल किया है तथा उसकी पुष्टि
पी.डब्ल्यू.4 ने अपने बयान में की है इसलिये यह तथ्य वादी ने
साबित किया है कि प्रश्नगत मकान की स्वामिनी उसकी मां थी।

मकबूला के पक्ष में कर निर्धारण की सूची प्रतिवादी के पक्ष द्वारा दाखिल की गई है। कर निर्धारण सूची स्वत्व का दत्तावेज नहीं है इसलिये इसे स्वत्व के रूम में नहीं स्वीकार किया जा सकता है। इस प्रकार यह तथ्य साबित है कि वादीगण प्रश्नगत मकान के स्वामी हैं। वादीगण के अनुसार मकान क्रय करने के पश्चात मौखिक किराये पर प्रतिवादीगण को दिया गया परन्तु मेहदी बेगम की मृत्यु के उपरान्त प्रतिवादी ने किराया अदा नहीं किया इस तथ्य को पी.डब्ल्यू.2 ने अपने बयान में तस्दीक किया है कि प्रतिवादी उसके किरायेदार थे और मां के मरने के बाद किराया अदा करना बन्द कर दिया, इसके खंडन से जो साक्ष्य प्रतिवादी की तरफ से आया है वह यह साबित करने के लिये पर्याप्त नहीं है कि प्रतिवादी वादी के किरायेदार नहीं है। स्वयं निगरानी न्यायालय ने अपने विश्लेषण में यह मत व्यक्त किया है कि वादीगण का प्रतिवादीगण वे मकान मालिक एवं किरायेदार का सम्बन्ध स्थापित होता है जिसकी पुष्टि मा० उच्च न्यायालय से हो चुकी है।"

35. When the said findings, as noticed above, was assailed before the revisional Court it affirmed the same and the relevant portion of the judgment rendered by the revisional court dated 13.03.2013 in this regard is being reproduced hereinafter for ready reference:-

"अतः अवर न्यायालय द्वारा विवादित मकान के मालिक होने के संबंध में वादीगण/प्रत्यर्थीगण द्वारा दाखिल बैनामा ग-26/2 तथा पी०डब्ल्यू० 4 साक्षी की साक्ष्य का आकलन करके यह विधिवत् सही निष्कर्ष लिया गया है कि विवादित मकान की स्वामी वादीगण/प्रत्यर्थीगण की माता मेहदी बेगम थीं तथा उनकी मृत्यु के उपरान्त वादीगण/प्रत्यर्थीगण विवादित सम्पत्ति के स्वामी हैं। अवर न्यायालय द्वारा यह भी निष्कर्ष सही लिया गया है कि वादीगण के कथनानुसार विवादित मकान क्रय किये जाने के बाद

प्रतिवादी/निगरानीकर्ता को किराये पर दिया गया, किन्तु वादीगण की माता की मृत्यु के पश्चात् प्रतिवादी ने किराया अदा नहीं किया। इस संबंध में जो साक्ष्य प्रतिवादी/निगरानीकर्ता की ओर से प्रस्तुत की गयी है, वह यह साबित करने के लिये पर्याप्त नहीं है कि प्रतिवादी वादीगण का किरायेदार नहीं है। निगरानीकर्ता/प्रतिवादी द्वारा लिये गये इस तर्क में कोई बल नहीं है कि पक्षकारों के मध्य मकान मालिक एवं किरायेदार का संबंध सिद्ध नहीं हुआ है। पंजीकृत विक्रय विलेख 26-ग/2 ता 5 के माध्यम से विवादित भवन क्रय करने के पश्चात् मेहंदी बेगम तथा उनकी मृत्यु के पश्चात् वादीगण विवादित भवन के स्वामी हुए हैं। उक्त विक्रय विलेख को किसी न्यायालय द्वारा अभी तक निरस्त नहीं किया गया है।"

36. From the perusal of the relevant portion which have been quoted herein above, it would indicate that both the courts have merely touched the issue of title in a summary manner [since the proceeding before the Provincial Small Causes Court Act is of a summary nature and in law the Small Cause Court is not bestowed with the jurisdiction to give any conclusive findings in so far as the title is concerned].

37. However what is conspicuously absent from the discussion in the two impugned judgments is the reference to any evidence by which the relationship of landlord and tenant was established. It is one thing to say that the plaintiffs may be the owner but it is another thing to establish the relationship of landlord and tenant. Since the private respondents were the plaintiffs, hence the initial burden was on them to establish the relationship of landlord and tenant.

