

A.F.R.



2026:AHC-LKO:185

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

MATTERS UNDER ARTICLE 227 No. - 7293 of 2025

Smt. Kamla Verma and 5 others

.....Petitioner(s)

Versus

Addl. Distt. Judge -Xii Lko. and 2 others

.....Respondent(s)

Counsel for Petitioner(s)	:	Jitendra Kumar Saxena,
Counsel for Respondent(s)	:	

Court No. - 17

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Jitendra Kumar Saxena, the learned counsel for the petitioners and perused the records._

2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioners have challenged an ex-parte judgment and decree dated 16.09.2013, passed by learned Judge Small Causes Court, Lucknow in SCC Suit No.60 of 2012: Salil Kumar Rastogi Vs. Ram Bharose Verma (dead) through LR's. The petitioners had filed an application under Section 47 read with Section 151 C.P.C. raising objection against the application for execution of the ex-parte decree and the Judge Small Causes Court, Lucknow rejected this application by means of an order dated 22.03.2015. The rejection order was challenged by filing SCC Revision No.24 of 2015, which has been dismissed by means of a judgment and order dated 27.05.2025 and the petitioners have challenged the validity of the order dated 23.05.2015 and the revisional order dated 27.05.2025 also.

3. The petitioners have impleaded the learned Additional District Judge-XII, Lucknow and Judge Small Causes Court, Lucknow as opposite parties no.1 and 2 to the petition.

4. The Registry had put an objection against impleadment of the courts as the opposite parties to the petition and although the petitioners have filed a supplementary affidavit stating that the courts have been impleaded erroneously no prayer has been made for striking out the courts as the opposite parties to the petition, whereas, as far back as in the year 1995 in the case of ***Savitri Devi Vs. District Judge, Gorakhpur; (1999) 2 SCC 577*** the Hon'ble Supreme Court deprecated the practice of courts being impleaded as opposite parties to the petition filed in the High Courts and Hon'ble Supreme Court.

5. In the case of ***Jogendrasinhji Vijaysinghji v. State of Gujrat, (2015) 9 SCC 1*** the Hon'ble Supreme Court has clarified that: -

“43. ...The civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High Court without the Court or the Presiding Officer being impleaded as a party. ... the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties...”

Therefore, the Additional District Judge ought not to have been impleaded.

6. The proceeding arise out of S.C.C. Suit No. 60 of 2012 filed by the landlord Salil Kumar Rastogi (the opposie party no. 3) for ejectment of the tenant Sri. Ram Bharose Verma (since deceased, the predecessor

in interest of the petitioners) from the premises bearing House No.109/136-Ka, new No.109/187, situated in Model House, Lucknow. The landlord had pleaded in the suit that he had purchased the house from its previous owners Nishi Tandon and Ramesh Tandon. He had sent a notice under Section 106 of Transfer of Property Act to the tenant, which was served on 28.03.2012, but in spite of it the tenant did not pay rent to him and did not vacate the house. It is recorded in the order dated 10.12.2012 passed by the trial Court that the defendant Ram Bharose Verma did not put in appearance in spite of service of summon and, therefore, the suit was ordered to proceed ex-parte.

7. The tenant – defendant Sri. Ram Bharose Verma died on 27.01.2013. The plaintiff filed an application for substitution of his heirs. On 21.03.2013, the trial Court held service of notice of the application for substitution to be sufficient. On 23.04.2013, the trial Court passed an order allowing the substitution application recording that inspite of service of notice on the proposed heirs of the deceased defendant, they had not filed any objection against the application. The plaintiff examined himself in evidence and produced a carbon copy of the notice alongwith postal receipt and a copy of the power of attorney as documentary evidence. The suit was decreed by an ex-parte judgment dated 16.09.2013 wherein the trial court has recorded a satisfaction that the defendant was in arrears of rent exceeding four months and he had not paid the rent and had not vacated the property in spite of service of notice. No revision was filed against the ex-parte judgment and decree dated 16.09.2013 and it has attained finality.

8. The decree holder filed Execution Application No. 1 of 2014 for execution of the ex-parte judgment and decree dated 16.09.2013. The petitioners filed an application under Section 47 CPC, which was registered as Misc. Case No. 31 of 2014, wherein it was *inter alia*, stated that the notice of demand of arrears of rent was sent by the landlord, Salil Kumar Rastogi, but the suit was filed through his power of attorney holder, Mr. Shoeb Ahmed. The notice sent by the house owner cannot

form the basis of a suit for ejectment filed through his power of attorney holder when the power of attorney holder himself had not sent any notice determining tenancy and demanding arrears of rent. The petitioners also alleged that the summon of the suit had not been served properly. However, there is no categorical denial that summons of the suit had not been served on the petitioners-tenants. One of the objections raised in the application under Section 47 is that the landlord has substituted Heena Verma whereas the petitioner no.2 is Hema Verma, who has not been impleaded as a defendant to the suit after the death of the original defendant Late Ram Bharose Verma, although she is in possession of the accommodation in question.

