

Saroj Devi and ors. Vs. Manik Chand Sarawgi and ors.

Saroj Devi and ors. Vs. Manik Chand Sarawgi and ors.

SooperKanoon Citation : sooperkanoon.com/520200

Court : Jharkhand

Decided On : May-14-2004

Reported in : [2004(4)JCR368(Jhr)]

Judge : P.K. Balasubramanyan, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100; [Transfer of Property Act, 1882](#) - Sections 106, 111 and 116

Appeal No. : Second Appeal No. 103 of 2003

Appellant : Saroj Devi and ors.

Respondent : Manik Chand Sarawgi and ors.

Advocate for Def. : Srijit Choudhary, Adv.

Advocate for Pet/Ap. : N.N. Tiwary, Adv.

Judgement :

P.K. Balasubramanyan, C.J.

1. Defendant No. 2 and the legal representatives of the deceased defendant No. 1 in Title Suit No. 24 of 1996 on the file of the Munsifs Court at Ranchi are the appellants in this second appeal. The contesting respondents, the plaintiffs, had filed a caveat and have appeared through counsel in the second appeal. Therefore, when the second appeal came up for admission under Order XLI. Rule

11 of the Code of Civil Procedure. the second appeal itself was finally heard and it is being disposed of by this judgment. Counsel appearing in the case had authenticated and undisputed copies of the pleadings and the relevant documents and the said documents were referred to during the course of hearing.

2. Though Various grounds are taken in the memorandum of second appeal, at the hearing. Senior Counsel appearing for the appellants, Mr. N.N. Tiwary raised only one substantial question of law before me. That question was 'whether the suit for eviction by the plaintiffs against the defendants was maintainable for want of termination of the tenancy in terms of Section 106 of the Transfer of Property Act?'

3. Admittedly, no notice had been issued on behalf of the plaintiffs in terms of Section 106 of the Transfer of Property Act terminating the tenancy. They had taken the stand that the tenancy had terminated by efflux of time and consequently, there was no need for the issue of a separate notice terminating the tenancy. The defendants contended that after the expiry of the term, or after termination of the original tenancy by efflux of time, a fresh relationship of lessor and lessee had come into existence between the parties and consequently, the defendants were tenants holding over in terms of Section 116 of the Transfer of Property Act and in that situation, it was imperative for the lessor to terminate the tenancy, which was one from month to month, by a notice to quit. Since the jurisdiction to decree eviction at the instance of the lessor in such a situation would depend upon due termination of the tenancy, the suit filed without such termination was not maintainable. The trial Court and the lower appellate Court, took the view that the tenancy having terminated by efflux of time and no tenancy by holding over having come into existence, a notice to quit prior to the suit was not essential and the suit could not be held to be not maintainable. It was thus that the suit was decreed on finding the other issues in favour of the plaintiffs. As already indicated, those issues, are not re-agitated before this Court in this second appeal and. therefore, for the purpose of this second appeal, these findings are accepted and the judgment proceeds on the basis of those findings,

4. Admittedly, the parties entered into Exhibit > B, lease transaction, on 14.11.1975. It was a registered lease deed executed by the lessor and the lessee for a term of 20 years. The monthly rent payable was Rs. 325/-. It was a lease of a plot of land. The lessee was to put up a construction as described in the document and the building which was put up was to be held by the lessee as a tenant for a term of 20 years with the obligation to pay the stipulated rent. On the expiry of the term of 20 years, the lessee was to vacate the premises without claiming any compensation for the building he had put up. The document stipulates that the building would be that of the lessor. The term of 20 years expired on 31.1.1996. The plaintiffs filed the suit for eviction on 21.3.1996 i.e. within two months of the expiry of the term: The defendants contended that after the expiry of the term on 31.1.1996, the lessor had accepted rent for the months of February and March, 1996 and by such acceptance of rent and the volition of the lessee to continue the relationship of lessor and lessee, a tenancy by holding over has come into being and that tenancy by operation of Section 116 of the Transfer of Property Act, had to be terminated by a notice to quit, as contemplated by that section, read with Section 106 of the Transfer of Property Act. This plea was sought to be supported by contending that the rent was paid for the months of February and March, 1996 by way of cheques to Anurag Sarawgi, one of the co-lessors, or, rather a legatee of one of the co-lessors. Anurag having accepted the cheques and encashed them through the joint account of the plaintiffs, a tenancy by holding over has come into existence. The plaintiffs met this plea by denying that rents for the months of February and March, 1996 were received by Anurag Sarawgi as pleaded by the defendants; that one of the defendants had attempted to pay those amounts into the joint account of the plaintiffs in their bank; that on coming to know of the attempt, the plaintiffs had instructed the bank to return the amounts to the person who had paid them into the account of the plaintiffs and the Bank had in fact returned the amounts to the defendants. According to them this was evident from Annexure 4/A and 4/B and in that situation, there was no question of acceptance of rent by the lessor as claimed by the lessee. It was further pointed out that the defendants had, in fact, questioned the title of Anurag Sarawgi as a legatee in the very suit and in that situation, it was highly improbable that the rent would have been paid to Anurag as claimed by the defendants. They also relied on the

circumstance that for all the rents paid till the expiry of the term on 31.1.1996. formal receipts had been granted by the lessors and admittedly, no rent receipts were granted after 31.1.1996 for the alleged payment of rent for the months of February and March, 1996. Of course, they relied on the fact that the suit was filed even before the expiry of the month of March, 1996.

