# Gulshera Khanam vs Aftab Ahmad on 27 September, 2016

## Equivalent citations: AIR 2016 SUPREME COURT 4810, 2016 (9) SCC 414, 2017 (3) ALJ 359, (2017) 2 UC 1482, (2017) 1 RENTLR 81, (2016) 2 WLC(SC)CVL 729, (2016) 119 ALL LR 455, (2016) 4 KER LJ 202, (2016) 9 SCALE 357, (2016) 2 RENCR 390, (2016) 3 ALL RENTCAS 387, (2016) 167 ALLINDCAS 161 (SC), (2016) 4 RECCIVR 657, (2016) 7 MAD LJ 355

## Author: Abhay Manohar Sapre

## Bench: J. Chelameswar, Abhay Manohar Sapre

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 9727 OF 2016
(ARISING OUT OF SLP (C) No. 16643/2012)

Gulshera Khanam .....Appellant(s)

VERSUS

Aftab Ahmad .....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) Leave granted.

2) This appeal is filed against the final judgment and order dated 17.01.2012 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 65612 of 2011 whereby the High Court allowed the writ petition filed by the respondent-tenant and set aside the order dated 04.03.1999 of the Prescribed Authority in U.P.U.B. Case No. 13 of 1994 and order dated 24.08.2011 of the Additional District Judge, Aligarh in U.P.U.B. Appeal No. 07 of 1999.

3) Facts of the case need mention, in brief, infra to appreciate the controversy involved in the appeal.

4) The appellant is the landlady of the shop being Shop No. 6 situated on the Dodhpur Road, Aligarh, Building No. 4/569B. The respondent is the tenant in Shop No. 6 and doing business of selling Footwear (shoes and sandals) in the name of Khan Brothers on a monthly rent of Rs.100/-.

5) There are in all 7 shops in the building in which suit shop in situated. Except Shop No.7, all are occupied by different tenants. Shop No. 7 is in occupation of the appellant wherein her daughter Dr. Naheed Parveen is doing medical practice. Initially, Shop No. 7 was occupied by the husband of the appellant, Dr. Ahsan Ahmed, who was practicing medicines in the said shop and after his death, the said shop remained closed for about two-three years and after that her daughter started practicing medicines there.

6) According to the appellant, Shop No. 7 is about 16.9 ft. x10 ft. in area and is inadequate for running clinic.

7) On 11.02.1994, the appellant personally requested the respondent to vacate Shop No. 6 but he did not vacate. Therefore, the appellant filed an application under Section 21(1)(a) of Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") in the Court of the Prescribed Authority/Civil Judge, Senior Division, Aligarh being U.P.U.B. Case No. 13 of 1994 seeking release of Shop No. 6 in her favour for her bona fide requirement and genuine need in comparison to the need of the respondent. It was alleged that the appellant's daughter, who is a doctor and running her private clinic in Shop No. 7 is finding it difficult and inconvenient to run the clinic due to space constraint in Shop No. 7 and it is for this reason she requires adjacent Shop No. 6 so that both Shops, i.e., 6 and 7 could be used for running the clinic in a comfortable manner. It was also alleged that the appellant's one son has done his MBBS and is doing M.D. He too would do his practice in the shop in question. It was alleged that there would be no space constraint once both the Shops (6&7) are clubbed together. It was further alleged that the appellant has no other shop available except Shop No. 6 which is most suitable for expansion of clinic being next to Shop No.

7. It was also alleged that the respondent is having his own shops in the same area and hence even if he vacates the shop in question, there will be no hardship to him.

8) The respondent filed his written statement to the application denying the need of the appellant-landlady as bona fide or genuine. Parties adduced evidence.

9) By order dated 04.03.1999, the Prescribed Authority allowed the application and directed the respondent-tenant to vacate the shop in question within 3 months of the date of the order and to give the vacant possession to the appellant-landlady and also pay by way of damages two years' rent amount within 30 days from the date of the order. It was held that the appellant's need for using Shop No. 6 is bona fide and genuine and that it is required for expansion of clinic run by the appellant's daughter in Shop No. 7 and her son. It was held that the appellant has no other suitable shop in city where her daughter/son can run their clinic. It was also held that the respondent has other shops for running his business in the same locality and, therefore, there would be no hardship caused to the respondent.