9. The objections under Section 47 CPC were rejected by means of the impugned order dated 23.05.2015 wherein the Court held that the plea that the suit was filed through a power of attorney holder cannot be examined upon objections filed under Section 47 CPC, as the executing court cannot go behind the decree. The suit was filed against the original tenant, Ram Bharose Verma. His heirs were substituted after his death. The name of Hema Verma has been corrected through an application under Section 152 CPC. A mere error in spelling of the name of the petitioner no.2 does not affect the validity of the decree when notices were duly served on the heirs of the deceased tenant, Shri Ram Bharose Verma, and they had full knowledge of the proceedings.

10. It is also mentioned in the impugned order dated 23.05.2015 that Hema Verma had filed an application in Execution Case No. 1/14 stating that she is not a party to the proceedings, rather, Heena Verma has been impleaded as a party and, therefore, she would not be bound by the outcome of the execution case. This objection of the petitioner no.2 has already been decided by means of a detailed order dated 08.05.2015.

11. The executing court further held that the SCC suit was instituted on 17.05.2012, summons were issued to the defendant and on 10.12.2012, service of summons was held to be sufficient and the suit

was ordered to proceed ex-parte. After the death of the original defendant, Shri Ram Bharose Verma, notices were issued to his proposed heirs and service was held to be sufficient by means of an order dated 21.03.2013 on the ground that the heirs declined to receive the notice and thereafter the substitution application was allowed by means of an order dated 23.04.2013.

12. The executing court held that the petitioner no.2 is daughter of the original tenant and the decree passed against the other joint tenants would equally be binding on her, as any of the joint tenants can represent the other joint tenants. A mere error in description of the name of the petitioner no.2 would not render the decree nullity. This order has been affirmed in revision.

13. Assailing the validity of the aforesaid orders, the learned counsel for the petitioners has submitted that after substitution of heirs of the deceased original tenant late Ram Bharose Verma, the trial court did not issue any notice to the heirs of the original tenant and the court passed an ex-parte judgment and decree, which is nullity.

14. A perusal of the order sheet of the trial court indicates that when summons of the suit were served on the original defendant, yet he did not appear before the trial court, an order was passed on 10.12.2012 to proceed with the suit ex-parte. The original tenant Sri Ram Bharose Verma, died on 27.01.2013. Thereafter, an application for substitution of his heirs was filed, upon which notices were issued to the proposed heirs of late Ram Bharose Verma. On 21.03.2013, the court passed an order holding service of notice of the application to be sufficient on the proposed heirs of late Ram Bharose Verma and on 23.04.2013, the substitution application was allowed and heirs of Late Ram Bharose Verma were substituted in his place. Thereafter, the court fixed a date for filing an additional written statement, which was not filed, the plaintiff filed evidence and advanced its ex-parte submissions and the suit was decreed ex-parte on 16.09.2013.

15. Order XXII, Rule 4 (4) provides as follows: -

“Order XXII

Death, Marriage and Insolvency of Parties

(4). Procedure in case of death of one of several defendants or of sole defendant.-

* * *

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representative of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place."

16. As per the provision contained in Order XXII Rule 4(4) CPC, when the suit was proceeding ex-parte against the original defendant, Late Ram Bharose Verma, by means of an order dated 10.12.2012, it was not necessary for the trial court to substitute the legal representatives of late Ram Bharose Verma and the suit could have been decreed ex-parte, even without carrying out substitution of the name of the original defendant, yet the court issued notices on the application for substitution of the deceased defendant. The notices were served by refusal to receive the same. By means of the order dated 21.03.2013, the trial court held service of notice to be sufficient by refusal and, thereafter, the heirs of the original defendant were substituted.

17. When substitution of the heirs of the original defendant was not necessary for the reason that the suit was already proceeding ex-parte against the original defendant, there was no necessity of issuing any fresh summons to the heirs of the original defendant, more particularly when the notices on the application for substitution were served by refusal. In these circumstances, the ex-parte judgment and decree dated 16.09.2013 cannot be said to be nullity for non-issuance of any fresh summons to the substituted heirs of the original defendant after their

substitution, when the original defendant was not contesting the suit, even after service of notice and the suit was proceeding ex-parte.

18. The learned counsel for the petitioners has submitted that the petitioner no.2 has not been substituted and, therefore, the impugned ex-parte judgment is not binding on her. A perusal of the substitution application shows that the heir no.2 of the deceased defendant is mentioned as “Heena Verma” whereas the petitioner no.2 is “Hema Verma”. The learned trial Court has already held that it was a mere typographical error in the description of petitioner no.2, which has been corrected by an order passed under Section 152 CPC and it would not make the decree a nullity.

