

Court No. - 19

Case :- S.C.C. REVISION No. - 12 of 2024

Revisionist :- Rakesh Gupta

Opposite Party :- Smt. Shail Kumari Gupta

Counsel for Revisionist :- Pritish Kumar, Amal Rastogi

Counsel for Opposite Party :- Abhay Kumar Srivastava

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Pritish Kumar and Sri. Amal Rastogi, the learned counsel for the revisionist and Shri Abhay Kumar Srivastava, the learned counsel for the sole opposite party. With the consent of the learned Counsel for the parties, the revision is being decided finally at the admission stage itself.
2. By means of the instant revision filed under Section 25 of the Provincial Small Causes Court Act, the revisionist has challenged validity of a judgment and order dated 29.05.2024 passed by the learned Additional District and Sessions Judge, Court No. 16, Lucknow in SCC Suit No. 14 of 2014, whereby the SCC Suit filed by the opposite party for the revisionist's ejectment from a shop in his tenancy and for recovery of rent at the rate of Rs.6,600/- per month, has been decreed.
3. The aforesaid suit was filed by the opposite party on 07.02.2014 inter alia stating that she is the owner of building No.133/211 situated in Mohalla Takiya Ganeshganj, Aminabad Road, P.S. Naka, District- Lucknow. The defendant-revisionist is her tenant in respect of one of the shops situated in the building which is bounded as below: -
East- Aminabad Road,
West- House of the plaintiff,
North- shop being run under the name and style of Gupta Kirana Store,

South- Shop being run under the name and style of Shivam Medical Store.

4. It was pleaded in the plaint that initially the revisionist's father Mangal Prasad was a tenant of the shop in question, who died on 30.07.2011. Thereafter, the revisionist entered into a tenancy agreement with the opposite party for a period of 11 months, at a monthly rent of Rs.6,600/- for the same shop which was previously in his father's tenancy. When the revisionist did not vacate the shop in spite of termination of his tenancy rights by efflux of time, she sent a legal notice dated 01.01.2014 to the revisionist but he declined to receive the same. The opposite party further stated that the revisionist has not paid rent since 01.09.2011.
5. The opposite party had filed an agreement dated 20.09.2011 allegedly executed between her and the revisionist.
6. The revisionist filed a written statement of his defense denying the plaint averments and he pleaded that he was a lawful tenant in occupation of the shop in question, at the monthly rent of Rs.500/-. The revisionist denied that the rent of shop in question is Rs.6,600/- per month and he specifically stated that the rent at the aforesaid rate has not been paid at any point of time. The revisionist further stated that when the opposite party did not receive rent from him after the death of his father, he had started depositing the rent in Misc. Case No.75 of 2013 under Section 30 (1) of the U.P. Act No.13 of 1972. The revisionist denied having received any notice sent by the opposite party or to have declined to receive the same. In additional pleas, the revisionist pleaded that the opposite party had filed an application under Section 21 of the U. P. Act No. 13 of 1972, wherein she had pleaded that rent of the shop in question was Rs.6,600/- per month . As the premises fell outside the purview of U.P. Act No.13 of 1972 as per pleadings made in the application under Section 21 of U.P. Act No.13 of 1972, the application had been dismissed as not maintainable.

