

Narinder Kumar Soni Vs. Sun Shine Roadways and ors.

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SooperKanoon Citation : sooperkanoon.com/686679

Court : Delhi

Decided On : Feb-16-1999

Reported in : 1999IIAD(Delhi)329; AIR1999Delhi189; ILR1999Delhi178; 1999RLR201

Judge : S.K. Mahajan, J.

Acts : [Court Fees Act, 1870](#) - Sections 7

Appeal No. : IA. Nos. 10178/97, 3648/98 in Suit No. 3159/96

Appellant : Narinder Kumar Soni

Respondent : Sun Shine Roadways and ors.

Advocate for Def. : Mr. P.K. Rawal, Adv.

Advocate for Pet/Ap. : Mr. Pravir Jain, Adv

Judgement :
ORDER

S.K. Mahajan, J.

1. Plaintiff filed this suit for possession and recovery of mesne profit and damages on the allegations that commencing from 1st April, 1994 the premises comprising of shop No. 3 left wing, ground floor of property No. 10/60B, Kirti Nagar Industrial

Area, New Delhi, measuring 750 sq.ft., was let to the defendant on a rent of Rs. 4,080/ p.m. The premises was let for a period of two years w.e.f. 1st April, 1994 and on the expiry of the lease when the tenant did not vacate the same, the plaintiff served three notices dated 6th April, 1996; 16th April, 1996 and 25th September, 1996 terminating the tenancy of the premises, though, according to the plaintiff, on the expiry of the lease on 31st March, 1996 no notice was required to be served for termination of lease. After the termination of lease, the plaintiff filed this suit for possession as well as for damages/manse profits from 1st April, 1996 to 31st December, 1996 at the rate of Rs. 12,000/ per month. In the plaint, the plaintiff besides claiming a sum of Rs. 1,08,000/ as the mesne profits has also claimed possession. In paragraph 8 of the plaint while valuing the suit for purposes of Court fee and jurisdiction, the plaintiff has stated as under :

'That the market value of the premises is Rs. 5,25,000/ (Rupees five lakhs twenty five thousand only) which is the valuation for the purposes of court fee and Jurisdiction for the purposes of possession and damages/manse Profits is Rs. 1,08,000/ (Rupees one lakh eight thousand only) on which appropriate court fee has been paid. The plaintiff has also paid additional Court fee of Rs. 10/ for Mesnes profits/Damages.'

2. The value of the suit for purposes of jurisdiction insofar as the relief of possession is concerned has been valued at Rs. 5,25,000/ on the ground that that is the market value of the property. After summons in the suit were served upon the defendants, written statement was filed and one of the objections taken in the written statement was that the suit has not been properly valued for purposes of Court fee and jurisdiction.

3. On 7th January, 1999 the Court observed that under Section 7(xi)(cc) of the Court Fees Act in a suit for recovery of possession of an immovable property from a tenant whose tenancy has been terminated, the amount of Court fee payable is one year's rent. The valuation of the suit for purposes of Court fee and jurisdiction fixed at Rs. 5,25,000/ appeared to the Court to be arbitrary. That is how arguments of learned counsel for the parties have been heard on the question as to whether the suit has been properly valued for purposes of Court fee and jurisdiction.

4. Learned counsel for the plaintiff submits that under Section 7(xi)(cc) of the Court Fees Act, it is only in the case of a tenant holding over that the Court fee is payable on the amount of annual rent of the property. He contends that in case the defendant is not a tenant holding over, the suit has to be valued on the market price of the property as the defendant on the termination of the tenancy is a trespasser therein. He also relies upon Section 116 of the Transfer of Property Act in support of his contention that a tenant holding over is the tenant from whom the rent has been accepted by the landlord after termination of the lease. Section 116 of the Transfer of Property Act is in the following terms:

'116. Effect of holding over : If a lessee or underlessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the Lesser or his legal representative accepts rent from the lessee or underlessee, or otherwise assents to his continuing in possession to lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.'

5. Learned counsel for the plaintiff has also relied upon the judgments reported as Champat v. Balakdas, 1925 Nagpur 131 and Gobinda Ram Agarwala Vs . Dulu Pada Dutta and Others : AIR1928 Cal753 , wherein it has been held that once the tenancy had been determined the person who has been a tenant became a trespasser holding on, and he could only be a tenant holding over provided such holding over was with the consent, express or implied, of the landlord. The Courts in the aforesaid cases, therefore, held that a tenant whose tenancy was determined was not a tenant holding over and was a trespasser holding on and the suit for ejectment of such a tenant does not fall within the meaning of Section 7(xi)(cc) of the Court Fees Act.

