Om Prakash & ANR. Vs. Mishri Lal (D) represented by his LR. Savitri Devi

[Civil Appeal No. 4309 of 2017 arising out of SLP (C) No. 17414 of 2015]

Rajendra Prasad & ANR. Vs. Mishri Lal (D) represented by his LR. Savitri Devi & ANR.

[Civil Appeal No. 4310 of 2017 arising out of SLP (C) No. 20758 of 2015]

AMITAVA ROY, J.

1. Delay condoned.

2. Leave granted.

3. The appellants/plaintiffs (for short, hereinafter to be referred to as "the appellants") are aggrieved by the dismissal of their suit and the application under the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (for short, hereinafter to be referred to as "the Act") for eviction of the respondents from the suit premises on the ground, amongst others of default and bona fide requirement. The suit and the application filed under Section 21 of the Act have been dismissed in two separate proceedings by the High Court vide orders dated 25.02.2014 in W.P.(C) No. 26732 of 2010 and Civil Miscellaneous Writ Petition No.31855 of 1998.

4. Both these petitions were analogously heard and thus the present adjudication would address collectively the issues involved.

5. We have heard Mr. Anand Varma, learned counsel for the appellants and Mr. R.D. Upadhyay, learned counsel for the respondents.

6. The appellants as plaintiffs instituted Suit No. 252 of 1989 in the Court of Small Causes, Allahabad against Mishri Lal, the predecessor-in-interest of the present respondents seeking his eviction from the suit premises on the ground of default in payment of rent and sub-letting of the suit premises without the knowledge and approval of the landlords i.e. the appellants. The appellants claimed themselves to be the joint owners of the suit premises since the death of their grand- mother Chameli Devi, widow of late Mahabir Prasad on 30.07.1985. They referred to a will dated 28.12.1976 executed by their afore-named grand-mother in support of their claim of joint ownership.

They averred that the predecessor-in-interest of the respondents was a tenant of the suit premises since 1968 against payment of monthly rent of Rs. 96/- and the same was rented out on the clear understanding that the tenant would vacate the same on one month's notice. The appellants alleged that the tenant i.e. the predecessor-in-interest of the respondents paid rent till October, 1979 and thereafter persistently failed to make payment thereof in spite of repeated demands.

Due to such default, the relationship between the landlords and tenant became strained, and as claimed by the appellants, he without offering the rent to the landlords, made deposits thereof under Section 30 of the Act, which was invalid and non est in law. Situated thus, the appellants addressed a notice dated 18.08.1989 terminating the tenancy,

demanding payment of the arrears of rent within the statutory period of one month with the clear indication that in case of failure to respond to the notice and the request for rent, the tenancy would stand determined and that the tenant would be liable for eviction. According to the appellants the notice was served on 26.08.1989, but despite the same, rent was not paid and consequently the tenancy stood terminated.

7. It was further alleged that the tenant also sub-let the suit premises to one Moti Chand for conducting his business therein. It was thus averred that on this ground as well, as the sub-letting was done without the knowledge and consent of the landlords, the tenant was liable for eviction. The suit was thus filed for recovery of arrears of rent, eviction of the tenant/ defendant and for damages for unauthorised use or occupation of the tenanted premises as well as for interest.

8. The original defendant/tenant in his written statement though admitted the tenancy under Smt. Chameli Devi, the grand- mother of the appellants, he refused to acknowledge the appellants as his landlords. He claimed that the tenancy had commenced from 1957 and that he had paid rent up to the month of September, 1989 to the landlord, Bhola Nath (father of the appellants) and that on his refusal to accept the same thereafter, he had deposited the rent in court under Section 30 of the Act. The defendant/tenant admitted Smt. Chameli Devi to be the landlady who used to realize the rent till her life time and after her death, Bhola Nath, her eldest son used to collect the same. He admitted the receipt of the notice dated 18.08.1989, but denied that he was a defaulter in payment of rent or that he was liable for eviction from the suit premises.