10) Felt aggrieved by the said order, the respondent-tenant filed an appeal being U.P.U.B. Appeal No. 7 of 1999 under Section 22 of the Act before the Additional District Judge, Aligarh. By order dated 02.02.2000, the appellate court allowed the appeal and set aside the order dated 04.03.1999

on the ground that the Presiding Officer has no jurisdiction to pass the order.

11) Against the said judgment/order dated 02.02.2000, the appellant- landlady filed C.M.W.P. No. 10669 of 2000 before the High Court. The High Court by order dated 18.02.2011 allowed the petition and set aside the order dated 02.02.2000 and remanded the matter to the appellate Court for deciding the same on merits in accordance with law.

12) Thereafter by order dated 24.08.2011, the appellate court dismissed the appeal (U.P.U.B. Appeal No. 7 of 1999) of the respondent-tenant and confirmed the order dated 04.03.1999 passed by the Prescribed Authority.

13) Feeling aggrieved by the said order, the respondent-tenant filed C.M.W.P. No. 65612 of 2011 before the High Court.

14) By impugned judgment dated 17.01.2012, the High Court allowed the writ petition and set aside the order dated 04.03.1999 of the Prescribed Authority and order dated 24.08.2011 dismissing the appeal of the respondent-tenant. The High Court held that firstly, the appellant's daughter- Dr. Naheed Parveen is not a member of family as defined under Section 3(g) of the Act because she is a married daughter whereas Section 3(g)(iii) include only an "unmarried daughter". Secondly, it was held that for this reason, the appellant could not seek eviction for the need of her married daughter; and lastly, it was held that the appellant's need is not bona fide.

15) Against the said judgment, the appellant-landlady has filed this appeal by way of special leave before this Court.

16) Heard Mr. Salman Khurshid, learned Senior Counsel, for the appellant and Mr. V.K. Garg, learned senior counsel, for the respondent.

17) Mr. Salman Khurshid, learned counsel for the appellant (landlady) while assailing the legality and correctness of the impugned judgment of the High Court urged three submissions.

18) His first submission was that the High Court erred in allowing respondent's writ petition by setting aside the order of the appellate court and the Prescribed Authority and thereby erred in dismissing the appellant's eviction petition filed under Section 21 of the Act.

19) His second submission was that the High Court erred in holding that the married daughter of landlady does not fall within the definition of an expression "Family" as defined in Section 3 (g) of the Act. Learned counsel urged that the High Court failed to notice that the definition of "family" is an inclusive definition and includes therein "any female having a legal right of residence in the building (tenanted accommodation)". Learned counsel pointed out that since it was an admitted fact that the appellant's husband (Muslim by religion) died intestate leaving behind daughter-Dr. Naheed Parveen as one of his heirs, she inherited an undivided but specific ownership right and interest in the suit building as provided in Mahomedan Law of inheritance. Learned counsel contended that the word "female" used in the definition of family would, therefore, include

"daughter" regardless of the fact as to whether she is married or not provided she is able to show that she has an interest in the suit building which, in turn, entitles her to claim a right of residence in such building. It was urged that the daughter of the appellant did inherit interest in the suit building as one of the co-owners which, in turn, entitles her to claim a right of residence in the suit building by virtue of she being a female.

20) His third submission was that when two courts below, i.e., Prescribed Authority and the first appellate court after appreciating oral and documentary evidence, held that the appellant's need was genuine and bona fide and that she has no other suitable shop of her own in the city where her daughter could shift her clinic and lastly, since the respondent (tenant) is having his more than one alternative suitable shop near to the suit shop, the appellant is entitled to claim the respondent's eviction from the suit shop, the High Court while hearing writ petition under Article 227 of the Constitution of India had no jurisdiction to upset the concurrent findings of fact. It was urged that these concurrent findings were binding on the High Court. Learned counsel further urged that it was more so because the findings were neither perverse to the extent that no average judicial person could ever reach to such conclusion nor these findings were against any provisions of law and not against pleadings or evidence.

21) In reply, learned counsel for the respondent (tenant) supported the reasoning and the conclusion arrived at by the High Court and urged that the impugned judgment does not suffer from any error.

22) Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by learned counsel for the appellant.

23) Two questions arises for consideration in this appeal, first, whether the High Court was justified in reversing the concurrent findings of the two courts below and thereby was justified in dismissing the appellant's eviction petition filed against the respondent under Section 21 of the Act by holding that the appellant's need set up in the petition for her daughter was not bona fide; and second, whether the finding that the appellant's married daughter does not fall within the meaning of the word "family" as defined under Section 3(g) of the Act and, therefore, her need cannot be considered under Section 21 of the Act for granting eviction of the tenant is proper or not?