6. Section 116 of the Transfer of Property Act speaks of only the effect of the acceptance of rent from a tenant whose tenancy has been determined. In view of this provision of law, in case, the landlord accepts rent from a tenant even after the termination of the lease, the notice of termination will be deemed to have been waived and the tenancy of the person whose tenancy had been terminated is

renewed from year to year or month to month, as the case may be. Section 116 of the Act does not define a 'tenant holding over'. In my view, Section 116 of the Transfer of Property Act is not applicable to the present case. With due respect to the learned Judges of the Calcutta and Nagpur High Courts, I have not been able to persuade myself to agree with the view of the learned Judges expressed in the aforesaid judgments. The view taken by the learned Judges of the Calcutta and Nagpur High Courts, in my opinion, is contrary to the plain language of Section 7(xi)(cc) of the Court Fees Act.

7. The case in hand, in my view, is clearly covered by the provisions of Section 7(xi)(cc) of the Court Fees Act as it is a case of recovery of immovable property from a tenant after the termination of his tenancy. There does not appear to be any other provision in the Court Fees Act which, in my view, would be applicable to the facts of the present case. The defendant being a tenant continuing in possession of the premises even after the termination of the tenancy, the plaintiff should have valued the suit for purposes of jurisdiction at the annual rent of the premises. The rent of the premises being Rs. 4,080/ p.m. the jurisdictional value could not be more than Rs. 48,960/. Faced with this situation, learned counsel for the plaintiff submits that under Section 4 of the Court Fees Act it is only in the case of under valuation that the Court can ask the plaintiff to make up the deficiency in Court fee, however, in the case of over valuation the plaint cannot be rejected and the Court must proceed with the suit. In my view, there is a basic fallacy in the arguments of learned counsel for the plaintiff inasmuch as it is not a case where the Court is rejecting the plaint on account of over valuation or over payment of Court fee. A party cannot be permitted to fix an arbitrary value for purposes of jurisdiction. As held in *Chand Bal and Another v. Kamal Kumar and Others*, the tenant cannot whimsically choose a ridiculous figure for filing the suit most arbitrarily where there are positive materials and/or objective standards of valuation of the relief appearing on the face of the plaint and where there are objective standards of valuation, or in other words, the plaintiff or the Court can reasonably value the relief correctly on certain definite and positive materials, the plaintiff will not be permitted to put an arbitrary valuation de hors such objective standards or materials. In this case as well there is a definite and positive material available before the Court to fix the value for purposes of jurisdiction and the plaintiff cannot

be permitted to put an arbitrary valuation so as to bring the suit within the jurisdiction of this Court.

8. In my view, therefore, the suit having not been properly valued and the value of the suit being on the annual rent of the property could not be more than Rs. 48,960/, the plaintiff has also claimed damages/manse profits of Rs. 1,08,000/, the value of the suit is, therefore, not more than Rs. 1,50,000/. That being the position, this Court will not have any pecuniary jurisdiction to try this suit. I, accordingly, direct the plaint to be returned to the plaintiff for presentation before proper Court.

1. Plaintiff filed this suit for possession and recovery of mesne profit and damages on the allegations that commencing from 1st April, 1994 the premises comprising of shop No. 3 left wing, ground floor of property No. 10/60B, Kirti Nagar Industrial Area, New Delhi, measuring 750 sq.ft., was let to the defendant on a rent of Rs. 4,080/ p.m. The premises was let for a period of two years w.e.f. 1st April, 1994 and on the expiry of the lease when the tenant did not vacate the same, the plaintiff served three notices dated 6th April, 1996; 16th April, 1996 and 25th September, 1996 terminating the tenancy of the premises, though, according to the plaintiff, on the expiry of the lease on 31st March, 1996 no notice was required to be served for termination of lease. After the termination of lease, the plaintiff filed this suit for possession as well as for damages/manse profits from 1st April, 1996 to 31st December, 1996 at the rate of Rs. 12,000/ per month. In the plaint, the plaintiff besides claiming a sum of Rs. 1,08,000/ as the mesne profits has also claimed possession. In paragraph 8 of the plaint while valuing the suit for purposes of Court fee and jurisdiction, the plaintiff has stated as under :

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