9. According to him, Motichand was his nephew and partner in his business and that as he was like his own son, the allegation of sub-letting was unfounded. Elaborating on the facts preceding the deposit of rent in Court, the tenant reiterated that after the refusal by Shri Bhola Nath to accept the rent subsequent to September, 1989, he remitted the rent for the month of October and November, 1989 by money order dated 04.12.1989 but the same was refused again.

He stated that thereafter, for the second time, he dispatched the rent for the months of October, November and December, 1989 on 26.12.1989 by money order but similarly the same was refused. According to the tenant, he again on 12.01.1990 remitted the rent for the months of October, 1989 to January, 1990 by money order and as the same was refused again, he started depositing the rent in Court, the first deposit being vide Misc. Case No.41 of 1990 for the months of October, 1989 to January, 1990.

10. He denied the execution of the will dated 28.12.1976 by Smt. Chameli Devi, who had two sons Bhola Nath and Bacchanlal, but admitted that the eldest son Bhola Nath used to realize rent from him.

11. Parallelly the appellants also filed an application under Section 21 of the Act before the Prescribed Authority against the original defendant/tenant seeking release of the suit premises on the ground of bona fide and genuine need therefor to, amongst others conduct their business therein. This application was contested as well by the original defendant by filing his objection questioning the bona fide need of the appellants.

12. The Trial Court, on the basis of the pleadings, framed issues and the parties adduced evidence, both oral and documentary. The appellants in particular examined their father Bhola Nath as PW2, who admittedly used to collect rent from the defendant/tenant till September, 1979, as claimed by them.

13. The Trial Court decreed the suit, both on the ground of default in payment of rent and sub-letting of the suit premises. In reaching this conclusion, it amongst others took note of the testimony of Bhola Nath, son of Smt. Chameli Devi, who supported the pleaded case of the appellants and endorsed the factum of execution of will by Smt. Chameli Devi on the basis of which they (appellants) claimed joint ownership of the suit premises. It also noticed that such joint ownership had not been questioned or disputed by any quarter.

It also referred to a compromise decree between the heirs of Bhola Nath and his brother Bachan Lal, rendered in Original Case No. 95 of 1986 qua the will, which too authenticated the claim of the appellants of the suit premises. Noticing the admission of the original defendant/tenant of having paid rent to Bhola Nath, the father of the appellants, the Trial Court negated his challenge to their claim of joint ownership and their status of landlord vis-a-vis the suit premises.

14. While upholding the allegation of sub-letting, the Trial Court as well held that the deposit of rent made by the original defendant was not in terms of the Act and therefore he was not entitled to the protection from eviction. It held the view that though disputed, even if the rent for the months of October, 1989 to January, 1990 had been sent to Bhola Nath vide money order, it did not amount to offering thereof to the appellants, the landlords, and thus the deposit in Court was not as mandated by Section 30 of the Act. According to the Trial Court, Bhola Nath was only a collector of rent on behalf of the appellants and therefore, offer thereof ought to have been made to them (appellants) for a valid deposit under Section 30 of the Act. The suit was thus decreed in full, as prayed for.

15. This verdict was challenged by the original defendant/tenant in revision before the District Judge, Allahabad, who reversed the same on the ground that the appellants have not been able to prove that they were the exclusive landlords owners of the suit premises.

16. The appellants thereafter filed a writ petition before the High Court, which remanded the matter to the Revisional Court by noticing, in particular the compromise decree dated 05.04.1989 in Original Case No. 95 of 1986, in which the joint ownership of the appellants in the suit premises had been decreed.

17. The Revisional Court, on remand, however maintained that the will dated 28.12.1976, on the basis of which the appellants claimed joint ownership had not been proved, as required under Section 63 of the Indian Succession Act, 1925 and Section 68 of the Indian Evidence Act, 1872. Besides, it also expressed its reservation with regard to the authenticity and genuineness of this document. The suit was thus dismissed by upturning the decree of the Trial Court. Consequently, the Revisional Court did not examine the other issues on merits.