24) Coming to the second question first, in our opinion, its answer depends upon the proper interpretation of the definition of the word "family" as defined in Section 3(g) of the Act. It reads as under:

> "3(g) "Family", in relation to a landlord or tenant of a building, means, his or her-
>
> (i) spouse;

male lineal descendants;

such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building;"

25) Perusal of the afore-quoted definition would go to show that family in relation to landlord or tenant of a building would include (1) spouse (2) male lineal descendants (3) such parents, grandparents, unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant as may have been residing with the landlord. The definition further says, "Family" includes in relation to landlord, any female having a legal right of residence in that building.

26) The inclusive part of the definition, which is enacted only for the benefit of "female" in relation to the landlord, adds one more category of person in addition to those specified in clauses (i) to (iii), namely, "any female having a legal right of residence in that building".

27) A fortiori, any female, if she is having a legal right of residence in the building, is also included in the definition of "family" in relation to landlord regardless of the fact whether she is married or not. In other words, in order to claim the benefit of expression "family", a female must have a "legal right of residence" in the building. Such female would then be entitled to seek eviction of the tenant from such building for her need.

28) Coming to the facts of this case, it is not in dispute that Dr. Ahsan Ahmad was the original owner of the building in question. He died intestate and, therefore, on his death, the appellant, two sons and four daughters inherited the estate left by Dr. Ahsan Ahmad, which included the building, in question.

29) Since Dr. Ahsan Ahmad was Mahomedan, his entire estate including the building in question, devolved on the appellant (wife), his two sons and four daughters as per the shares defined in Hanafi Law of Inheritance. The shares of the heirs which are defined in the Table in Chapter VII titled "Hanafi Law of Inheritance" (at page 66-A of Mulla-Principles of Mahomedan Law-20th Edition) would show that daughter is also entitled to claim her specific share in her father's estate. The daughter's share is defined in column Nos. 2, 3 and 4 at serial number 7, in the table. It reads as under:

| (1) | (2) | (3) | (4) |
|---|---|---|---|
| Sharers | Normal Share | Conditions under which the normal share is inherited | This column sets out- (A) Shares of Sharers Nos. 3,4,5,8 and 12 as varied by special circumstances; (B) conditions under which |

| | | | | |
|---|---|---|---|---|
| | | | | sharers Nos. 1,3,7,8,11 and 12 succeed as Residuaries |
| | Of one | Of two or more collectively(b) | | |
| 7. Daughter | 1/2 | 2/3 | When no son | [With the son she becomes a residuary: see Tab. Of Res.,No.1] |

30) Dr. Naheed Parveen being the daughter, accordingly, received her share and became co-owner of the building along with other co-sharers. Being a co-owner, she got a legal right of residence in the building as provided under Section 3(g) of the Act. In this way, she fulfilled the definition of “family” under Section 3 (g) of the Act.

31) In the light of foregoing discussion, we are unable to agree with the reasoning of the High Court and while reversing the finding answer the second question in appellant's favour and accordingly hold that the appellant was entitled to claim eviction of the respondent from the building in question for the need of her daughter Dr. Naheed Parveen for running her clinic as the daughter was having a legal right of residence in the building in question.

32) This takes us to examine the first question as to whether the High Court was justified in its writ jurisdiction to reverse the concurrent findings of the two courts below and was, therefore, justified in holding that the appellant's (landlady) need for expansion of clinic run by her daughter was not bona fide.

33) The Constitution Bench of this Court settled the law relating to exercise of jurisdiction by the High Court while deciding revision in rent matters under the Rent Control Act in Hindustan Petroleum Corpn. Ltd. vs. Dilbahar Singh, (2014) 9 SCC 78, Justice R.M. Lodha, the learned Chief Justice speaking for the Bench held in para 43 thus: (SCC pp. 101-102) “43. We hold, as we must, that none of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is

entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity."

34) Coming now to the facts of this case, keeping in view the principle of law laid down in the aforementioned case and on perusal of the order of the Prescribed Authority/Civil Judge and the first appellate court, we find that both the courts properly appreciated the facts and evidence adduced by the parties and on that basis recorded all necessary findings (detailed above) in favour of the appellant and granted decree of eviction against the respondent. This the Prescribed Authority/Civil Judge and the first appellate court could do in their respective jurisdiction and, in our opinion, both the courts rightly did it in the facts of this case.

