A SANTOSH CHATURVEDI

v.

KAILASH CHANDRA & ANR.

(Civil Appeal No. 6572 of 2010)

B NOVEMBER 15, 2019

[R. BANUMATHI, A. S. BOPANNA AND HRISHIKESH ROY, JJ.]

U.P. Urban Buildings (Regulation of Letting, Rent and C *Eviction) Act, 1972 – s.2(1)(a) – Eviction – Appellant initiated the petition u/s.2(1)(a) against the predecessor of the respondents seeking release of the suit property/premises – The prescribed authority dismissed the petition and held that appellant cannot claim ownership right over the coparcenary property and he was not the landlord of the respondents and also held that his bonafide* D *requirement did not exist – The Appellate Authority on re-appreciating the entire aspect of the matter arrived at conclusion that the appellant had lawfully become the owner of the property and respondents were tenant under the appellant and held that case for release of property was made out – Thereafter, respondent* E *filed writ petition before the High Court – High Court took the similar view as arrived at by the prescribed authority and reversed the judgment passed by the Appellate Court – On appeal, held: The proceedings under the Rent Act is of summary nature wherein the jural relationship of landlord and tenant is to be taken note to the extent it is required for considering such eviction petition and* F *the rigour of examining the ownership ought not to be indulged in the manner as done in a title suit unless the respondent sets up title to the very rented property which is adverse to that of the landlord – In the instant case, the consideration made by the prescribed authority was in the nature of the title being examined* G *in the suit for partition or for seeking declaration of title – The detailed examination with regard to the nature of the right to the property was made, which was wholly unnecessary in a summary proceeding when tenant had not set up title to the premises in question – Father of the appellant admittedly was the owner of the property and he had made a settlement in favour of his*

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son-appellant, the title thus acquired and cannot called in question – Further, predecessor of the respondents earlier, had initiated a proceeding before the Rent Control and Eviction officer and sought alternate premises, that showed that respondents did not have any issue with regard to the ownership – Insofar as a bonafide *requirement is concerned, there was no material available on record to indicate that the appellant had any other alternate premises, the* bonafide *need of the appellant as claimed, accepted – Therefore, the Judgment passed by the prescribed authority and the High Court set aside – Consequently, the Judgment passed by the Appellate Authority restored.*

Allowing the appeal, the Court

HELD : 1. Though such detailed examination with regard to the nature of the right to the property has been made in the present case, this Court is of the opinion that the same was wholly unnecessary in a summary proceeding of the present nature when the tenant had not set up title to the premises in question. Irrespective of the fact as to whether the property was the coparcenary property or had become the absolute property of father of the appellant, the fact remains that a family settlement dated 15.11.1999 was entered into, to which father of the appellant, who was the owner was himself a party and had given a portion of his property to his son-appellant. Pursuant to such oral family settlement dated 15.11.1999 a Memorandum dated 02.02.2000 was also drawn up. Subsequent thereto the appellant had also filed an Original Suit No.220/2001 seeking that the family settlement be declared as valid. The said suit was disposed of on 19.04.2001 based on the compromise. [Para 14] [85-G-H; 86-A]

2. Whether the share given by father of the appellant to his son who is appellant is justified or as to whether the nature of the document under which the settlement was recorded was as per requirement of law and valid are all issues which can only be raised by any other member of the family who would feel deprived and could have claimed right over the such property. But in a circumstance where father of appellant who admittedly was the owner of the property had made a settlement in favour of the appellant who is his son, the title thus acquired, in any

event, cannot be called in question by the person who is in occupation of the premises as a tenant when father of appellant who admittedly was his landlord did not continue to claim to be the landlord. If that be the position as rightly noticed by the Appellate Authority, in view of the provision as contained in Section 8 and Section 109 of Transfer of Property Act, on transfer of the property by the owner the tenant would automatically become the tenant of the transferee. [Para 15] [86-B-E]