18. By the impugned judgment and order as well, the High Court, while limiting itself to the aspect of the proof of the will, concurred with the Revisional Court and dismissed the suit of the appellants. Apropos, the proceedings based on the application under Section 21 of the Act for the eviction of the original defendant on the ground of bona fide requirement, the High Court, by the impugned verdict, upheld the rejection thereof, as recorded by the Prescribed Authority by negating their status of that of a landlord.

In reaching this conclusion, the High Court noted that Bhola Nath, the father of the appellants used to collect rent from the original defendant throughout and that they did not at any point of time claim to be the owners/landlords of the suit property, pursuant to the will executed by Smt. Chameli Devi.

It also concurred with the findings recorded by the Prescribed Authority and the Appellate Court on the issue of bona fide need and comparative hardship. The High Court was of the view that the will dated 28.12.1976 on the basis of which the appellants had claimed joint ownership was not proved as required in law and thus, the mere registration thereof did not either suggest its genuineness or its validity so as to provide the locus standi to them to maintain the application.

19. The learned counsel for the appellants has emphatically urged that the issue of their joint ownership having been settled finally in view of the compromise decree dated 05.04.1989 rendered in Original Case No. 95 of 1986 and their status as the heirs of Smt. Chameli Devi having been conclusively established, the suit filed for the eviction of the predecessor-in- interest of the respondents in that capacity was maintainable, more particularly in the absence of any dispute of title inter se the other legal heirs.

In the alternative, it has been argued that in any view of the matter, the appellants being the sons of Bhola Nath, who admittedly used to collect rent and was a landlord under the Act, they were entitled to receive rent qua the suit property from the tenant as landlords under the statute and, therefore not only the predecessor-in- interest of the respondents were estopped from denying their status as such, but had made himself liable for eviction therefrom by persistent default in payment of rent.

The learned counsel for the appellants has submitted that the High Court in this factual background had grossly erred in dismissing the suit and the application for release of the suit premises filed under Section 21 of the Act on the sole purported ground that the will executed by Smt. Chameli Devi on 28.12.1976 had not been proved. Additionally, as the appellants have proved that the original tenant had continuously defaulted in payment of rent and had sub-let the premises without the knowledge and approval of the landlords, the Trial Court was justified in decreeing the suit for his eviction, he urged. It was further argued that the suit premises being required bone fide by the appellants for their genuine need for business, the impugned judgments and orders, if allowed to stand would result in serious miscarriage of justice.

20. As against this, the learned counsel for the respondents has maintained that the appellants in the attendant facts and circumstances are neither the landlords nor the owners of the suit premises, which is clearly borne out by the fact that the rent therefor was initially collected by Smt. Chameli Devi and thereafter, by their father Bhola Nath, during his lifetime. It has been argued that as Bhola Nath refused to receive rent, it was offered to him and thereafter was deposited in court under Section 30 of the Act and thus the original defendant/tenant by no means can be branded as defaulter. It was reiterated that Motichand was the nephew of the original tenant as well as a partner in his business and thus his stay in the suit premises did not amount to sub-letting thereof. The learned counsel for the respondents also endorsed the finding of all the forums on the absence of bona fide need or requirement of the appellants of the suit premises.

21. The competing assertions and the materials on record have been duly taken note of. Before adverting thereto, it would be appropriate to undertake a brief survey of the relevant provisions of the Act, which as the title suggests, is a legislation for regulation of letting and rent of and the eviction of tenants from certain classes of building, situated in the urban areas and for matters connected there with. The expressions "tenant" and "landlord" are defined as hereunder:
3(a) "tenant" in relation to a building, means a person by whom its rent is payable, and on the tenant's death, his heirs.

