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Court : Allahabad

Decided On : Dec-09-1971

Reported in : AIR1972All444

Judge : K.N. Srivastava, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 80; Transfer of Property Act - Sections 106

Appeal No. : Second Appeal No. 2641 of 1969

Appellant : The State of U.P. and anr.

Respondent : Raj Kumar Jain and ors.

Advocate for Def. : K.C. Agarwala, Adv.

Advocate for Pet/Ap. : S.S. Bhatnagar, Adv. and ;Standing Counsel

Disposition : Appeal dismissed

Judgement :

K.N. Srivastava, J.

1. This is an appeal by the State of U. P. arising out of the following facts:

The plaintiff-respondent filed a suit for ejectment of the State of U. P. and the Civil Surgeon, Dehradun on the ground of their being in arrears of rent for more than three months and had not been paid in spite of notice. The premises was taken for running a hospital. The tenancy was from month to month but the rent was to be paid annually to the plaintiffs. The plaintiffs therefore filed the suit for arrears of rent and ejectment after serving notices under Section 106 of the Transfer of Property Act and Section 80, C. P. C.

2. The suit was contested by the State of U. P. on the ground that the notice under Section 80, C. P. C., was bad and that the tenancy was an annual tenancy and the rent had to be paid by the end of March.

3. The trial Court and the lower appellate Court held that the tenancy was from month to month. Now this fact is not in controversy. The suit of the plaintiff was decreed by the trial Court on the finding that the notices were good and there was arrears of rent for more than three months. The State of U. P. filed an appeal before the District Judge. The District Judge dismissed the appeal. Being dissatisfied, the State of U. P. has filed this appeal.

4. The only point which was pressed in this appeal was that under Section 80, C. P. C., it was necessary for the plaintiffs to have mentioned the cause of action on which the suit was to be filed and as till the date of the notice, no cause of action had accrued to the plaintiffs, therefore, the notice was bad in law. This contention is based on the ground that after the notice under Section 106 of the Transfer of Property Act, the defendants had a right to pay up the entire dues and to save themselves from ejectment and therefore the cause of action for the suit would only arise if the amount was not paid after the notice and in this view of the matter, according to the learned counsel for the appellants, the notice was bad because on the date of the notice, no cause of action under Section 80, C. P. C., had accrued.

5. In support of their respective contentions, the learned counsel for the parties, cited, a number of decisions of different High Courts. There is no doubt that the defendants were in arrears of rent for three months. It was the duty of the defendants to pay the rent of each month on the date it fell due but for three

consecutive months, the rent was not paid. Under Section 3 of the U, P. Control of Rent and Eviction Act, a landlord gets a right to sue for ejection of the tenant who is in arrears of rent for three months after serving a notice under Section 106 of the Transfer of Property Act. As laid down under the aforesaid section, the tenant can save his ejection from the premises if he pays the rent within the time prescribed in the notice. In case he does not pay the amount, the cause of action for filing the suit would not be on the date of his final refusal but on the date on which the amount fell into arrears. There may be cases where a tenant after receiving a notice under Section 106 of the Transfer of Property Act may not write to the landlord about his refusal to pay. Therefore, in such cases, it will be difficult to know actually the date on which the refusal was made. It shall be only presumed that as the rent was not paid within the time specified in the notice under Section 106 of the Transfer of Property Act, that amounted to refusal.

6. In the instant case, it is 'noteworthy that the same cause of action was given in the plaint which was mentioned in the notice under Section 80, C. P. C. The notices under Section 80, C. P. C. are given to the Government only to know the exact position and to settle the dispute. The cause of action has to be inferred from the bundle of facts stated in the notice. From the facts stated in the notice, which has been read over to me, there is not the least doubt that the defendants had failed to pay the arrears of rent which was due for more than three months and this failure of payment gave the cause of action to the plaintiffs to sue for ejection and arrears of rent.

7. On behalf of the appellants, re-liance was placed on a decision of the Punjab High Court *Brahma Dutt v. East Punjab Province*. In this case, the cause of action had not actually accrued and therefore it was held that the mandatory provisions of Section 80, C. P. C., were not fulfilled. In this case, as discussed above, the cause of action had actually accrued to the plaintiffs and therefore this decision did not help the defendant.

8. The other case relied upon by the appellant is *Bhairabendra Narain Bhup v. State of Assam* AIR 1953 Assam 162. In this case, the notice under Section 80, C. P. C., was served before the cause of action had accrued. Therefore, this case

also does not apply to the facts of the present case.

9. The other two cases cited by the learned counsel for the appellants are the same which have been cited by the learned counsel for the respondents and therefore they shall be dealt with while dealing with the cases cited by the respondents.

10. On behalf of the respondents, a Supreme Court decision was cited. It is State of Madras v. C. P. Agencies : AIR 1960 SC1309 . The following observation by the Supreme Court in the above case can be read with advantage:

'On a fair reading of the notice it may be said that the fact of the contract for the payment of the godown rent, the quantity of goods stored, the rate at which and the period for which the claim was made and the failure of the first defendant to pay the same are sufficiently stated so as to enable the first defendant, which is the appellant before us, to know what the plaintiff's claim was about and whether the claim should be conceded or resisted.'

11. In the instant case also, all the facts relevant were mentioned and the failure to pay the rent was also mentioned. Therefore, the defendant-appellant got all facts from the notice on which it may decide whether to resist the claim or to fight it out.

12. The other case cited by the respondents is State of West Bengal v. Jiwanmall Babu AIR 1960 Cal 678. In this case also, it was held as below:--

'A notice under Section 80 of the Code of Civil Procedure does not require that the date of the accrual of the cause of action should be given. Rule 1 of order VII of the Code requires, among other things, that the plaint must state the facts constituting the cause of action, and when it arose. In the present case, as we have already indicated, the same cause of action has been stated in the notice under Section 80 of the Code of Civil Procedure as in the plaint. We have shown this by a comparison of the material portions of the notice and the plaint. That being the case, it cannot be properly contended that the notice in question is an invalid and inoperative notice.'

13. Similar views were taken in other cases. I don't think it necessary to multiply them. The lower appellate Court relied on a decision Chandulal Vadilal v. Govt. of the Province of Bombay AIR 1943 Bom 138. This decision also goes against the contention of the learned counsel for the appellants and supports the view taken in the cases referred to by the learned counsel for the respondents. I am, therefore, of the opinion that the notice served was a valid notice and the lower appellate Court rightly held the same to be valid.

14. The learned counsel for the appellants also argued that the findings about arrears of rent was wrong. This point is concluded by finding of fact based on evidence and this point has therefore no force in it.

15. The other points have all been decided in favour of the respondents. The appeal is therefore dismissed with costs.

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