

Renu Gupta Vs. Kanti Devi and Others

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Court : Allahabad

Decided On : Oct-08-2012

Judge : The Honourable Mr. Justic Pankaj Mithal

Appeal No. : Civil Revision No. 468 of 2012

Appellant : Renu Gupta

Respondent : Kanti Devi and Others

Advocate for Def. : Sri. J.J.Munir

Advocate for Pet/Ap. : Sri. Pankaj Agarwal

Judgement :

1. In this revision under Section 25 of the Provincial Small Cause Courts Act, 1887 the only question which has been raised for consideration by the parties is as to the validity of the notice dated 27.8.2005 by which the lease/tenancy is said to have been determined under Section 106 of the Transfer of Property Act,1882.

2. The suit of the landlady against the tenant for his eviction and for recovery of certain rent due has been decreed by the Small Cause Court vide impugned judgment and order dated 25.8.2012.

3. The court below in deciding issue No.3, held the notice to be valid and duly served. A finding has also been returned that the provisions of U.P. Act No.13 of

1972 are not applicable to the said shop and that the tenant has defaulted in payment of rent w.e.f. 14.2.2005.

4. I have heard Sri J.J.Munir, learned counsel for the defendant/revisionist and Sri Pankaj Agarwal, learned counsel for the plaintiff/respondents.

5. In view of the involvement of the above question only, they have agreed for final disposal of the revision on the basis of the impugned judgment and order itself and the copy of the notice which has been annexed with the stay application.

6. The submission of Sri Munir is that the aforesaid notice does not determine the tenancy and is invalid as it does not specify the time from which the tenancy, if at all, stands determined.

7. Sri Pankaj Agarwal on the other hand, submits that may be the notice is not very happily worded but the fact remains that the intention of the landlady therein is clear that she wants the tenant to vacate the shop on the expiry of the statutory period required to be mentioned in the notice.

8. The court below in view of the fact that the notice demands arrears of rent and requires the tenant to vacate the premises held that the notice is not invalid as the notice is to be construed liberally and not with an eye to find fault with it.

9. The notice paper No.10 Ga has been filed as Annexure 1 to the stay application. Its contents are not disputed. The notice reads as under:

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10. A plain reading of the aforesaid notice reveals that it requires the tenant to pay the rent for the period 14.2.2000 to 9.1.2005 amounting to Rs.46,200/- and to vacate the shop, but it fails to specify the exact date from which the tenancy would stand determined.

11. A combined reading of sections 106 and 111 of the Transfer of Property Act, 1882 provides that in the absence of any contract or law, lease of immovable property other than for agricultural or manufacturing purposes shall be a lease from month to month which is terminable on 15 days notice which in its

applicability to the State of U.P. is 30 days from the date of receipt of the notice i.e. service of notice.

12. In view of the above, the Act itself provides for a statutory 4 period of 30 days from the date of receipt of notice from which the tenancy would stand determined.

13. The aforesaid section 106 of the Act in Sub- clause 3 and 4, apart from other things, further provides that a notice determining lease shall be in writing and signed by or on behalf of the person giving it and that it shall not be invalidated merely because the period mentioned in the notice is short of the period specified under Sub-clause 1 of Section 106 of the Act provided the suit is filed after the expiry of the period mentioned in Section 106 of the Act.

14. In view of the above specific provision that the mention of the shorter period in the notice than statutory provided would not invalidate it provided the suit is instituted after the expiry of the notice period provided under Section 106 of the Act leads to an inevitable conclusion that it would not affect the notice even if no period is mentioned therein subject to the above condition. In the said event the statutory period of 30 days would be taken as the period of notice. In the circumstances, where the notice fails to make mention of any time or the exact date determining tenancy, the only things relevant for consideration is to find out the date of service of notice and the expiry of the statutory period of notice as contemplated by Section 106 of the Act and then to see if the suit is filed thereafter.

15. In the absence of any period and date mentioned in the notice, the validity of the notice is dependent upon two factors; namely, the date of service/deemed service; and the date of institution of the suit.

16. In the present case, the notice in question is dated 22.8.2005. The said notice has been described to be a notice under Section 80 CPC. However, ignoring the provision mentioned and treating the notice to be one under Section 106 of the Act and applying the decision of the Supreme Court in Bhagwan Das Agrawal Vs. Bhagwan Das Kanu and Others AIR 1977 SC 1120 which lays down that a notice to quit must be construed not with a desire to find fault in it rather it must be

construed ut res magis valeat quam per eat which means that an act may avail rather than perish, I find the intention of 5 the said notice is manifest so as to determine the tenancy and requiring the tenant to vacate it and to handover possession on the expiry of the statutory period of notice which certainly is 30 days from the date of service of the notice.

17. The date of service or deemed service of notice has not been pleaded by either of the sides. There is nothing on record to establish the date on which the notice was actually served or deemed to have been served upon the defendant revisionist.

18. In paragraph 5 of the affidavit filed in support of the stay application though it has been stated that the suit was filed on 30.1.2006 but no such date is clear from the plaint which is Annexure- 1 to the stay application.

19. The court below has not recorded any finding as to the date of service/deemed service of notice and the date of institution of the suit. In the absence of such a finding, this Court finds itself at a loss to record any finding in this regard in exercise of revisional jurisdiction.

20. The finding on the above aspects are crucial and goes to the root of the matter so as to express opinion about the maintainability and institution of the suit on the basis of the notice.

21. In view of the aforesaid facts and circumstances, I am of the opinion that the matter requires reconsideration by the court below as to the maintainability of the suit on the basis of notice dated 27.8.2005 for which finding regarding service/deemed service of the notice and the date of institution of the suit are mandatory.

22. Accordingly, the impugned judgment and order dated 25.8.2012 is set aside and the matter is remanded to the court below for decision afresh in accordance with law in the light of the observations made above. The court below will proceed to decide the matter as expeditiously as possible preferably within a period of six months from the date of production of the certified copy of this order.

23. Revision is allowed as above.

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