

Court No. - 5

Case :- SECOND APPEAL No. - 612 of 2022

Appellant :- Mohammad Sayed And Another

Respondent :- Mohd. Isha And 7 Others

Counsel for Appellant :- Pradeep Singh Sengar, Sr. Advocate

Hon'ble Salil Kumar Rai, J.

This is a defendants' second appeal against the judgment and decree dated 10.5.2022 passed by the Additional District & Sessions Judge, Court No.7, Ballia in Civil Appeal No.100 of 2011.

The facts of the case are that the plaintiffs-respondents instituted original Suit No.339 of 2001 for eviction of the appellants/defendants from the suit property which was a residential house as well as for arrears of rent and damages. The suit was dismissed by the Civil Judge (Junior Division), i.e., the trial court vide judgment and decree dated 29.10.2011. Against the judgment and decree of the trial court, the plaintiff instituted Civil Appeal No.100 of 2011 which has been allowed by the lower appellate court vide its judgment dated 10.5.2022 and Original Suit No.339 of 2001 has been decreed directing the eviction of the appellants from the Suit Property and also for means profit @ Rs.50/- per month from 6.1.2001.

In the affidavit filed along with Application No.2 of 2022, the appellants have stated that no execution case was registered after the decree passed by the lower appellate court and no process was issued by any executing court to evict the appellants from the suit property. It has been further stated that without any execution case having been registered for execution of the decree of the lower appellate court, the plaintiffs with the assistance of Rakesh Kumar Singh, the Station House Officer, Rasara, Ballia, Ravindra Patel Sub-Inspector of said Police Station, Ushman, Trainee Circle Officer, Rasara and Rajendra Prasad, Executive Officer, Nagar Palika Parishad, Rasara, Ballia demolished the suit property after forcibly evicting the appellant from the same. It has been further stated that no action was taken by the Superintendent of Police, Ballia even though repeated applications and complaints have been made by the appellants against the illegal act of the aforesaid Police

Officer and executive authorities.

In support of his contention that the residential house was demolished with the assistance of the Police, the appellants have annexed a photograph of the spot showing the presence of a Police Officer during the demolition.

The facts stated in the affidavit, if true, reveal a shocking state of affairs in the police department in District Ballia. The police force is a law enforcement agency of the State having the duty to protect the rights of the citizens. Law is doomed if the law enforcement agency itself acts illegally or assists any person in his illegal activity. The facts stated, if true, the action of the police authorities is not only arbitrary and illegal, but also subjects the police authorities to disciplinary action and criminal prosecution.

The counsel for the appellants has handed over a copy of the Application No.2 of 2022 along with the affidavit to the Standing Counsel. The counsel for the appellant shall also hand over a copy of the memo of second appeal along with its annexures to the Standing Counsel in the Court today itself.

The Superintendent of Police, Ballia along with the officers named above i.e., Station House Officer, Rasara, Ballia namely Rakesh Kumar Singh, Sub-Inspector Ravindra Patel of said Police Station, Trainee Circle Officer, Rasara Ushman and Rajendra Prasad, Executive Officer, Nagar Palika Parishad, Rasara, Ballia shall be personally present in the court on 22.7.2022 along with their personal affidavits explaining their conduct.

The Superintendent of Police shall also intimate about the proceedings in the present second appeal to the plaintiff-respondents. i.e, respondent nos. 1/1 to 1/3 and inform them about the next date fixed in the case. A notice regarding the next date fixed in the case shall also be served on the aforesaid respondents through the Chief Judicial Magistrate, Ballia. Steps for the said purpose shall be taken by the appellants within two days.

Put up again as fresh on **22.7.2022**

The Registrar (Compliance) shall send a copy of this order to the Superintendent of Police, Ballia as well as Chief Judicial Magistrate, Ballia within 24 hours.

Meanwhile, parties shall not change the nature of the suit property and no further constructions shall be made over the same.

Order Date :- 12.7.2022

IB