

Chandika Vs. Sukhnandan

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SooperKanoon Citation : sooperkanoon.com/466381

Court : Allahabad

Decided On : Jun-30-1980

Reported in : AIR1981All312

Judge : V.K. Mehrotra, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106

Appeal No. : Second Appeal No. 1457 of 1970

Appellant : Chandika

Respondent : Sukhnandan

Advocate for Def. : Girish Chandra, Adv.

Advocate for Pet/Ap. : G.P. Bhargava, Adv.

Disposition : Appeal dismissed

Judgement :

V.K. Mehrotra, J.

1.This is a defendant's second appeal against whom the lower appellate Court has passed a decree also for ejectment from the premises in suit in which the appellant was a tenant of the plaintiff-respondent. The plaintiff claimed that the appellant was in default in the matter of payment of rent and that he failed to make

the payment in spite of service of a notice of demand within the time allowed by law. The plaintiff also claimed that the defendant failed to vacate the premises in spite of being called upon to do so by a notice under Section 106 of the Transfer of Property Act.

2. The appellant, inter alia, pleaded that he was not in default and further that the composite notice of demand and one under Section 106 of the Transfer of Property Act, was invalid. Both these pleas were accepted by the trial Court which, consequently, dismissed the suit for the relief of ejectment. It, however, decreed the suit for recovery of certain amount found due from the defendant.

3. The lower appellate court concluded against the defendant in respect of the aforesaid two pleas and, as noticed above, decreed the suit also in respect of the relief refused by the court. Aggrieved the defendant has come up to the court.

4. Dr. J. N. Dubey appearing for the appellant raised two contentions before me. Firstly, that the conclusion that the appellant was in default was unsustainable on the material on record from which it was fully established that a sum of Rs. 30/- was remitted by him to the plaintiff which the latter had refused to accept; secondly, that the notice was invalid, inasmuch as, it purported to terminate the tenancy of the defendant 'in praesenti'. The contentions have been countered by Sri R. P. Goel. learned counsel for the defendant.

5. The lower appellate court considered the evidence on record and came to the conclusion that the defendant had not succeeded in establishing that the plaintiff refused any remittance of Rs. 30/- made to her through money order. This conclusion appears to be sound. It is clear from the testimony of the defendant as also of the plaintiff's husband, who appeared as a witness for her, that the claim that the defendant made a remittance of Rs. 30/- through a money order which was refused by the plaintiff is not established.

6. The second submission in regard to the validity of the notice also has to be answered against Dr. Dubey, The relevant portion of the notice is contained in paragraph 6 thereof and reads thus;

'6. That my clientess does not want to keep an undesirable tenant like you and thus your tenancy is hereby terminated by this notice.

I, therefore, hereby call upon you to pay the aforesaid amount of Rs. 64/-(Rs. sixty-four) to my clientess within a month and to deliver the actual vacant possession of the house in your occupation to my clientess within thirty days next after the receipt of the notice, failing which I hold instructions to file a suit for the recovery of the amount and your ejectment, and thus you shall be liable for all its costs as to consequences which please note.'

The submission of Dr. Dubey has been that the phrase 'is hereby.....terminated' shows that the tenancy of the defendant was sought to be terminated forthwith and that such termination of tenancy being 'in praesenti' was not in accordance with law.

7. It is difficult to accept the submission. The word 'hereby' as used in the context in which it occurs in the aforesaid paragraph means nothing more than that the tenancy of the defendant was being terminated through the notice. In the Legal Glossary compiled by the Government of India, Ministry of Law, Justice and Company Affairs (1969 Edition), the word 'hereby' is shown to mean 'by this act or document (Section 2(a), Transfer of Property Act).' To the same effect is the meaning given to that word in Webster's New International Dictionary Volume II at page 1058. The use of the word 'hereby', therefore, cannot lead to the conclusion that the plaintiff intended to terminate the tenancy of the appellant in praesenti. Besides, reading paragraph 6 of the notice (quoted above) as a whole, it is obvious that the termination of the tenancy was intended to be brought about at the end of 30 days. In this respect, the notice in the present case clearly falls within the category of notices held to be valid by a Division Bench of this Court in the case of Abdul Jalil v. Haji Abdul Jalil (1974 All LJ 381) : (AIR 1974 All 4021).

8. Both the points raised in support of this appeal being unacceptable, the appeal fails and is dismissed. There shall, however, be no order as to costs.