7. The revisionist filed a rent agreement dated 21.09.2011 executed between the parties wherein the agreed rent was said to be Rs.500/- per month and the period of tenancy was agreed to be 11 months with effect from 31.07.2011. It was specifically stated in this agreement that the period of tenancy will expire on 31.05.2012 whereafter the tenancy will stand terminated automatically.
8. The opposite party filed her affidavit as her examination-in-chief wherein she reiterated the plaint averments. She stated that a rent agreement had been executed between the parties for giving the shop in question on rent to the revisionist for a period of 11 months at the agreed monthly rate of Rs.6,600/- and that the revisionist had not paid rent since 01.09.2011 in spite of notice and he has not vacated the shop.
9. In her cross-examination, the opposite party stated that earlier the revisionist's father was tenant of the shop. No written agreement had been executed between the opposite party and the revisionist's father and she did not issue any receipt for the rent from the revisionist's father. After death of revisionist's father, the opposite party had asked the revisionist to vacate the shop but thereafter a rent agreement for 11 months was executed between the parties in the year 2011 and the agreed rent was Rs.6,600/- per month. The opposite party denied that the agreed rent of the shop in question was Rs.500/- per month.
10. PW-2 Rajesh Kumar Shukla had also put his signatures on the agreement and he gave his statement to prove the tenancy agreement dated 20.09.2011.
11. The revisionist filed his affidavit as his examination-in-chief in support of his defense wherein he stated that he is a statutory tenant of the shop in question and the rent payable by him is Rs.500/- per month. He denied that rent of the premises is Rs.6,600/- per month. He denied having received any notice sent by the opposite party or to have declined to receive the notice. He stated that earlier he was

depositing rent of the shop in proceedings under Section 30 of U.P. Act No.13 of 1972 and after filing of the suit for ejectment, he was depositing the same under Order XV Rule 5 C.P.C. The revisionist denied having entered into any written agreement of tenancy and he stated that the alleged agreement is forged and fictitious and the revisionist has never put his signatures on any agreement. In his cross-examination also, the revisionist asserted that no written agreement was executed between the parties and rent payable by him is Rs.500/- per month only.

12. Initially, upon an application filed by the landlady – opposite party, the trial Court had passed an order dated 19.10.2016 for getting a hand writing expert's report regarding the signatures made on the agreement dated 20.09.2011 but subsequently, the opposite party filed an application (C-57) stating that since the expert's report was not received in spite of expiry of a period of two years and the opposite party wanted disposal of the suit expeditiously, she had decided to not press the written agreement. The Court accepted the opposite party's aforesaid application and passed an order dated 02.1.2020 holding that the rent agreement (Paper No.C6/2 to C6/5) will not be treated as a part of the plaintiff's evidence.

13. The trial Court formulated the following points for determination: -

- (1) Whether there is a relationship of landlady and tenant between the parties in respect of the shop in question?
- (2) Whether the defendant has inherited the tenancy from his father or a new tenancy has come into existence?
- (3) Whether rent of the shop after death of the revisionist's father is Rs.6,600/- per month or it is Rs.500/- per month?
- (4) Whether a notice under Section 106 of the Transfer of Property Act had been adequately served on the defendant?
- (5) Whether the plaintiff is entitled to get possession of the property in question and arrears of rent and damages from the defendant?

14. On the first point, the learned trial Court held that the defendant himself has pleaded in the written statement that he is a tenant of the plaintiff in respect of the shop in question. Therefore, the defendant is a tenant of the plaintiff.
15. While deciding the second point, the trial Court held that the plaintiff has contended that after death of the defendant's father, a rent agreement was executed at the request of the defendant, for giving the shop on rent for a period of 11 months at the monthly rent of Rs.6,600/- per month. Although the plaintiff had not pressed this agreement, PW-2 has stated in his examination-in-chief that an agreement had been executed between the parties on 20.09.2011 for giving the shop in question on rent for a period of 11 month at the monthly rent of Rs.6,600/-, in his presence and he had also had put his signatures on the agreement as a witness of its execution. In his cross-examination, PW-2 stated that when he had reached, the agreement had already been prepared and he had signed the same after reading it. Another witness Satyam Pandey had also signed the agreement in his presence after reading it. The trial Court held that although the plaintiff had not pressed the agreement dated 20.09.2011 and accordingly it had been ordered on 02.01.2020 that the agreement will not be treated as a part of the plaintiff's evidence, the testimony of PW-2, who is an independent witness, proves that a rent agreement had been executed between the parties on 20.09.2011. Therefore, the trial Court held that a new relationship of tenant and landlord came into being between the parties and the tenant was not continuing under the tenancy inherited from his father.
16. Regarding the rate of rent, the trial Court held that the Prescribed Authority had dismissed the application filed under Section 21 of U. P. Act No. 13 of 1972 by an order dated 04.02.2016 holding that rent of the premises exceeded Rs.2,000/- per month and it had no jurisdiction to entertain the application. This order has attained finality and is binding on the parties. PW-1 and PW-2 both have stated the rate

of rent to be Rs.6,600/- and, therefore, the plaintiff has proved the rate of rent to be Rs.6,600/-.