38. In this regard, if the evidence which has been brought on record is seen, it would reveal that the examination-in-chief and the cross examination of P.W.2, namely, Smt. Samar Jahan i.e. the private respondent no.3 has been brought on record as annexure no.10. In her examination-in-chief, it has been mentioned how the mother of the plaintiffs, namely, Smt. Menhdi Begum had purchased the property by a sale deed dated 10.04.1972.

39. It was also stated that Smt. Menhdi Begum was survived by six children and four of them had expired and it is only the deponent, namely, Smt. Samar Jahan and her sister Smt. Farhad Jahan who were remaining and they were the owners of the said property. It was also stated that the defendant used to pay rent of Rs.50/- per month but after the death of Smt. Menhdi Begum, the defendant stopped paying rent from 01.03.1981. In her examination-in-chief in paragraph-8, she made a reference that several times the composite notice for demand an ejectment was sent to the defendant but the same was not served and lastly on 10.04.1999, the said notice was affixed at the tenanted premises.

40. In her entire statement, she did not mention or produce any witness who could establish the relationship of landlord and tenant. Merely a bald statement was made in the examination-in-chief that the defendant Sharafatullah was a tenant on monthly rent of Rs.50/- and he had stopped paying rent from 01.03.1981. There is no explanation that once the defendant had stopped paying rent from 01.03.1981 then

at any prior point of time any of the heirs of Smt. Menhdi Begum had ever demanded the rent. There was no mention as to before whom the said tenancy was created, no material was brought on record to indicate that how the defendant paid rent to Smt. Menhdi Begum. There was also no evidence which could indicate that how the plaintiffs knew that the rent was outstanding from 01.03.1981.

41. Merely to state that the defendant was a tenant and the tenancy was oral will not suffice for the pleadings to discharge the burden. However, what is most important is that neither there was any statement in the plaint nor in the examination-in-chief to state that Menhdi Begum did not issue any rent receipts nor it was brought on record that there was any diary/book/document wherein Smt. Menhdi Begum noted down the details of rentals and its monthly payment and who paid the same and before whom the said rent was ever paid.

42. From the above quoted portion of the judgment of the trial court as well as the Revisional Court it would reveal that the focus of the two courts was on the issue of title (even though for ancillary purposes) but no finding has been given as to what was the material before the Court, upon which it returned its findings regarding the relationship of landlord and tenant.

43. In view of the above, in absence of any cogent evidence the relationship of landlord and tenant was not established and the two courts merely by dealing with the issue that the plaintiffs have been able to establish their ownership hence concluded that the defendant

was its tenant is clearly erroneous.

44. Illustratively if a person files a suit on the plea that he is the owner and landlord of the premises in question in a suit for arrears of rent and ejectment and the defendant while contesting the said suit does not deny the title, however, raises a defence that there is no relationship of landlord and tenant, then in such a situation, it will be necessary for the court to return a finding as to whether the relationship of tenant and landlord is made out on the basis of the evidence on record. In absence of any clear and relevant evidence, the suit may not be decreed, if the relationship of landlord and tenant is not made out. Similarly in another situation where the plaintiff pleads that he is the owners/landlord and both the aspects are denied by the defendant and if the title is found to be subsisting in favour of the plaintiff but in absence of the relationship of landlord and tenant, the suit may not succeed. This is for the reason that even if the title is available with the plaintiff but the relationship of landlord and tenant is not made out then the suit will not succeed. The status of such a defendant who may be in possession but not as a tenant then his status could be that of a licensee or of an unauthorized occupant but nevertheless in such a case, the suit for eviction or possession against such a defendant would be cognizable by the regular civil courts and not be the court of small causes. In this regard the provisions of Section 15 and IIInd Schedule appended with the Act of 1887 are relevant.

45. Accordingly for the foregoing reasons as the two courts have merely assumed that since the plaintiffs were the owners, hence defendant was a tenant and the issue of relationship between the landlord and tenant was held to be proved is clearly erroneous. Accordingly, the findings returned on the said issue cannot be sustained and are set aside.