3. The aspect which is also necessary to be taken note is that the predecessor of the respondents had initiated a proceeding in Suit No.113/2011 before the Rent Control and Eviction Officer wherein he had sought for allotment of alternate premises by indicating that the case bearing No.6/2010 had been initiated by the appellant herein against him. This would indicate that at the first instance, the predecessor of the respondents did not have any issue with regard to the ownership and was making an attempt to secure an alternate premises but has only thereafter raised the contention despite the relationship being indisputable. Therefore, taking into consideration all these aspects this Court is of the opinion that the view expressed by the Appellate Court is appropriate in the present facts and circumstance. [Para 16] [86-G-H; 87-A-B]

4. From the evidence as tendered, the appellant had contended that he is doing wholesale business of cloth for which he does not have premises due to which he, his wife and two children are experiencing hardship. In a circumstance where there is no material available on record to indicate that the appellant has any other alternate premises, the bonafide need of the appellant as claimed will have to be accepted and even though the respondents would face some hardship, as compared to the same the hardship to be faced by the appellant would be greater if the premises is not released to the appellant. [Para 17] [87-C-D]

Shalini Shyam Shetty & Anr. v. Rajendra Shankar Patil **(2010) 8 SCC 329 : [2010] 8 SCR 836 – referred to.**

Case Law Reference

[2010] 8 SCR 836	**referred to**	**Para 8**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6572 of 2010.

From the Judgment and Order dated 28.11.2007 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 54204 of 2007.

Rajiv Dutta, Sr. Adv., Vikas Singh Jangra, Amit Kumar Pathak, B. Vardhman Singh, Advs. for the Appellant.

Ms. Purnima Bhat, Adv. for the Respondents.

The Judgment of the Court was delivered by

A. S. BOPANNA, J.

1. The appellant is before this Court assailing the order dated 28.11.2007 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No.54204/2007. Through the said order the High Court has allowed the Writ Petition filed by the respondents herein and has set aside the judgment and order dated 09.10.2007 passed by the Special Judge, Mathura in P.A. Appeal No.1/2002 whereby the order dated 03.08.2001 passed by the Prescribed Authority/ Upper Civil Judge (C.D.) is upheld. The appellant is, therefore, aggrieved and is before this Court.

2. The appellant herein instituted the petition under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the "Rent Act" for short) against the predecessor of the respondents herein seeking release of the premises bearing No.83/72A, Tiwari Gali, Chhatta Bazar, Mathura. The suit was registered as petition No.6/2000 before the Prescribed Authority. The Prescribed Authority having taken into consideration the rival contentions, on holding that the appellant herein cannot claim ownership right over the coparcenary property and in that light on arriving at the conclusion that the appellant is not the landlord of the respondents and also holding that the bonafide requirement does not exist, had dismissed the petition declining the release of the shop/ premises in question.

3. The appellant claiming to be aggrieved by the same had filed the appeal in P.A. Appeal No.1/2002 before the Appellate Authority, namely, the Special Judge, Mathura. The learned Appellate Judge on reappreciating the entire aspect of the matter had arrived at the

A conclusion that the appellant herein had lawfully become the owner of the property and in that circumstance considering the predecessor of the respondents herein to be the tenant under the appellant had further examined the matter with regard to the bonafide requirement. Accordingly, the learned Appellate Judge had arrived at the conclusion that the case for release of the property is made out and had accordingly
B allowed the appeal. While so considering the matter, the learned Appellate Judge had also taken into consideration that an alternative shop bearing No.83/9-C situated at Chhatta Bazar, Mathura measuring 2.5 ft. x 26 ft. standing in the name of the father of the appellant which was vacant be allotted in favour of the respondents so as to mitigate
C the hardship, if any. In that view, the respondents were directed to vacate the premises in question by taking possession of the said alternative shop No.83/9-C within one month.

