

Court No. - 05

Case :- MATTERS UNDER ARTICLE 227 No. - 7673 of 2019

Petitioner :- Mahendra Pal Singh

Respondent :- Abhay And Another

Counsel for Petitioner :- Amit Kumar Pandey

Hon'ble Surya Prakash Kesarwani,J.

1. Heard learned counsel for the tenant-petitioner.
2. This petition has been filed praying for the relief:

"(a) Set aside the impugned order dated 20.08.2019 passed by the Additional District Judge, Court No.10, Agra in S.C.C. Revision No.4 of 2019 (Mahendra Pal Singh Vs. Abhay and another) and impugned order dated 21.12.2018 passed by Judge, Small Cause Court, Agra in S.C.C. Suit No.48 of 2016 (Abhay and another Vs. Mahendra Pal Singh)."

3. Briefly stated facts of the present case are that admittedly one Sri Brajpal was the owner and landlord of the shop No.125, Agra Chhavni, Agra. Admittedly, the defendant-petitioner was the tenant of the said shop at a monthly rent of Rs.250/-. According to the petitioner, the aforesaid original owner executed a registered agreement to sell dated 13.01.2005 in favour of the defendant-petitioner with respect to the disputed shop but no sale deed was executed. According to the petitioner, the agreed consideration was Rs.2,50,000/- out of which Re.1 lac was paid as mentioned in the agreement to sale dated 13.01.2005 and the remaining Rs.1,59,000/- was paid on 14.01.2005 under a receipt. According to the petitioner, since the petitioner purchased the disputed shop, therefore, he is the owner of the disputed shop and not the tenant. According to the plaintiffs-respondents, the defendant-petitioner is the tenant of the disputed shop and he defaulted in payment of rent. Therefore, the plaintiffs-respondents filed S.C.C. Suit No.48 of 2015 (Abhay and another vs. Mahendra Pal), which was decreed by the impugned judgment dated 21.12.2018 passed by the Judge Small Cause Court, Agra. Against this judgment, the defendant-petitioner filed a Rent Revision No.04 of 2019 (Mahendra Pal vs. Abhay and another),

which has been dismissed by the impugned judgment dated 20.08.2019 passed by the Additional District Judge, Court No.10, Agra. Aggrieved with these two judgments, the defendant-petitioner has filed the present petition under Article 227 of the Constitution of India.

4. Learned counsel for the petitioner states that the year of SCC suit has been incorrectly mentioned in the impugned judgment dated 21.12.2018 as of 2015 instead of the correct year as 2016. He submits that since the defendant-petitioner is the owner of the disputed shop under the registered agreement to sale dated 13.01.2005 and has also paid the entire consideration, therefore, the impugned judgment passed by the Judge Small Cause Court as well as the revisional court are wholly illegal since the petitioner is not the tenant. There is no landlord-tenant relationship between the plaintiffs-respondents and the defendant-petitioner.
5. He further submits that a Suit No.955 of 2016 (Mahendra Pal vs. Vidya Devi and others) has also been filed by the defendant-petitioner for specific performance of the agreement to sale dated 13.01.2015, which is pending.
6. I have carefully considered the submissions of the learned counsel for the defendant-petitioner.
7. The aforesaid S.C.C. Suit was filed by the plaintiffs-respondents for eviction of the tenant/ petitioner on the ground of default in payment of rent. The petitioner has admitted that he has not paid the rent. The reason given for non-payment of rent is that since he subsequently became the owner of the disputed shop, therefore, rent was not paid. Thus, non-payment of rent is an admitted fact.
8. The agreement to sale does not confer title to the property. According to own case of the defendant-petitioner, he was a tenant of the disputed shop. Thus, it is undisputed that the defendant-petitioner was the tenant and the father of the plaintiffs-respondents was the owner and landlord.

Father of the plaintiffs-respondents died in the year 2015. The suit property was succeeded by the plaintiffs-respondents and they became the landlord. In a rent case, landlord-tenant relationship is to be looked into. From the facts as noted above, it is clear that the plaintiffs-respondents are the landlord and the defendant-petitioner is the tenant. Therefore, the courts below have not committed any manifest error of law to hold the landlord-tenant relationship and to decree the suit.

9. For all the reasons afore-stated, I do not find any merit in this petition. Consequently, **the petition** fails and is hereby **dismissed**. However, it is made clear that any observation made in the body of this judgment shall not come in the way of deciding in accordance with law the pending Suit No.955 of 2016 for specific performance. It is further made clear that this court has not expressed any opinion with respect to the title of the disputed property.

Order Date :- 31.10.2019
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