

Arun Kumar Vs. Viiiith Additional District Judge, Badaun and anr.

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Court : Allahabad

Decided On : Mar-08-2002

Reported in : 2002(2)AWC1655

Judge : Anjani Kumar, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 106, 111 and 114

Appeal No. : C.M.W.P. No. 9687 of 2001

Appellant : Arun Kumar

Respondent : Viiiith Additional District Judge, Badaun and anr.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : M.A. Qadeer, Adv.

Disposition : Writ petition dismissed

Judgement :

Anjani Kumar, J.

1. This writ petition was dismissed by me vide order dated 8.3.2002 for the reasons to be recorded later on. Now here are the reasons for dismissing the writ petition.

2. The facts leading to the filing of the present writ petition are that the respondent Smt. Sudha Devi is admittedly the landlord of the premises which is under the tenancy of the petitioner, Arun Kumar. The respondent filed a suit after serving a notice, i.e., S.C.C. Suit No. 14 of 1995 on the allegation that the petitioner-tenant has not paid the rent w.e.f. 1.2.1994 till 25.4.1995 and has not paid the arrears of rent Rs. 7,400. A notice dated 25.4.1995 was sent by the landlord through her counsel by registered post which has been received by the petitioner-tenant. It is further stated in the plaint that it has been agreed upon by the tenant at the time of letting out the shop in dispute that apart from the rent agreed : the petitioner-tenant shall be liable to pay house and water tax whatever may be imposed by Nagar Palika from time to time. Petitioner-tenant apart from the arrears of rent has also not paid water tax which was Rs. 1,920 and has been realised by the Nagar Palika from the landlord and thus till March, 1995, an amount of Rs. 2,880 became due on account of payment of taxes and in July, 1995, it became Rs. 3,040. In spite of notice dated 25.4.1995 being served and tenancy having been terminated, the aforesaid amount towards arrears of rent Rs. 8,000 upto June, 1995 and damages for use and occupation for the month of July and August, 1995, have become due. The relief in the suit was asked for that the suit be decreed for eviction of the petitioner-tenant and thereafter handing over the possession to the plaintiff-respondent No. 2 a decree for a sum of Rs. 8,000 towards the arrears of rent w.e.f. 1.2.1994 to 31.5.1995 passed in favour of the plaintiff-respondent No. 2 and a further decree for a sum of Rs. 1,000 towards the damages for use and occupation w.e.f. 1.6.1995 to 31.7.1995 and a decree for sum of Rs. 3,040 towards the arrears of house and water tax upto 31.7.1995 including the expenses for notice be decreed. For the further damages a decree be passed for use and occupation at the rate of Rs. 500 per month from the date of filing of the suit till the date of decree.

3. Petitioner-tenant denied the case set-up by the plaintiff-respondent and has basically stated that it is incorrect to say that the agreed rent was Rs. 500 per month as alleged in the plaint. In fact the rent agreed was Rs. 400 per month. Since the quantum of house rent and water tax was in dispute, the tenant-petitioner was paying a sum of Rs. 500 out of that Rs. 400 towards the rent and Rs. 100 towards the house and water tax and there was no agreement that the

electricity charges shall be responsibility of the tenant. It is also stated by the petitioner-tenant that the tenant has paid rent up to December, 1994, but the plaintiff has not issued any receipt for the same and after December, 1994, the rent was sent by money order dated 17.4.1995. But since the landlord has refused to accept the same without assigning any reason, the tenant cannot be said to be at default. The rent of the shop in dispute was always realised by one Kaushal Kishore Moondra who is elder brother of the petitioner's husband and he has always expressed that he is the landlord of the shop in dispute. Shri Moondra has not issued the receipt of the rent even after receiving the rent for the period w.e.f. 1.5.1994 to 31.5.1994. It is further stated by the tenant that Shri Moondra has accepted an advance of Rs. 7,000 from the petitioner-tenant which has neither been refunded nor adjusted towards the alleged arrears of rent with regard to payment of house and water taxes. The tenant petitioner has deposited the same till December, 1994, with the landlord and if the same has not been deposited by the owner, no responsibility can be fastened on the tenant.

4. It is further stated by the petitioner tenant that the tenancy is regulated under the provisions of U. P. Act No. 13 of 1972. The trial court has found that the tenancy has been terminated by a valid notice issued under Section 106 of the Transfer of Property Act and suit was decreed. The trial court decreed the suit that the provisions of U. P. Act No. 13 of 1972 are not applicable to the tenancy in dispute and the tenant is liable to be evicted and sum of Rs. 8,000 towards the arrears of rent and Rs. 1,000 towards the damages and for water tax Rs. 3,040 and suit was decreed further mesne profit at the rate of Rs. 500 from the date of Institution of the suit till possession was delivered.

5. Aggrieved by the said decree the petitioner-tenant preferred a revision and during the pendency of the revision an application has been filed by the tenant-petitioner claiming the benefit of Section 114 of Transfer of Property Act on the ground since it has been held by the trial court that the provisions of U. P. Act No. 13 are not applicable, he is depositing the amount by tender that the said amount for which the suit has been decreed and he may be granted benefit of the aforesaid Section 114 of the Transfer of Property Act and, therefore, the tenant may be given the benefit of Section 114 and may be exempted from eviction and

he is ready to deposit all the amount which is found due. The said application has been rejected by the revisional court vide its order dated 20.2.2001 holding that according to law and decisions at the bar, the benefit of provisions of Section 114 will be available only to such tenancy which stands forfeited in accordance with the provisions of Section 111(g) read with Section 114 of Transfer of Property Act. But in the present case, the tenancy was terminated by a notice under Section 106 of Transfer of Property Act.