35) Likewise, when we peruse the impugned judgment, we find, as rightly urged by the learned counsel for the appellant, the High Court did not keep in mind the aforesaid principle of law laid down by the Constitution Bench in Hindustan Petroleum Corpn. Ltd. (supra) so also the principle laid down by this Court in relation to exercise of jurisdiction under Article 227 of Constitution of India in the case of Surya Dev Rai vs. Ram Chander Rai & Ors., (2003) 6 SCC 675 while deciding the writ petition and proceeded to decide like the first appellate court. The High Court as is clear from the judgment probed all factual aspects of the case, appreciated evidence and then reversed the factual findings of the appellate court and the Prescribed Authority. This, in our view, was a jurisdictional error, which the High Court committed while deciding the writ petition. In other words, the High Court, in our view, should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate court while deciding the first appeal. It was, however, not done.

36) In our considered opinion, the question in relation to the bona fide need of the appellant's daughter to expand the activities of running the clinic was rightly held by the Prescribed Authority and the first appellate Court in appellant's favour by holding the appellant's need to be bona fide and genuine. We find no ground on which the High Court could have upset the concurrent finding on this question in its writ jurisdiction under Article 227, which is more or less akin to revisional jurisdiction of the High Court. The High Court also failed to hold that finding of the two courts were so perverse to the extent that any judicial person could ever reach to such conclusion or that the findings were against any provision of law or were contrary to evidence adduced etc.

37) The High Court, in our view, should have seen, as was rightly held by the two courts below, that the appellant's daughter had been running her medical clinic in shop No. 7 for quite some time. This fact was not in dispute. Though a feeble attempt was made by the respondent contending that after appellant's daughter's marriage, she has started living in Moradabad and, therefore, her need to run the clinic and expand its activity is not bona fide but this plea did not find favour with Prescribed

Authority and the first appellate Court and, in our view, this being a pure finding of fact, was binding on the High Court in its writ jurisdiction.

38) In our considered opinion, the appellant's need for additional space for the expansion of clinic activities for her daughter cannot be said to be unjust or unreasonable in any manner. It is for the reasons that, firstly, the suit shop No.6 is adjacent to Shop No. 7 and secondly, the need for expansion of clinic could be accomplished effectively only with the use of two shops, which are adjacent to each other. It is a well settled principle laid down by this Court in rent matters that the landlord is the sole judge to decide as to how much space is needed for him/her to start or expand any of his/her activity. This principle was overlooked by the High Court while deciding the issue of need. That apart, the High Court should have also seen that the two courts below have recorded a finding that the respondent was having his own shops in the same area where he could shift his existing business activity without suffering any comparative hardship.

39) In the light of aforementioned factual findings of the courts below, in our view, there was no justification on the part of the High Court to have probed into any factual issues again in depth by undertaking appreciation of evidence like a first appellate court and reversed the findings.

40) In view of foregoing discussion, we are unable to agree with the reasoning and the conclusion arrived at by the High Court. The impugned judgment is, therefore, not legally sustainable and is accordingly set aside. As a result, the order dated 04.03.1999 of Prescribed Authority in U.P.U.B. No. 13/1994 and order dated 24.08.2011 of the Additional District Judge, Aligarh in U.P.U.B. Appeal No. 7/99 are restored. The respondent is, however, granted three months' time to vacate the suit shop from the date of this order subject to furnishing of the usual undertaking in this Court to vacate the suit premises within 3 months and further, the respondent would in addition to the directions given by the Prescribed Authority also deposit all arrears of rent till date at the same rate at which he had been paying monthly rent to the appellant (if there are arrears) and would also deposit three months' rent in advance by way of damages for use and occupation as permitted by this Court. Let the undertaking, arrears of rent, damages for three months and compliance of direction to deposit damages by Prescribed Authority and the cost awarded by this Court be deposited within one month from the date of this order.

41) The appeal is accordingly allowed with cost, which is quantified at Rs.10000/-, to be paid by the respondent to the appellant.

……..J.
[J. CHELAMESWAR]

….…….J.
[ABHAY MANOHAR SAPRE] New Delhi;
September 27, 2016

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