3(j) "landlord", in relation to a building, means a person to whom its rent is or if the building were let would be, payable, and includes, except in clause (g), the agent or attorney, or such person.

22. It would be apparent from hereinabove that a "tenant" in relation to a building is a person by whom rent is payable and on his death, his heirs. "Landlord" vis-a-vis a building, as defined, means a person to whom its rent is or if the building was let, would be payable and or include the agent or attorney of such person. The definition of "Family" being not relevant in the present context qua the expression "landlord" is not being dilated upon. In terms of Section 20 of the Act, a suit for eviction of a tenant for building after the determination of his tenancy may be instituted on one or more of the grounds as enumerated in sub-section (2), clauses (a) to (g) which includes:

(i) arrears of rent for not less than four months and failure to pay the same to the landlord within one month from the date of service upon him of a notice of demand; and

(ii) sub-letting of the suit premises by the tenant in contravention of the provisions of Section 25 of the whole or any part of the building.

23. Sub-section 4 of Section 20 provides that if at the first hearing of the suit, the tenant unconditionally pays or tenders to the landlord, the entire amount of rent and damages for use and occupation of the building due from him (such damages for use and occupation being calculated at the same rate as rent) together with interest thereon at the rate of 9% per annum and the landlord's cost of the suit in respect thereof after deducting therefrom any amount already deposited by the tenant under sub-section 1 of Section 30, the court may in lieu of passing a decree for eviction, pass an order relieving the tenant against his liability for eviction, on that ground. The proviso thereto being not of any consequence in the present case is not being referred to.

24. Section 21 authorises the Prescribed Authority to order the eviction of a tenant from the building under tenancy or any specified part thereof, if it is satisfied, on an application by the landlord, that, amongst others the building is bona fide required either in its existing form or after demolition and raising of new construction by the landlord for occupation by himself or any member of its family or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling or if the landlord is a trustee of a public charitable trust, for the objects of the trust.

25. Sub-section 4 clarifies that such an order may be made notwithstanding that the tenancy has not been determined with the exception that no such order would be made in the case of tenancy created for a fixed term by registered lease, before the expiry of such term.

26. Section 30 of the Act permits deposit of rent in court in certain circumstances. It predicates that if any person claiming to be a tenant of a building tenders any amount as rent in respect of the building to its alleged landlord and the alleged landlord refuses to accept the same, then the tenant may deposit such amount in the prescribed manner and continue to deposit any rent which he alleges to be due for any subsequent period in respect of such building until the landlord in the meantime signifies by notice in writing to the tenant, his willingness to accept it. Sub-section 2 elaborates that where any bona fide doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any building, the tenant may likewise deposit the rent stating the circumstances under which such deposit is made and may until such doubt has been removed or such dispute has been settled by the decision of any competent court or by settlement between the parties, continue to deposit the rent that may subsequently become due in respect of such building.

27. Whereas sub-sections (4) and (5) provide for issuance of notice of the deposit to the alleged landlord or the person/persons concerned, sub- section (6) mandates that in respect of such a deposit being made, it would be deemed that the person depositing it has paid it on the date of such deposit to the person in whose favour it is deposited. Section 38 proclaims that the provisions of that Act would have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act, 1882 or in the Code of Civil Procedure, 1908.

28. It is a matter of record that Smt. Chameli Devi, widow of Mahabir Prasad was the grand-mother of the appellants. As the verdict in original Case No. 95 of 1986, consistently referred to by all the Forums, would divulge, Mahavir Prasad and Chameli Devi had two sons Bhola Nath and Bachhan Lal. As noted hereinabove, the appellants are the sons of Bhola Nath. Incidentally, Radha Devi, wife of Bacchan Lal and her sons instituted the afore-mentioned suit i.e. Original Case No.95 of 1986 in the Court of the Additional Civil Judge- VI, Allahabad seeking declaration of title in respect, amongst others of the suit premises. This was contested by Bhola Nath and the appellants and in course of the adjudication, the will dated 28.12.1986 executed by Chameli Devi surfaced for scrutiny. On the basis of this document, the appellants claimed ownership of the suit premises.

