

Vedpal Singh Vs. Harbansh Singh

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Court : Allahabad

Decided On : Apr-02-1991

Reported in : AIR1991All320

Judge : H.C. Mittal, J.

Acts : Transfer of Propety Act, 1882 - Sections 10, 106 and 160; [Code of Civil Procedure \(CPC\), 1908](#) - Order 18, Rule 2(4)

Appeal No. : Civil Revn. No. 263 of 1990

Appellant : Vedpal Singh

Respondent : Harbansh Singh

Advocate for Def. : Pramod Jain, Adv.

Advocate for Pet/Ap. : M.D. Singh, Adv.

Judgement :

ORDER

1. Vedpal Singh has preferred this revision against the judgment and order dated 29-3-1990 against the decree for possession and ejectment of the revisionist from the accommodation in suit and for recovery of arrears of rent etc.

2. Counter and rejoinder affidavits havebeen exchanged and, therefore, arguments of the learned counsel for the parties were heard for final disposal at

the time of admission of the revision.

3. Admittedly the revisionist has been tenant of the plaintiff of the accommodation in suit at the rate of Rs. 300/- per month. According to the plaintiff-respondent-opposite party the accommodation in suit was constructed in the year 1980 and was assessed to house tax from 1st April 1980 and, therefore, U.P. Act No. XIII of 1972 was not applicable to it. The suit was filed in the year 1987 which was decreed against the revisionist. On being aggrieved, this revision has been preferred and following points were pressed in this revision. Firstly, it was urged that the notice terminating the tenancy was not a valid notice as its contents did not specifically terminate the tenancy as required and that the notice was further bad on the ground that it required the revisionist to vacate the shop within 30 days. Annexure-3 with the counter affidavit is the copy of the notice which specifically contains in para 5 that the plaintiff did not want to keep the defendant as his tenant and para 6 further states that with the intention to terminate the tenancy the defendant was being given notice u/S. 106, T.P. Act and through the notice he was informed to vacate the shop within 30 days and also to make the payment of the rent due and deliver possession of the shop and thereafter he would be deemed to be a trespasser and he would be liable to pay damages at the rate of Rs. 500/- per month.

4. From these terms of the notice it is clear that the tenancy was clearly determined. In support of his contention learned counsel placed reliance on the decision in the case of Ichcha Ram v. Smt. Parsandi (Deceased) (1990 A LR (16) 703). In that case the notice simply stated that the lessor did not desire to continue tenancy, but had not determined the tenancy in specific words, hence the decision is not at all applicable to the facts of this case.

5. Reliance was also placed on a decision in the case of Farooq Ahmad v. Muneshwar Bux Singh (AIR 1972 All 155): 1972 All LJ 799. In that case also the notice was only for vacation of the premises and not for termination of the tenancy. Hence this decision is also not applicable. On the other hand on behalf of the respondent reliance has been placed on a decision of this Court in the case of Sheo Kumar Gupta (dead) through LRs v. Bhikham Singh (1991 (1) ARC 101)

wherein also the landlord had terminated the tenancy after receipt of the notice and had requested to clear of the arrears of rent and hand over possession within one month of the receipt of notice failing which the suit be filed. Hon'ble M. L. Bhat, J. relying on a Full Bench decision of this Court in the case of Gorakh Lal v. Maha Prasad Narain Singh, (AIR 1964 All 260) : 1963 All LJ 829 held that the time limit fixed for payment of rent and to vacate the accommodation within thirty days from the date of service of the notice was the outer limit by which the tenant must vacate and that the notice was strictly according to the letter and spirit of the law and was valid.

6. In view of the above discussion it is clear that the notice in the present case clearly determines the tenancy as required u/S. 160, T.P. Act and there is no force in the contention of the learned counsel for the revisionist that it was not a valid notice.

7. It was next contended that the finding of the learned Court below that the U.P. Act No. XIII of 1972 was not applicable was based on documents which did not connect the property in question as it did not contain correctly the number of the accommodation in question. On the other hand, learned counsel for the respondent-opposite-party pointed out that in the notice itself it was specifically mentioned that the accommodation was part of new No. 258 Shyampal and the papers certified copy of the assessment record which was a public document also contains the same description. That apart, the plaintiff himself had stated on oath as P.W. 1 that the shop in question was built in the month of March, 1980 and for the first time it was assessed tax from 1st April, 1980 and he proved the notice and the copy of assessment (Exs. 1 and 2). In his cross-examination no question was put to challenge the veracity of the statement except that the shop was 20 years old. In his statement on oath the defendant did not even depose that the shop was 20 years old or that it was not built in 1980, but was built more than ten years prior to the institution of the suit.

8. Learned counsel for the revisionist on that point argued with some emphasis that it was default of the counsel who was not experienced enough to get his statement correctly recorded and, therefore, he subsequently moved an

application under Order XVIII, R. 2(4), C.P.C. that he be permitted to re-examine himself, but that application was rejected and against that order he had filed a revision in this Court which was dismissed, but an observation was made that the tenant could raise the point in accordance with law in case the suit was decreed. Annexure 5 is a copy of that order of the Court in that revision. This order of the Court dated 30-11-1990 prima facie can be no help in the present revision. If there had been any force in the application of the defendant or the Court might have thought it necessary in the interest of justice to afford an opportunity to the defendant it could have made such observation even while not admitting the revision and observing that the Court below may reconsider the same if a fresh application was moved, hence whether it was latches of the defendant or of his counsel, the defendant cannot derive any benefit.

9. From the copy of assessment which has been duly connected with the shop in question by the statement on oath of the plaintiff-respondent it is proved that the accommodation was assessed with tax for the first time from 1st April, 1980. That apart, there is uncontroverted statement of the plaintiff that the accommodation was built in the month of March, 1980 and, therefore, under any circumstance the U.P. Act No. XIII of 1972 was not applicable in the year 1987 when the suit was filed.

10. It was also pointed out that a previous suit had already been filed by plaintiff for the recovery of arrears of rent and for the period in question in the present suit also the arrears of rent has been claimed and in spite of the proceedings were not stayed u/S. 10 in spite of the application of the defendant. From the copy of the plaint it is clear that the previous suit was regarding arrears of rent from 22-6-86 to 21-1-1987 as contained in para 7 of the plaint, while the present suit was regarding arrears of rent for the period thereafter, i.e. arrears of rent due from 22-1-87 onward and, therefore, the lower court rightly did not stay the proceedings. Of course, there appears to be some typing error in the judgment that in spite of 21-1-87, 21-6-87 has been printed.

11. Lastly, it was urged that according to the defendant he had deposited Rs. 16,000/- as security with the plaintiff and unless that amount was returned he was

not entitled to a decree for possession. On this point there is no evidence of the defendant. He did not even say a word in his statement on oath. The conclusion, therefore, is that there is no force in the revision and the same is dismissed in limine.

12. Revision dismissed.

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