4. The respondents herein claiming to be aggrieved by the said order dated 09.10.2007 had filed the writ petition under Article 227 of
D the Constitution of India before the High Court of Judicature at Allahabad in C.M.W.P. No.54204/2007. The learned Single Judge has in fact considered the matter in great detail, more particularly with regard to the claim of ownership made by the appellant herein and keeping in view the provisions contained in the Hindu Succession Act, 1956 has arrived at the conclusion that the appellant cannot be considered
E as a coparcener in respect of the premises in question. Hence the learned Single Judge has also taken a similar view as arrived at by the Prescribed Authority/learned Upper Civil Judge and in that light has reversed the judgment passed by the Appellate Court. The appellant, therefore, claiming to be aggrieved is before this Court in this appeal.

F 5. We have heard Mr. Rajiv Dutta, learned senior advocate along with Mr. Vikas Singh Jangra, learned advocate on behalf of the appellant, Ms. Purnima Bhat, learned advocate on behalf of the respondents and perused the appeal papers.

6. The learned senior advocate for the appellant would contend
G that the authorities prescribed under the Rent Act in issue had considered the matter and though divergent opinions were expressed, the Appellate Court had in fact appreciated the matter in its correct perspective since in a summary proceedings of the present nature the relationship of landlord and tenant was sufficient to be established which in fact had
H been established and it ought not to have been considered like a title

suit. The Prescribed Authority has examined the ownership of the property as if being considered in a partition suit or title suit so as to arrive at its conclusion. It is no doubt true that the father of the appellant had earlier filed an eviction suit against the predecessor of the respondents and had failed in the proceedings arising thereunder. However, in a family settlement the property in question had fallen to the share of the appellant herein and in that circumstance the need for the premises was a fresh cause of action and in a circumstance where at the first instance there was no dispute to the fact that the father of the appellant, namely, Shri Dwarka Prasad Chaturvedi was the owner, there could not have been dispute to the fact that the appellant, who is his son had acquired ownership over the property in the family settlement. In that regard, it is contended by the learned senior advocate that when the learned Appellate Judge which is a statutory authority under the Act had arrived at the conclusion based on reappreciation of the matter, the consideration as made by the High Court in a writ petition under Article 227 of the Constitution, as if it was in the nature of an appeal by reappreciating the entire aspect is not justified. Hence, he contends that the ownership as well as the bonafide requirement being established, the appellant is entitled to succeed and secure release of the suit schedule premises.

7. The learned advocate for the respondents, on the other hand, would contend that the undisputed position is that Shri Dwarka Prasad, the father of the appellant had filed the petition under Section 21(1)(a) of the Rent Act for release of the shop but the suit was dismissed by the Prescribed Authority through the judgment dated 07.12.1979. The appeal against the same was dismissed and the writ petition was also dismissed on 29.10.1999. The father of the appellant having failed to succeed had thereafter instituted a fresh proceeding through the appellant who is his son, on 10.02.2000 by creating certain rights in favour of the appellant under an alleged settlement dated 15.11.1999. The Memorandum of Settlement dated 02.02.2000 was created for the said purpose. It is her contention that the father of the appellant had secured his share in the property prior to the birth of the appellant and as such the property cannot be considered as a coparcenary property whereunder the appellant can claim any right as a coparcener and secure a share. It is her contention that the Prescribed Authority as also the High Court has considered this aspect and has arrived at the conclusion in accordance with law which does not call for interference.

A It is further contended that the alternate shop indicated by the learned Appellate Judge is not suitable for business purpose and, therefore, even in that regard, apart from the bonafide of the appellant not being established the respondents would be exposed to greater hardship if the premises is ordered to be released. Hence it is contended that the order impugned does not call for interference.