6. Sections 111 and 114 of the Transfer of Property Act are reproduced below :

' 111. Determination of lease. --A lease of immovable property determines :

(a) by efflux of the time limited thereby ;

(b) where such time is limited conditionally on the happening of some event by the happening of such event ;

(c) where the Interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event by the happening of such event ;

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right ;

(e) by express surrender, that is to say, in case the lessee yields up his Interest under the lease to the lessor, by mutual agreement between them ;

(f) by implied surrender ;

(g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter, or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself : or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event ; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease ;

(h) on the expiration of a notice to determine the lease, or to quit or of intention to quit, the property leased, duly given by one party to the other.'

'114. Relief against forfeiture for non-payment of rent.--Where a lease of Immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture ; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

114A. Relief against forfeiture in certain other cases.--Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing :

(a) specifying the particular breach complained of ; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach ;

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy :

Nothing in this section shall apply to an express condition against assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of nonpayment of rent.'

7. On combined reading of Section 111(g) and 111(h) of the Transfer of Property along with Section 114, the inevitable conclusion is that in case, the tenancy is forfeited only for non-payment of the rent and suit is instituted, in that event, the tenant is entitled for the benefit of Section 114 to the effect that if within fifteen days of decree passed by the trial court, the amount of decree is deposited, the tenant shall be absolved of the liability of eviction from the accommodation in

dispute. The revisional court has recorded a finding that the petitioner tenant failed to demonstrate that there is any lease-deed or agreement about the tenancy in writing between the plaintiff-respondent and defendant-petitioner in which there was a clause that the tenancy shall stand forfeited due to non-payment of the rent. There being no such contingency and particularly when the revisions against the decree is pending and the tenancy stands terminated by a notice under Section 106 of Transfer of Property Act, the question of giving benefit of Section 114 of Transfer of Property Act does not arise and the said benefit cannot be granted to the petitioner-tenant. The revisional court fixed the date of hearing and ultimately vide its Judgment dated 23.3.2001 rejected the aforesaid revision. Before the revisional court at the time of hearing, learned counsel for the petitioner-tenant has reiterated the same argument which were already advanced claiming the benefit of Section 114 of Transfer of Property Act.

8. Before me, learned counsel for the petitioner has reiterated the same argument that the revisional court has erred in law in not granting the benefit of Section 114.

9. Some decisions have been cited at the bar, one of which is in Chandrashekhar Prasad v. Spl. Judge/Additional District Judge, Ballia and others, 2001 (1) JCLR 662 (All), Civil Misc. Writ Petition No, 22871 of 1997, decided on 10th May, 2000, wherein the learned single Judge has held that a Joint reading of Section 111 and Section 114 will demonstrate that the tenancy can be determined on various grounds under Section 111 of Transfer of Property Act. The tenancy can be determined under Clause (a) by efflux of time limited thereby, by forfeiture under Clause (g) ; and by serving a notice determining the tenancy or to quit under Clause (h) of Section 111 of the Transfer of Property Act.

10. The plaintiff-respondent in the case referred to above relied by learned counsel for the petitioner, the tenancy was determined under Section 106 of the Transfer of Property Act and also issued another notice Including that the tenancy has come to an end by efflux of time. The notice sent by the plaintiff-respondent did not indicate that the tenancy had been terminated on account of non-payment of rent.

11. In these circumstances, the benefit of Section 114 of Transfer of Property Act cannot be given to the petitioner-tenant. The learned single Judge went on to say

that Section 114 of the Transfer of Property Act is applicable when three conditions are satisfied. Firstly, there is an agreement of lease between the parties ; Secondly, there is a condition in the lease deed that the lease will be forfeited if the rent is not paid to the lessor in accordance with the conditions mentioned in these lease deed and thirdly, the lease is forfeited by the lessor on the ground that the lessee has not complied with the terms of payment of rent as contained in the lease deed.

12. The next case cited is in 1994 ARC 17. Para 7 learned single Judge has held as under :

'In the instant case I am of the view that since the L). P. Act No. 13 of 1972 is not applicable the petitioner was entitled for the relief as contemplated under Section 114 of Transfer of Property Act.'

13. The next case cited at the bar is in 1998 (2) ARC 362 :

'For the applicability of Section 114, existence of an agreement containing a stipulation empowering the landlord to re-enter in the demised premises in case of breach of a condition regarding payment of rent is essential. In the present case, there was no such agreement and U. P. Act No. 13 of 1972 was not applicable to the premises, there was simplicitor termination of tenancy under Section 106 of the T. P. Act serving a notice thereunder. The mere fact that the notice stated about non-payment of rent also besides termination of monthly tenancy and demand of vacant possession it would not be a case of forfeiture under Clause (g) but one of determination of tenancy by exercising power under Clause (h) of Section 111 of the T. P. Act. No authority is required for the proposition that where there is simplicitor termination of tenancy under Section 106 of the T. P. Act and not under Section 111(g) of the T. P. Act then provision of Section 114 of the T. P. Act cannot be attracted. Therefore. Section 114 of the T. P. Act has no application to the facts of the present case as it was not a case of forfeiture of tenancy for nonpayment of rent. The tenancy was terminated under Section 106 of the T. P. Act simplicitor.'

14. Therefore, the benefit of Section 114 of Transfer of Property Act as claimed by the tenant cannot be granted to him.

15. No useful purpose will be served in citing other decisions which lay down the same proposition of law as stated above in view of the aforesaid legal proposition, the argument advanced by the learned counsel for petitioner, cannot be accepted.

16. No other argument was advanced. The orders passed by the revisional authority and that of the trial court do not require any interference by this Court in exercise of powers under Article 226 of the Constitution of India. In the result, writ petition deserves to be dismissed and is hereby dismissed. Interim order, if any stands vacated.

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