As the decision rendered in that suit on 05.04.1989 would reveal, a compromise was arrived at between the parties having due regard to the said will, whereby the ownership of the suit premises of the sons of Bhola Nath and Bacchan Lal was declared and a decree to that effect was passed. This decree, indisputably, has become final, in absence of any challenge thereto before any forum. In the face of this compromise decree, in our comprehension, the dismissal of the suit and the rejection of the application for the release under Section 21 of the Act by the High Court on the sole ground that the appellants had no locus to maintain the same in absence of formal proof of the will dated 28.12.1976 was grossly misdirected and thus cannot be sustained, more particularly in view of the definition of the "landlord" provided in the Act.

29. Noticeably, the predecessor-in-interest of the respondents had admitted the tenancy under Smt. Chameli Devi. He has admitted as well that during her lifetime, rent used to be paid to her and thereafter her elder son, Bhola Nath, father of the appellants used to receive the rent. It is his pleaded case that as was the arrangement, he paid rent to Bhola Nath upto September, 1979, whereafter he refused to accept the same. Incidentally, even assuming that the plea of the original defendant of having paid rent to Bhola Nath up to September, 1989 is correct (the allegation of the appellants is that the default is from October, 1979), the default from October 1989 is incidentally subsequent to the

compromise decree, as afore-mentioned whereunder the sons of Bhola Nath and Bachan Lal were held to be the owners of the suit premises.

It is a matter of record that the appellants by notice dated 19.08.1989 had demanded from the original defendant the arrears of rent from October, 1979 which was admittedly received by him but not acted upon. In spite thereof, according to the original defendant, he offered rent to Bhola Nath for the months of October, 1989 to January, 1990 by remitting the same by money-orders and on the alleged refusal thereof, eventually deposited the rent in court under Section 30.

30. In view of the categorical disclosure in the notice dated 18.08.1989, issued on behalf of the appellants, requiring payment of rent in arrears to them as the landlords and also indicating determination of tenancy in case of failure in payment, we are of the view that the so called offer of rent for the months of October, 1989 to January, 1990 to Bhola Nath by money-orders and thereafter deposit in Court under Section 30 of the Act would be of no avail to the original defendant and on his death, the present respondents.

The original defendant in terms of the aforementioned notice was fully aware of the compromise decree and the status of the appellants as the joint owners/landlords and thus his offer of rent to Bhola Nath, who ceased to be the landlord, was not in compliance either of sub-section 4 of Section 20 or Section 30 of the Act to be availed as a defence against his/their eviction from the suit premises. The original defendant and consequently the respondents has/have therefore rendered himself/themselves as defaulters within the meaning of the Act and are liable to be evicted thereunder. It is more so as admittedly neither the original defendant nor the respondents had ever endeavoured to offer rent to the appellants after the compromise decree dated 05.04.89.

31. Viz-a-vis the aspect of sub-letting, we are inclined to concur with the finding of the Trial Court that Motichand, who was the nephew of the original defendant, had been inducted in the suit premises as a sub-tenant. Further as it is a matter of record that the original defendant had constructed his own house elsewhere where he has been residing with his wife, the accommodation of his nephew Motichand in the suit premises did amount to sub-letting and the same having been done without the knowledge and approval of the landlords, this too provided a ground for his eviction therefrom. Additionally, even if the deposit of arrears of rent in full by the original defendant at the time of institution of the suit is construed to be valid, in the face of his own house elsewhere, he is not entitled to the protection from eviction under the proviso to sub-section 4 of Section 20.