5. During the course of the evidence, one of the plaintiffs was examined as PW 4, in chief examination, he denied that the defendants had paid any rent subsequent to the expiry of the term of the lease and claimed that the suit was laid on the expiry of the term. But in cross-examination, it was brought out that the two cheques were handed over to Anurag and Anurag had deposited them in the joint account. But he proceeded to say that the amount was returned by the Bank to the defendant who made the deposits on being instructed to do so by the plaintiffs.

6. The trial Court, on an appreciation of the evidence thus available, came to the conclusion that the defendants have not proved that there was payment and acceptance of the rent, after the expiry of the term on 31.1.1996. The trial Court held that in the light of the evidence in support of the return of the amount by the Bank to one of the defendants who had allegedly paid the money into the joint account of the plaintiffs and in the light of the stand of the defendants that Anurag had derived no title to the plaintiff on the death of one of the original lessors, even in the present suit, and the improbability of their hearing, paid rent to Anurag, it could not be held that a tenancy by holding over by payment and acceptance of rent has come into existence. Thus, finding against the plea of the defendants that rents have been paid and accepted after 31.1.1996, the trial Court held that the tenancy stood terminated by efflux of time and no fresh notice to quit was necessary and the suit had to be held to be maintainable. The lower appellate Court, on a reappraisal of the pleadings and the evidence in the case in the light of the circumstances proved, came to the conclusion that the finding of the trial Court (that there was no payment and acceptance of rent after 31.1.1996, bringing into existence a tenancy by holding over. was fully justified and calls for no interference in appeal. Thus, on a consideration of the relevant aspects, that Court also entered a finding of fact that no rent had been paid by the lessee after expiry of the term which had been accepted by the lessor. From this, it came to the conclusion

that no tenancy by holding over has come into existence.

7. Whether a tenancy by holding over in terms of Section 116 of the Transfer of Property Act has come into existence is a mixed question of fact and law. Of course, in an appropriate case. it may also generate a substantial question of law. But a finding that the lessee had not paid any rent after the expiry of the term or a finding that even though the lessee had attempted to pay the rent, the same has not been received by the lessor are pure questions of fact depending on an appreciation of the evidence in the case. Such a finding of fact could be interfered within a second appeal under Section 100 of the Code of Civil Procedure, only if this Court finds that the said finding was rendered without adverting to the relevant pleadings or evidence or is based on a misunderstanding of the effect of the legal evidence available on the record, or by ignoring the effect of an important item of evidence, or by a perverse appreciation of evidence, or the finding is one which could not have been come to on the materials by the Tribunal trained in law. Here, on appreciating the pleadings, the evidence and the elaborate arguments raised before me by senior counsel appearing for the appellants. I am not in a position to say that anything relevant has been omitted to be considered or anything irrelevant has been taken into account for arriving at the finding. In fact, the only argument on the aspect before me by learned senior counsel was that in the face of the clear admission of PW 4. one of the plaintiffs examined, that Anurag Sarawgi, had received the two cheques and had put them in the Joint account and the non-examination of Anurag, the finding ought to have been that there was payment and acceptance of rent and any subsequent attempt to return the money to the tenant was of no avail. It is not as if the Court below have ignored the admission of PW 4. They have taken note of that admission brought out in examination and they have considered it along with the return of the amounts by the Bank to the person who made the deposits of those amounts in the Bank and the case of the defendants that Anurag, one of the plaintiffs, to whom the cheques were allegedly handed over, had derived no title to the leasehold and the correspondence between the plaintiffs and the bank to come to the conclusion that the stray answer of PW 4 in this cross-examination could not be taken to be conclusive and his evidence, read as a whole in the light of the other evidence, clearly led to the position that there was no assent to the continuance of the lessee

by the lessor after the expiry of the term. It is also to be noted that the suit was filed on 23.3.1996, within two months of the expiry of the term originally fixed in the lease deed. Reading the deposition of PW 4 as a whole with particular reference to paragraphs 13 to 16 and 93 to 95, I am of the view that the trial Court and the lower appellate Court were fully justified in finding that there has been no payment and acceptance of rent after 31.1.1996. In this context, the Courts below, in my view, have also rightly referred to the fact that during the term of the lease, the lesser was in the habit of issuing receipts for acceptance of rent and no receipts were issued after 31.1.1996 and the lessee could produce no receipt for payment of rent for the month of February, 1996 and March, 1996. This fact also has been rightly noticed by the lower appellate Court while discussing the question. I am, therefore, of the view that the finding that no rent was accepted, though it was attempted to be paid for the months of February and March, 1996 is a finding of fact that cannot be interfered within second appeal under Section 100 of the Code of Civil Procedure.

8. Once this finding of fact is confirmed, obviously, it has to be held that the tenancy stood terminated by efflux of time and there was a determination of the lease in terms of Section 111(a) of the Transfer of Property Act. In that situation, the finding, that no notice to quit was necessary, rendered by the Courts below is also clearly sustainable. Thus, the finding that the suit cannot be dismissed on the ground of want of termination of the tenancy was rightly rendered by the Courts below.

9. In the view I have taken as above, there really does not arise any substantial question of law in this second appeal. Thus, on the question framed by me and as argued before me, whether the suit for eviction is bad for want of termination of the tenancy, has to be answered in the negative and against the appellants. In other words, it has to be held that the Courts below were Justified in decreeing eviction on the finding that the suit was maintainable even without a notice to quit,

10. Thus. I affirm the judgments and decrees of the Courts below and dismiss this second appeal. In the circumstances, I make no order as to costs.