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8. In the background of the rival contentions, at the outset, a perusal of the judgment in the case of ***Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil*** (2010) 8 SCC 329 relied upon by the learned senior advocate for the appellant would be in order. This case refers to the scope of consideration that could be made by the High Court in a writ petition of the present nature. However, keeping in view the fact that the High Court in the instant case while examining the matter had two views before it, one taken by the Prescribed Authority and the other by the Appellate Authority which were divergent, one of the views was required to be accepted by examining the matter in that regard. Therefore, in the instant facts if that aspect of the matter is taken note, since the Prescribed Authority while examining the claim of the appellant herein had adverted to the manner in which the claim of ownership was made to the property and had held that the appellant cannot be considered as a coparcener to be accepted as the landlord, the High Court has also made a consideration in that regard to accept such view. Hence in the present circumstance instead of examining the extent of jurisdiction, what is required to be noticed by this Court is as to whether the nature of consideration as made by the Prescribed Authority as also the High Court is justified as against the conclusion reached by the Appellate Authority and which among the divergent opinions is to be accepted.

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9. In order to examine that aspect of the matter a perusal of the papers would indicate that at the first instance the father of the appellant Shri Dwarka Prasad had become the owner of the property under a partition deed dated 09.07.1959. In that capacity, the predecessor of the respondents was the tenant under him and the said Shri Dwarka Prasad instituted an eviction petition against the predecessor of the respondents on 10.03.1979. In the said proceedings there was no dispute whatsoever with regard to the ownership of the property or the jural relationship of landlord and tenant between the father of the appellant and the predecessor of the respondents. It is no doubt true that the father of the appellant had failed in the said proceedings and presently

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the Petition bearing No.6/2000 was instituted by the appellant, who is his son, claiming to be the owner of the property. The entire case as put forth by the respondents to oppose the eviction suit is with regard to the status of the property by contending that the joint family property had lost its character when the partition had taken place between the father of the appellant and the other members of the Hindu undivided family on 09.07.1959. It is, therefore, contended that the appellant being born in the year 1977 cannot be considered as a coparcener. In that light it is contended that in a circumstance where the appellant was not a coparcener, he could not have taken a share in the property in the alleged family settlement dated 15.11.1999 to claim as the owner of the property. Such contention as urged by the respondents herein has been accepted by the Prescribed Authority as well as the learned Single Judge in the High Court.

10. While referring to the said contentions it is necessary to emphasise that the proceedings under the Rent Act is of summary nature wherein the jural relationship of landlord and tenant is to be taken note to the extent it is required for considering such eviction petition and the rigour of examining the ownership ought not to be indulged in the manner as done in a title suit unless the respondent sets up title to the very rented property which is adverse to that of the landlord. The Prescribed Authority at the initiation of the proceedings appears to have been mindful of the same and the said aspect would be clear if the very nature of the issues that were framed for consideration by the Prescribed Authority is taken note of, which read as hereunder:

1. Whether the petitioner is having a just, dire and bonafide need of the disputed shop for running his business?
2. Whether the difficulties arising to the petitioner is more compared to the difficulties arising to the respondent if the disputed shop is being released to the respondent.

However, the consideration has extended beyond the same and therefore the question is as to whether it is justified in the instant facts.

11. It is to be noticed that the ownership of the property was not raised by the Prescribed Authority as an issue for consideration but appropriately the issues that were required under the Rent Act had been framed. Though that was the position the requirement of proof noted and the finding recorded by the Prescribed Authority with regard to the nature and status of the property reads as hereunder:

