

PRABHA ARORA AND ANR.
v.
BRIJ MOHINI ANAND AND ORS.

OCTOBER 31, 2007

[A.K. MATHUR AND MARKANDEY KATJU, JJ.]

Rent Control and Eviction—Eviction suit—On the ground of using the premises for earning purpose—Eviction denied by Prescribed Authority—Allowed by the Appellate Authority and High Court—Subsequent event during pendency of appeal—On appeal, held: In the facts of the case and in view of subsequent event, ground for eviction disappeared—Landlady not entitled for eviction—U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972—s. 21 (1) (a).

Respondent-landlady filed an application u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 against the appellant-tenants. Eviction was sought on the ground that she wanted the premises for running tuition/coaching classes in order to augment her income. Prescribed authority rejected her application. Appellate Authority as well as High Court upheld her claim. Hence the present appeal.

Appellant contended that during pendency of the appeal before the appellate authority, a Trust was created in respect of the property in question and in view of that the very purpose for which the eviction was sought, disappeared.

Respondent contended that the purpose did not disappear because the application for eviction was filed on the ground that the respondent wanted to do charitable work.

Allowing the appeal, the Court

HELD: In view of the creation of the Trust during pendency of

A the litigation, the purpose for which eviction was sought of the tenants through the release application has disappeared. The trust deed nowhere mentions that any income of the Trust will be given to the petitioner who filed the release application. In fact, Section 51 of the Trust Act debars a trustee from using the trust property for his own profit. The purpose mentioned in the petition under Section 21 of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 was not for doing charitable work. However, after the execution of the trust deed, the premises in dispute now belongs to the Trust. The need mentioned in the petition under Section 21 has totally disappeared. [Paras 4 and 8] [723-D, E; 724-C, D]

Kedar Nath Agrawal (dead) and Anr. v. Dhanraji Devi (dead) by Lrs. and Anr., [2004] 8 SCC 76; *Hasmat Rai v. Raghunath Prasad*, [1981] 3 SCC 103 and *M.M. Quasim v. Manohar Lal Sharma and Ors.*, [1981] 3 SCC 36, relied on.

Tulsidas Kilachand and Ors. v. Commissioner of Income Tax, AIR (1961) SC 1023, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2371 of 2007.

From the Judgment and Order dated 9.10.2006 of the High Court of Uttaranchal at Nainital in W.P. No. 337/2004 (M/S).

Dinesh Dwivedi, P.N. Gupta for the Appellants.

M.N. Krishnamani, S.C. Maheshwari, J. Quddisi, Vipul Maheshwari, M.P.S. Tomer and Sandhya Goswami for the Respondents.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. This appeal has been filed against the judgment dated 09.10.2006 passed by the Uttaranchal High Court in Writ Petition No. 337 of 2004 (M/S). Heard learned counsel for the parties and perused the records.

2. The appellants before us are the tenants of the premises in dispute while the respondents are the landlords. The landlady filed the petition

under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. The grounds mentioned in the release application of the landlady was that she is a retired teacher getting only a pension of Rs. 538/- per month which is insufficient for her needs. Hence to augment her income she wants to run tuition/coaching classes in the premises in question. The said petition was rejected by the Prescribed Authority, but in appeal the appellate authority (ADJ Dehradun) by his judgment dated 16.03.2004 reversed the order of the Prescribed Authority and allowed the release application. The said judgment dated 16.03.2004 has been upheld by the High Court by the impugned judgment dated 09.10.2006. Hence this appeal.

3. It may be mentioned that during the pendency of the appeal before the appellate authority a Trust was created in respect of the property in question vide trust deed dated 04.08.2003 (copy of which is annexed as Annexure P-8 to this appeal).

4. Learned counsel for the appellants, Shri Dinesh Dwivedi, submitted that in view of the aforesaid trust deed dated 04.08.2003 the very purpose for which eviction was sought of the tenants through the release application has disappeared. We are in agreement with this submission. The trust deed nowhere mentions that any income of the Trust will be given to the petitioner who filed the release application. In fact, Section 51 of the Trust Act debars a trustee from using the trust property for his own profit.

5. In *Kedar Nath Agrawal (dead) & Anr. v. Dhanraji Devi (dead) by Lrs. & Anr.*, [2004] 8 SCC 76 this Court held that the court has to consider the changed circumstances during the pendency of the litigation. This decision relied on the earlier decision of this Court in *Hasmat Rai v. Raghunath Prasad*, [1981] 3 SCC 103: AIR (1981) SC 1711 in which it was observed that where possession is sought for personal requirement, the said requirement must not only exist on the date of the filing of the petition but must also subsist till the final decree for an order for eviction is made. If, in the meantime, events crop up which would show that the landlord's requirement no longer subsists then the action must fail.

6. In *Tulsidas Kilachand & Ors. v. Commissioner of Income Tax*, AIR (1961) SC 1023 it was held that on creation of a Trust the property

A passes to the trustees. Hence, in our opinion, rent is now to be paid to the trustees who will collect it on behalf of the Trust.

7. In *M.M. Quasim v. Manohar Lal Sharma & Ors.*, [1981] 3 SCC 36 this Court held that on transfer of property to a person who is not a party to the proceedings the suit for eviction will fail.

B

8. Learned counsel for the respondents, Shri M.N. Krishnamani, submitted that the petition under Section 21 for eviction was filed on the ground that the petitioner wanted to do charitable work, and after creation of the Trust also the purpose remains the same. We do not agree. In the petition under Section 21 it is stated in paragraph nos. 3 – 7 of the petition that the petitioner has a monthly pension of Rs. 538/- only and she wants to augment her income as it is difficult for her to survive on the meager pension. Hence she wants to open a tutorial centre in the premises in dispute to earn some money. The purpose mentioned in the petition under Section 21 was not for doing charitable work. However, after the execution of the trust deed the premises in dispute now belongs to the Trust. The need mentioned in the petition under Section 21 has totally disappeared.

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D

9. In this view of the matter, the impugned judgment of the High Court dated 09.10.2006 and of the appellate authority dated 16.03.2006 can not be sustained and are set aside.

E

10. Appeal is allowed, no order as to costs

K.K.T.

Appeal allowed.

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