17. While deciding the forth point which was framed regarding service of notice, the trial Court held that plaintiff has filed the notice, the postal receipt and the unserved envelop which mentions the correct address of the revisionist and which contains an endorsement made by the postman that the addressee had declined to receive it. No question was put to the plaintiff on this point during her cross-examination. Therefore, service of notice by refusal by the revisionist was proved.
18. In view of the findings of the trial Court on the aforesaid four points, the suit was decreed by the impugned judgment dated 29.05.2024 holding the revisionist liable to pay arrears of rent and damages at the rate of Rs.6,600/- per month.
19. While assailing validity of the judgment and decree dated 29.05.2024, Sri. Prithish Kumar, the learned counsel for the petitioner has submitted that no oral evidence is admissible to prove the contents of the written agreement and when the plaintiff herself had given an application (Paper no. A57) stating that she did not want to press the tenancy agreement as a part of her evidence, which application had been allowed by an order dated 02.01.2020, the trial court could not have relied upon any evidence to prove the terms of the agreement which was not to be treated as a part of the plaintiff's evidence.
20. The second submission of the learned counsel for the petitioner is that in P.A. Case No. 14 of 2014 filed by the opposite party-landlady under Section 21(1) of the U.P. Act No. 13 of 1972, the landlady had claimed that rent of the shop in question was Rs.6,600/- per month. The petitioner had disputed this fact and he had contended that rent of the premises was merely Rs.500/- per month. The Prescribed Authority rejected the application as not maintainable by holding that when the landlady herself contends the rate of rent to be Rs.6,600/-, the premises falls outside the purview of Rent Control Act.

Relying upon this decision of the Prescribed Authority, the trial court has taken the rate of rent to be Rs.6,600/- whereas rate of rent of Rs.6,600/- was recorded in the order passed by the Prescribed Authority merely on the basis of the contention of the landlady, which was denied by the petitioner-tenant. The Prescribed Authority has dismissed the application as not maintainable and no finding regarding rate of rent has been recorded by the Prescribed Authority.

21. Opposing the revision, the learned counsel for the opposite party has submitted that the petitioner had not pleaded in his written statement that he had not executed the rent agreement dated 20.09.2011. He has submitted that since the pleading in respect of execution of rent agreement dated 20.09.2011 remain un-controverted, there was no requirement to prove the un-controverted pleading.
22. The learned counsel for the opposite party next submitted that the Prescribed Authority has recorded a finding that it is undisputed that the rent of the shop in question was Rs.6,600/-.
23. I have considered the submissions of the learned counsel for the parties.
24. What appears from the material available on record is that the opposite party claims to have entered into an agreement dated 20.09.2011 under which the revisionist had agreed to pay the rent of the shop at the rate of Rs.6,600/- per month and that the period of tenancy would expire on 19.08.2012. The petitioner disputed having agreed to pay rent at the rate of Rs.6,600/-. There is force in the submission of the learned Counsel for the petitioner that after the order dated 02.01.2020 was passed allowing the plaintiff's application C-57 and providing that the rent agreement dated 20.09.2011 will not be treated as a part of the plaintiff's evidence, the finding of the Trial Court regarding that agreement is unsustainable in law.
25. The learned trial Court has also erred in relying upon the order passed by the Prescribed Authority to fix the rate of rent of the

shop at Rs.6,600/-, when the Prescribed Authority had not adjudicated the matter on merits and it had not recorded any finding of fact. The Prescribed Authority had merely dismissed the application under Section 21 of the U. P. Act No. 13 of 1972 as not maintainable, keeping in view the pleading of opposite party- land lady that rent of the shop in question was Rs.6,600/-, which plea had been disputed by the revisionist-tenant, who had contended that rent was Rs.500/-.