A "In the present case, the petitioner had to prove that the disputed property was a coparcenary property of the Joint Hindu Family. In this context, the petitioner had not presented any record in which the disputed property has been shown to be a coparcenary property. The petitioner's father himself had filed the petition against the respondent in the year 1979 for the release of the disputed shop, in that also, he had declared himself to be owner and landlord of the disputed property and he has not given any such statement that he himself in the capacity of the Karta of the family was the owner of the coparcenary property of the Hindu Joint Family, is the owner and the landlord. Apart from this, the perusal of the paper No.33g/22 (Colly) (Lagayat) 26, which is filed on behalf of the respondent and is a copy of the Assessment of Municipal Corporation, that the disputed property was registered in the name of Dwarka Prasad as the owner and in this, Shyam Bihari has been shown as a tenant in one shop and in the above record, there is no such mention that Dwarka Prasad had been the owner of the disputed property, in the capacity of Karta of the family. Besides this, the electricity bill paper No.33g/27 is in the name of Dwarka Prasad. After going through all the circumstance, I am of the opinion that the petitioner has failed to prove that the aforesaid disputed shop to be a coparcenary property of the Joint Hindu Family."

12. The very consideration made by the Prescribed Authority as noticed above is in the nature of the title being examined in a suit for partition or for seeking declaration of title. In fact the Prescribed Authority apart from the above conclusion has gone to the extent of indicating as if the family settlement dated 15.11.1999 was not an equitable partition and that the right claimed under the same cannot be accepted as in the earlier round of litigation when Shri Dwarka Prasad instituted the suit for eviction he had not referred to the property as a coparcenary property but had claimed absolute right over the same.

13. As against such conclusion, the learned Appellate Judge has taken note that Shri Dwarka Prasad, the father of the appellant had received the property under a registered partition dated 09.07.1959 and in that light has kept in view the legal position that a share received in the coparcenary property would remain to be so for three generations. Having observed so the learned Appellate Judge has concluded in the following manner:

"On the basis of the above discussions, it is very much clear and evident that the shop in question was a coparcenary property in the hands of Dwarka Prasad and the applicant Santosh Chaturvedi being his son has got a right, interest and share in the said coparcenary property. Evidence available on the record reveals that again family settlement occurred in between Dwarka Prasad, his sons and mother on 15.11.1999 and due to this family settlement, family claims and dispute arose and due to that cause there was repartition of the said property on 09.04.1997 between Santosh Chaturvedi and his mother, father and brother which was written memorandum on 02.02.2000. The written memorandum was also filed on the records and one original suit No.220/01 Santosh Chaturvedi vs. Dwarka Prasad and Others was filed in context with the partition of the property which was decided on 19.04.2001 on the basis of the compromise.

It is the argument of the learned counsel for Shyam Bihari that all the averments are concocted and have been framed just to give colours to the matter, I am not satisfied with this argument. Because, the evidence has been filed on record that oral partition occurred on 15.11.1999 amongst Dwarka Prasad and his sons Vijay and Santosh Chaturvedi and his mother which was reduced in writing by a memorandum of family settlement dated 02.02.2000 which was confirmed by the decree of the original suit No.220/01. It is well settled law on this point that the partition can be oral and even written amongst the members of Hindu families. The Hindu Law is very much clear that if one coparcener expresses his desire for the partition then legally the partition/severance of the coparcenary property takes its effect from the same day i.e. from the day, coparcener had expressed his desire for the partition."

14. Though such detailed examination with regard to the nature of the right to the property has been made in the present case, we are of the opinion that the same was wholly unnecessary in a summary proceeding of the present nature when the tenant had not set up title to the premises in question. Irrespective of the fact as to whether the property was the coparcenary property or had become the absolute property of Shri Dwarka Prasad, the fact remains that a family settlement dated 15.11.1999 was entered into, to which Shri Dwarka Prasad who was the owner was himself a party and had given a portion

A of his property to his son. Pursuant to such oral family settlement dated 15.11.1999 a Memorandum dated 02.02.2000 was also drawn up. Subsequent thereto the appellant had also filed an Original Suit No.220/ 2001 seeking that the family settlement be declared as valid. The said suit was disposed of on 19.04.2001 based on the compromise.