To be elaborate, under sub-section 4 of Section 20, as referred to hereinabove, if a tenant, at the first hearing of the suit, unconditionally pays or tenders to the landlord the entire amount of rent and damages for use and occupation of the building due from him together with interest thereon @ 9% per annum and the landlords' costs of the suit in respect thereof, after deducting therefrom any amount already deposited by the tenant under sub-section1 of Section 30, the court may, in lieu of passing a decree for eviction on that ground, pass an order relieving the tenant against his liability for eviction on the ground of default.

The proviso thereto predicates that this benefit would not be available to a tenant who or any member of his family has built or has otherwise acquired in a vacant state, or has got vacated after acquisition, any residential building in the same city, municipality, notified area or town area. Apart from the fact that no evidence is forthcoming to attest that the requirements of sub-section 4 of Section 20 had been fully complied with, the construction of his own house elsewhere,

as is evident from the record, did dis-entitle the original defendant and now the respondents to avail the benefit of such protection, as contemplated by the Act.

32. It is no longer res integra and is settled by this Court in Sri Ram Pasricha vs. Jagannath and Ors., (1976) 4 SCC 184, Dhannalal vs. Kalawatibai and Ors. (2002) 6 SCC 16 and India Umberalla Manufacturing Co. and Ors. vs. Bhagabandei Agarwalla (dead) by Lrs. Savitri Agarwalla (Smt.) and Ors. (2004) 3 SCC 178 that a suit for eviction of a tenant can be maintained by one of the co-owners and it would be no defence to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit.

The judicially propounded proposition is that when the property forming the subject matter of eviction proceedings is owned by several co-owners, every co-owner owns every part and every bit of the joint property along with others and thus it cannot be said that he is only a part owner or a fractional owner of the property and that he can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object. In the contextual facts, not only the compromise decree, as aforementioned, has declared the appellants to be the joint owners of the suit premises, their status as such has not been questioned at any stage by anyone interested in the title thereto.

33. Further, the original defendant having accepted Smt. Chameli Devi as his landlady and thereafter continued to pay rent to her son Bhola Nath, the father of the appellants, in terms of the definition of "landlord" in Section 3(j) of the Act, he during his life time and after his demise, the respondents are estopped under Section 116 of the Indian Evidence Act, 1872 to dispute the status of the appellants as their landlord in a suit for his eviction from the tenanted premises.

34. That a tenant during the continuance of the tenancy is debarred on the doctrine of estoppel from denying the title of his landlord through whom he claims tenancy, as is enshrined in Section 116 of the Indian Evidence Act, 1872, is so well-settled a legal postulation that no decision need be cited to further consolidate the same. This enunciation, amongst others is reiterated by this Court in S. Thangappan vs. P. Padmavathy (1999) 7 SCC 474 and Bhogadi Kannababu and Ors. vs. Vuggina Pydamma and others (2006) 5 SCC 532. In any view of the matter, the appellants, being the son of Bhola Nath, who at all relevant time, was the landlord vis-à-vis the original defendant and the respondents in terms of Section 3(j) of the Act, their status as landlords for the purpose of eviction under the Act, could not have been questioned so as to non suit them for want of locus.

35. To reiterate, the High Court by the decisions impugned, had dismissed the suit and the application for release of the suit premises under Section 21 of the Act, principally on the ground of want of standing of the appellants. In the face of the determination made hereinabove, the said conclusion is unsustainable on facts and in law and are thus liable to be set aside, which we hereby do.

Having regard to the conclusions recorded on the aspect of default in payment of rent and sub-letting, both statutorily recognized grounds for eviction of a tenant under Section 20 of the Act, it is considered inessential to dilate on the ground of bona fide requirement and comparative hardship. In the wake up of the above, the impugned judgments and orders of the High Court are set-aside and the suit of the appellants is decreed in full. The respondents would vacate the suit premises at the earliest and in no case later than three months from today. The appeals are allowed.

No costs.

……………………………………..J. (ARUN MISHRA)

……………………………………..J. (AMITAVA ROY)

NEW DELHI;

MARCH 21, 2017