26. When the Prescribed Authority had dismissed the application as not maintainable, without recording any finding, the trial Court could not have relied upon the order passed by the Prescribed Authority to hold that rent of the premises is Rs.6,600/- per month.

27. In para 9 of the revisionist's affidavit filed before this Court, he has stated on oath that "*the revisionist also specifically submitted that the rent of the tenanted premises is Rs.500/- per month and not Rs.6,600/- as alleged by the Respondent. That in support of this contention the Revisionist placed on record rent receipts, and also an agreement, dated 21.09.2011 executed by Respondent in favour of the Revisionist which stated the rent to be Rs.500/- only. Copy of the agreement, dated 21.09.2011 is being annexed hereto as **ANNEXURE NO. 4** to this affidavit.*" A copy of the agreement dated 21.09.2011 filed by the revisionist as Annexure No. 4 to the affidavit states that the parties had agreed that rent of the premises will be Rs.500/- per month and period of tenancy will be till 30.05.2011. The tenancy will stand terminated automatically on 31.05.2012.

28. Regarding this agreement, learned counsel for the petitioner has submitted that this is an agreement executed on a stamp paper worth merely Rs.100/- and it has not been registered and, therefore, it is not admissible in evidence.

29. It is true that this agreement is not duly stamped but the liability to pay stamp duty on this agreement was of the revisionist himself. The revisionist himself has evaded payment of proper stamp duty on this agreement. It is a settled principle of law that no person

can be allowed to take advantage of his own wrong. When the revisionist himself had avoided payment of stamp duty on the agreement dated 21.09.2011, he cannot take the plea that the agreement dated 21.09.2011 not being duly stamped, is not admissible in evidence although it has been filed by the revisionist himself. Therefore, this Court finds no reason to disbelieve the agreement filed by the revisionist-defendant alongwith his affidavit filed before this Court.

30. The learned Counsel for the petitioner next submitted that the opposite party – plaintiff had not taken any plea based on the agreement dated 21.09.2011 and, therefore, no decision has been given by the trial Court on this point. In these circumstances, it would be proper to remand the matter to the trial Court for being decided afresh.

31. In **Jagdish Prasad v. Angoori Devi**: (1984) 2 SCC 590, the Hon'ble Supreme Court had held that: -

“2. ...This was not an attempt to reassess evidence but to take into consideration the evidence which had not been looked into by the trial court. The revisional jurisdiction under Section 25 of the Provincial Small Cause Court Act is not as wide as the appellate jurisdiction under Section 96 of the Code of Civil Procedure; yet in a case of this type we do not think fault could be found with the revisional court for pointing out the legal error committed by the trial court in its approach to this material aspect....”

32. In the present case also, the revisionist – defendant had himself filed an agreement dated 21.09.2011, as per which, his tenancy stands expired with effect from 31.05.2012, but it was not taken into consideration by the learned trial Court. This Court is well within its jurisdiction to correct the legal error committed by the trial Court by ignoring this material evidence placed by the revisionist.

33. In view of the foregoing discussion, the revision is **allowed** in part. The judgment and order dated 29.05.2024 passed by the learned Additional District and Sessions Judge, Court No. 16, Lucknow in SCC Suit No. 14 of 2014 is set aside to the extent that it holds the rate of rent of the shop in question to be Rs.6,600/- per month and it is held

that the rate of rent of the shop in question was Rs.500/- only. The remaining part of the judgment and decree so far as it orders ejectment of the revisionist-defendant, does not suffer from any illegality calling for interference in exercise of this Court's revisional jurisdiction and the revision in respect of this relief is dismissed. The parties will bear their own costs of litigation.

(Subhash Vidyarthi J.)

Order Date: 06.09.2024

-Amit K-