B 15. Whether the share given by Shri Dwarka Prasad to the appellant who is his son is justified or as to whether the nature of the document under which the settlement was recorded was as per requirement of law and valid are all issues which can only be raised by any other member of the family who would feel deprived and could have claimed right over the such property. But in a circumstance where C Shri Dwarka Prasad who admittedly was the owner of the property had made a settlement in favour of the appellant who is his son, the title thus acquired, in any event, cannot be called in question by the person who is in occupation of the premises as a tenant when Shri Dwarka Prasad who admittedly was his landlord did not continue to D claim to be the landlord. If that be the position as rightly noticed by the Appellate Authority, in view of the provision as contained in Section 8 and Section 109 of Transfer of Property Act, on transfer of the property by the owner the tenant would automatically become the tenant of the transferee. The further observation of the Appellate Authority contained in its order to notice the relationship of landlord and tenant is E as hereunder;

> "……Even if, Shyam Bihari Lal has denied himself to be the tenant of the applicant, but here it is more important that another suit was pending amongst the parties for the eviction of tenant Shyam Bihari Lal where Shyam Bihari Lal had F accepted himself to be the tenant of Santosh Chaturvedi and had deposited the rent on the first date of hearing of the suit and has also requested for extending the benefit of Section 20(4) of Act No.13 of 72, to him in that case."

It will indicate that the respondents at this juncture cannot dispute G the ownership of the appellant over the property or the jural relationship.

16. The aspect which is also necessary to be taken note is that the predecessor of the respondents late Shyam Bihari had initiated a proceeding in Suit No.113/2011 (Annexure R-12) before the Rent Control and Eviction Officer, Mathura wherein he had sought for H allotment of alternate premises by indicating that the case bearing No.6/

2010 had been initiated by the appellant herein against him. This would indicate that at the first instance, the predecessor of the respondents did not have any issue with regard to the ownership and was making an attempt to secure an alternate premises but has only thereafter raised the contention despite the relationship being indisputable. Therefore, taking into consideration all these aspects we are of the opinion that the view expressed by the Appellate Court is appropriate in the present facts and circumstance.

17. Having arrived at the above conclusion we have taken into consideration the nature of the claim made by the appellant for release of the property. From the evidence as tendered, the appellant had contended that he is doing wholesale business of cloth for which he does not have premises due to which he, his wife and two children are experiencing hardship. In a circumstance where there is no material available on record to indicate that the appellant has any other alternate premises, the bonafide need of the appellant as claimed will have to be accepted and even though the respondents would face some hardship, as compared to the same the hardship to be faced by the appellant would be greater if the premises is not released to the appellant. Though at this juncture the learned counsel for the respondents would submit that the alternate premises bearing No.83/9-C Chhatta Bazar, Mathura ordered to be made available to the respondents is not suitable, it is in fact an order made by the Appellate Court only in order to minimize the hardship. In that circumstance, if the said premises is not suitable, it is open to the respondents to not opt for the same. However, when the appellant has established that he is the owner of the property and the same is required for his bonafide occupation, the release of the premises in any event, is required to be made.

18. In that view, for all the reasons stated above we are of the opinion that the Prescribed Authority as well as the learned Single Judge of the High Court were not justified in their conclusion. Accordingly, the judgment dated 03.08.2001 passed in Petition No. 6/2000 and the judgment dated 28.11.2007 passed in C.M.W.P. No.54204/2007 are set aside. Consequently, the judgment dated 09.10.2007 passed in P.A. Appeal No.1/2002 is restored. The respondents are granted three months' time to vacate and handover the vacant possession of the petition subject premises bearing No.83/72-A situate in Tiwari Gali, Chhatta Bazar, Mathura to the appellant subject to an undertaking being filed before this Court within a period of three weeks. It is made clear

A that if such undertaking is not filed the benefit of the time granted to vacate will not be available to the respondents. Further, the release of the premises in question shall be made irrespective of opting for the alternate premises as ordered by the Appellate Court.

19. The appeal is allowed accordingly. There shall be no order
B as to costs. All pending applications shall stand disposed of.

Ankit Gyan Appeal allowed.