46. Now the second issue which is to be seen is regarding the service of notice. The trial court while dealing with the said issue no.2 has recorded in its judgment dated 07.01.2009 as under:-

"इस सम्बन्ध में वादीगण की तरफ से अपने जवाबदावा में कथन किया गया है कि प्रतिवादीगण को धारा 106 सम्पत्ति अन्तरण अधिनियम की नोटिस दी गई परन्तु पोस्टमैन से मिलकर उसकी तामीला से बचते रहे इसलिये दि. 10.4.99 को नोटिस प्रश्रगत मकान पर गवाह की उपस्थिति में चस्पा की गई जिस तथ्य का खंडन प्रतिवादी द्वारा किया गया है और कथन किया गया है कि प्रतिवादी पर नियमानुसार नोटिस की तामीला नहीं की गई है। वादीगण की तरफ से नोटिस 6 ग/2 पत्रावली में दाखिल है जिसके अवलोकन से विदित है कि गवाह लैल खाँ व नदीम की उपस्थिति में अंकित मकान पर चस्पा किया गया है इस तथ्य को वादिनी बतौर पी.डब्लू. 2 व लैल खाँ बतौर पी.डब्लू.1 ने तस्दीक किया है जिसका खंडन प्रतिवादीगण की तरफ से किया गया है। प्रतिवादी की तरफ से यह भी प्रश्न उठाया गया है कि वादपत्र में मकान नं० 14/199 का जिक्र है जबकि वास्तव में प्रश्रगत मकान सं० 14/499 है। परन्तु अवलोकन से विदित है कि पहले वाद पत्र में प्रश्रगत मकान का नं० 14/199 अंकित था परन्तु उसे जरिये संशोधन दुरुस्त किया गया है। प्रश्रगत मकान की चौहद्दी में कोई विवाद नहीं

है। अतः मकान नम्बर की गलती लिपिकीय त्रुटि थी जिसका निवारण कर दिया गया है। चौहद्दी के सम्बन्ध में कोई विवाद नहीं है। अतः यह माना जायेगा कि प्रतिवादी पर नोटिस नियमानुसार धारा 106 सम्पत्ति अन्तरण अधिनियम के अनुपालन में तामील की गई है, अतः इस बिन्दु पर प्रतिवादीगण की आपत्ति निराधार है और यह तथ्य दस्तावेजों से साबित है कि नोटिस की तामीला प्रतिवादीगण पर सही ढंग से की गई है।"

47. The said finding as quoted above has been affirmed by the Revisional Court in its judgment dated 13.03.2013 in the following words and the relevant portion is being reproduced hereinafter:-

"वादीगण के कथनानुसार, प्रतिवादी/निगरानीकर्ता को धारा 106 सम्पत्ति अन्तरण अधिनियम के अन्तर्गत नोटिस प्रेषित की गयी है तथा निगरानीकर्ता द्वारा तामीला से बचने पर दिनांक 10.04.1999 को विवादित मकान पर गवाह लैल खाँ व नदीम की उपस्थिति में चस्पा की गयी। चूँकि साक्षीगण पी०डब्लू० 2 वादिनी व पी०डब्लू० 1 लैल खाँ द्वारा उक्त नोटिस का विवादित मकान में चस्पा किया जाना अपनी सशपथ साक्ष्य से तस्दीक किया गया है। अतः अवर न्यायालय द्वारा यह निष्कर्ष भी विधिवत् सही लिया गया है कि प्रतिवादी/निगरानीकर्ता पर नोटिस नियमानुसार धारा 106 सम्पत्ति अन्तरण अधिनियम के अनुपालन में तामील की गयी है।"

48. Having noticed the aforesaid, it needs to be seen that what was the statement given by the witnesses before whom the said affixation of notice dated 10.04.1999 was made. The statement has been brought on record as annexure no.9. From the perusal of the aforesaid statement of Lail Khan in paragraph-2, he states that in his presence

the notice dated 10.04.1999 was affixed on House No.14/199, Nai Basti, Murad Ali Lain, Barafkhana, Husainganj, Lucknow which was bounded as per the boundaries given below and the said notice was pasted on the main door of the said property in presence of Nadeem and Gulam Sabir.

49. However, what is relevant to see is that in his examination-in-chief he refers to the boundaries of the house where the affixation was made but the actual boundaries are absent in the examination-in-chief. He states that the notice was affixed on House No.14/199 whereas in the main case, the said property is mentioned as House No.14/499. In his cross examination, he states that whatever house number is mentioned in his examination-in-chief was the house where the affixation was done. In case if this is noticed, it would be found that in his examination-in-chief, he had referred to House No.14/199 whereas the case set up and in proved by the plaintiffs was in respect of House No.14/499.

50. In his cross examination, he further stated that at the time of affixation of the notice, the persons present were Smt. Samar Jahan i.e. the private respondent, Nadeem and Lail Khan and no other person. However, in the examination-in-chief, he stated that at the time of affixation, Nadeem, Smt. Samar Jahan and Gulam Sabir were present apart from Lail Khan.