19. Section 3(a) of U.P. Act No.13 13 of 1972 provides as follows:

“3. Definitions.- *In this Act, unless the context otherwise requires-*

(a) “tenant”, in relation to a building, means a person by whom its rent is payable, and on the tenant's death-

(1) in the case of residential building, such only of his heirs as normally resided with him in the building at the time of his death;

(2) in the case of a non-residential building, his heirs;

(Explanation.-An occupant of a room in a hotel or a lodging house shall not be deemed to be a tenant;”

20. The learned Counsel for the petitioners has admitted that the premises in question is a residential premises and therefore, Section 3(a) (2) of Act would not apply to the present case. In the application under Section 47 CPC, as also in the petition under Article 227 of the Constitution of India, there is no averment that petitioner no.2 was normally residing with late Ram Bharose Verma in the building in question at the time of his death. Therefore, the pleadings do not make out that upon the death of late Ram Bharose Verma, the petitioner no.2

became a tenant in respect of the premises in dispute and she was entitled to be substituted in his place.

21. The Learned Counsel for the petitioner has placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup and another**: AIR 1990 Supreme Court 2053 wherein the Hon'ble Supreme Court has noted that *“there is a finding in this case that the respondent was as much a tenant as the mother and other brother. That being the position, the ex-parte decree for eviction obtained against his mother and brother, without impleading him in that suit has to be set aside”*.

22. Neither is there any such finding in the present case, nor are there any pleadings or averments so as to make out that the petitioner no.2 has become one of the joint tenants upon the death of the original defendant for the reason that she was normally residing with him in the building at the time of his death. Therefore, the facts of the present case are different from the facts on the basis whereof the judgment in the case of **Textile Association (Supra)** was rendered.

23. In **Harish Tandon v. ADM**: (1995) 1 SCC 537, the Hon'ble Supreme Court held that: -

*“23. It appears to us, in the case of H.C. Pandey v. G.C. Paul [(1989) 3 SCC 77] it was rightly said by this Court that **after the death of the original tenant, subject to any provision to the contrary, the tenancy rights devolve on the heirs of the deceased tenants jointly. The incidence of the tenancy is the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs and there is no division of the premises or of the rent payable therefor and the heirs succeed to the tenancy as joint tenants.***

24. In the case of Gian Devi Anand v. Jeevan Kumar [(1985) 2 SCC 683] the Constitution Bench of this Court in connection with Delhi Rent Control Act, 1958 said:

“The heirs of the deceased tenant in the absence of any provision in the Rent Act to the contrary will step into the position of the deceased tenant and all the rights and obligations of the deceased tenant including the protection afforded to the deceased tenant under the Act will devolve on the heirs of the deceased tenant. As the protection afforded by the Rent Act to a tenant after determination of the tenancy and to his heirs on the death of such tenant is a creation of the Act for the benefit of the tenants, it is open to the Legislature which provides for such protection to make appropriate provisions in the Act with regard to the nature and extent of the benefit and protection to be enjoyed and the manner in which the same is to be enjoyed. If the Legislature makes any provision in the Act limiting or restricting the benefit and the nature of the protection to be enjoyed in a specified manner by any particular class of heirs of the deceased tenant on any condition laid down being fulfilled, the benefit of the protection has necessarily to be enjoyed on the fulfilment of the condition in the manner and to the extent stipulated in the Act.”

25. *The framers of the Act have clearly expressed their intention in Sections 12, 20 and 25 while protecting the tenant from eviction except on the grounds mentioned in Section 20, that **after the death of the original tenant his heirs will be deemed to be holding the premises as joint tenants and for any breach committed by any of such joint tenants, all the heirs of the original tenant have to suffer.** They cannot take a plea that unless the grounds for eviction mentioned in sub-section (2) of Section 20 are established individually against each one of them, they cannot be evicted from the premises in question.”*

24. In **Durga Prasad Tiwari v. Additional District Judge/Special Judge (S.C./S.T. Act), Allahabad: (2008) 1 All.L.J. 518 = 2007 SCC OnLine All 590**, this Court held that

“20. ...The Supreme Court in the case of Harish Tandon (supra) has categorically held that the heirs of tenant inherit the premises as joint tenants and not as tenants-in-common and therefore, the notice to one was sufficient notice to all for the purpose of the proceedings under section 21(1)(a) of the Act. The Supreme Court held that after the death of the original tenant, his heirs became the joint tenants and not tenants-in-common....”

Therefore, the petitioner no. 2 being merely one of the several joint tenants, even in case there was any defect in service of notice upon her, it would not make the decree passed against all the joint tenants a nullity when the notices were served on the other joint tenants.

25. The Learned Counsel for the petitioners next submitted that summons of the suit were not properly served on the original defendant. The trial court has recorded a satisfaction regarding proper service of the suit in the order dated 10.12.2012, on the basis whereof the ex-parte judgment and decree dated 03.10.2013 was passed. The petitioners did not assail the order dated 10.12.2012 and they did not file any revision under Section 25 of the Provincial Small Causes Courts Act against the ex-parte judgment and decree dated 03.10.2013. It is settled law that the executing court cannot go behind the decree and cannot examine the facts recorded or the satisfaction recorded by the trial court in the ex-parte judgment or in any order passed during the pendency of the suit. Therefore, this plea is not open to be raised in a proceeding under Section 47 CPC.

26. In view of the foregoing discussions, I find no good ground to entertain the petition, which is dismissed at the admission stage.

(Subhash Vidyarthi,J.)

January 05, 2026
Ram.