

**Moti Ram Vs. Baldev Krishan**

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**Court :** Delhi

**Decided On :** Nov-30-1978

**Reported in :** 15(1979)DLT90

**Judge :** M.L. Jain, J.

**Acts :** Displaced Persons (Compensation and Rehabilitation) Act, 1954 - Sections 29; [Code of Civil Procedure \(CPC\), 1908](#) - Order 8, Rule 9; [Transfer of Property Act, 1882](#) - Sections 106; [General Clauses Act, 1897](#); [Evidence Act, 1872](#) - Sections 114

**Appeal No. :** Regular Second Appeal No. 39 of 1971

**Appellant :** Moti Ram

**Respondent :** Baldev Krishan

**Advocate for Pet/Ap. :** V.K. Jain,; A.K. Jain and; M.L. Mehra, Advs

**Judgement :**

**M.L. Jain, J.**

(1) This is a second appeal which has arisen like this. The property in dispute was an evacuee property. Madan Mohan Lal, father of the defendant, Baldev Krishan, was an allottee. The property was sold to the plaintiff, Moti Ram, on November 1, 1961, and a certificate was issued in his favor on December 20, 1961. According to

Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the defendant became a statutory tenant and could not be evicted before two years without certain specified grounds. The plaintiff, however, filed an application for fixation of rent. The Rent Controller revised the rent to Rs. 15.00 per month from Rs. 13.00 per month. Moti Ram served a notice by registered post on Madan Mohan Lal on April 9, 1963, which was returned refused. Four years thereafter, Madan Mohan Lal died in the year 1967. The present suit was brought by Moti Ram against his son Baldev Krishan in 1969 for possession and recovery of damages. In that plaint, the plaintiff did not mention that the tenancy had been terminated by a notice. It simply averred that Madan Mohan Lal was a statutory tenant and after his death, the tenancy not being heritable did not pass on to the defendant. In the written statement, an objection was raised that the tenancy having not been terminated, Madan Mohan Lal was not a statutory tenant but a contractual tenant at the time of his death, and the defendant inherited the tenancy. It was in replication that the service of notice in 1963 was pleaded. The registered envelope was also produced. The sole question, therefore, was whether the tenancy had been terminated validly in the year 1963. The defendant contended that the alleged notice was never served upon his father. The main ground for such contention was that the number of the disputed house was '3344', but the address on the registered envelope containing the notice was '3342-46'. It was vehemently contended that the notice was sent on a wrong address and there was no evidence that the man who refused the notice was the deceased Madan Mohan Lal. The learned Sub-Judge, Delhi, held that service of the notice had been proved, and he decreed the suit for possession. On appeal, the decree was reversed by the Learned Addl. District Judge by his Judgment dated October 24, 1970, holding that the plaintiff was not entitled to derive any benefit of the notice, firstly, on the ground that it was not specifically pleaded in the plaint, secondly, its refusal by Madan Mohan Lal had not been established as the postman who made the endorsement of refusal was not examined, and lastly, the address mentioned on the envelope was not a correct address; as a matter of fact it was a different address. Hence, this second appeal.

(2) I have heard the arguments. There is no doubt that a contractual tenancy had come into being in the year 1961, if not earlier, when the rent was revised from Rs.

13.00 per month to Rs. 15.00 per month. It is also no more in doubt that the alleged registered notice was sent. The learned counsel for the respondent however, strenuously urged that in the circumstances of the case, it may be held as a necessary conclusion that the notice was not served and the tenancy had not been validly terminated. The tenant had died long ago and his successor is a poor and old tailor, while the plaintiff's sons are lawyers and yet they did not mention in the plaint anything about this notice, The address is obviously wrong and in order to prove its service on the deceased. strong evidence was required, especially when a silence of six years had intervened and no steps were taken. It is very difficult for the respondent to prove that the notice was in fact not served The plaintiff has miserably failed to discharge the burden that squarely lay upon him.

(3) I have considered over the question, and it appears to me that if replication had been permitted by the court to be filed, then it formed a part of the pleadings besides the plaint and the written statement which strictly constitute pleadings under Order 6 Rule 1 Civil Procedure Code It is true that in the plaint notice was not pleaded, but it was stated that at the time of his death Madan Mohan Lal was a statutory tenant which only means that contractual tenancy had been terminated by a notice. If there remained any doubt, it has been cleared by the replication. There is no reason to hold that this was a reference to statutory tenancy provided in the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The replication is covered by Order 8 Rule 9 Civil Procedure Code I quite realize the handicap from which the defendant-respondent suffers in the matter of rebuttal but no inference can be drawn to the disadvantage of .the plaintiff simply on the ground that intervention of six years is a circumstance to show that no notice was in fact sent.

(4) The learned counsel for the plaintiff-appellant urged that Section 106 of the Transfer of Property Act, Section 27 of the General Clauses Act, (Section 3(c) of the Post Offices Act, and Section 114 of the Evidence Act, all raise a strong presumption that the notice sent by the plaintiff was served on the deceased until otherwise shown, even if it was refused. Sec. 106 of the Transfer of Property Act, allows a notice to be sent by post. Sec. 27 of the General Clauses Act raises a presumption of service in such cases. Though Sec. 3(e) of the Post Offices Act

raises no presumption in case of refusal, but such a presumption may certainly be raised under Sec. 114 illustration (f) of the Evidence Act. As regards the address, though the property in question bears Municipal Tax No. 3344, yet the numbers '3542-46' include the number '3344'. It is not therefore possible to urge that the address on the registered notice was wrong. I agree with the contentions of the appellant-plaintiff, and the learned lower appellate court was clearly in the wrong in holding that the tenancy had not been validly terminated. It raised a mixed question of law and fact.

(5) I, therefore, accept this appeal, set aside the impugned Judgment, and restore the Judgment of the learned Sub-Judge of December, 16, 1969. However, in view of the hardship which would be caused to the respondent I direct that the respondent shall be given six months' time from now to vacate the premises. Costs of this appeal shall be easy.

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