51. Certain other questions were put to Lail Khan regarding the service of notice, to which he could not answer clearly and moreover

he also could not explain that how did he mention that Gulam Sabir was present at the time of affixation when Gulam Sabir was the father of Nadeem who had already expired. He also could not explain the discrepancy regarding the house number mentioned in his examination-in-chief that the actual house number was 14/499 and what is the distance between the House No.14/199 and House No.14/499.

52. In the aforesaid context, if the examination-in-chief of Smt. Samar Jahan is seen, it would reveal that she also deposed in paragraph-8 of the examination-in-chief that the notice dated 10.04.1999 was served by affixation and she clearly stated that the witnesses before whom affixation took place was Lail Khan and Nadeem.

53. Another important aspect that needs to be seen is the fact that in the notice dated 10.04.1999, which is said to have been affixed on the disputed premises, which is on record as annexure no.8, it would indicate that even in the said notice, the reference was made to House No.14/199, Nai Basti, Murad Ali Lain, Barafkhana, Husainganj, Lucknow and the boundaries given in the notice is as under:-

East	:	Door and Rasta
West	:	Well of house Sayeed Ahmad
South	:	Rasta
North	:	Wall of house of Kallan

However, the boundaries as mentioned in the plaint as mentioned in paragraph-1 is as under:-

East	:	Shop and Rasta
West	:	Wall
South	:	Rasta
North	:	Wall

54. Apparently, the boundaries as given in the plaint are as vague as could be and the boundaries as given in the notice have not even been reproduced in the plaint nor in the examination in chief of the plaintiff and its witness it has been connected with any cogent evidence to establish the identity and location of the said property.

55. Another fact which is evident from the notice dated 10.04.1999 that earlier notices dated 03.10.1998, 24.11.1998 and 08.03.1999 were said to have been sent by the plaintiffs through post to the defendant but the defendant in connivance with the postman evaded service hence the necessity to serve the notice by affixation arose. However, this fact is conspicuously absent in the plaint as well as in examination-in-chief of the plaintiff Samar Jahan P.W.2.

56. Apparently, none of these notices i.e. 03.10.1998, 24.11.1998 and 08.03.1999 were brought on record nor the postal receipts were brought on record. The notice dated 10.04.1999 is also said to have been sent by the registered post, however, there is no postal receipt in respect of this notice as well.

57. The notice annexure no.8 at the top indicates that it has been sent by registered A.D. post, however, as noticed above, there is no postal receipt nor the original returned covers indicating that the notice could not be served have been placed on record, hence there

was no clear cogent evidence on service of notice.

58. The documentary evidence which was filed on behalf of the plaintiffs and which has been noticed in the judgment of the trial court, is the copy of the sale deed alongwith its Hindi Translation, the municipal assessment and examination-in-chief of P.W.1 Lail Khan, P.W.2. Samar Jahan, P.W.3 Jeenat Begum and P.W.4 Ehsan Ali. Neither the earlier notices nor any of the postal receipt were brought on record which could substantiate the averments relating to the notices issued to the defendant and not served.

59. In light of the above and the discrepancy in the statement of Lail Khan which has been noticed hereinabove, it would be clear that the findings recorded by the two courts on the issue of service of notice is *per se* perverse.

60. This Court in exercise of powers under Article 226/227 of the Constitution of India does not enter into the question of fact. However, any finding which is perverse cannot be sustained. Any finding of fact recorded by a court in absence of any evidence or is based on any inadmissible evidence or a conclusion has been drawn which is perverse in the sense that no reasonable person could come to the aforesaid conclusion, hence cannot be sustained.

61. In light of the aforesaid, this Court is satisfied that the plaintiffs/private respondents no.3 and 4 could not establish the relationship of landlord and tenant nor could establish the service of notice terminating the tenancy, hence the findings on the aforesaid issues

recorded by the trial court as well as affirmed by the Revisional Court suffers from gross errors and the said judgments for the aforesaid reason, cannot be sustained.

62. For the aforesaid reasons, the petition succeeds and the writ petition is allowed. The judgment passed by the trial court dated 07.01.2009 in SCC No.133 of 1999 and the judgment of Revisional Court dated 13.03.2013 passed in SCC Revision No.8 of 2009 are set aside and the suit of the private respondents no.3 and 4 shall stand dismissed.

63. Before parting, it may be stated that none of the findings of this Court be treated as an expression of opinion on merits in so far as the title of the parties in respect of the disputed premises is concerned which needless to say will be subject to any final judgment passed in suit bearing No.773 of 2007 where the parties shall be at liberty of agitating their rights, which will be decided on its own merit.

64. With the aforesaid observations, the writ petition is **allowed** and the parties shall bear their own costs.

Order Date :- September 24, 2024.
ank/-