

(2012) 10 AHC CK 0037

Allahabad High Court

Case No: C.R. No. 463 of 2012

Ram Lal Pratham

APPELLANT

Vs

Chandu Lal Pratham
and Another

RESPONDENT

Date of Decision: Oct. 15, 2012

Acts Referred:

- Provincial Small Cause Courts Act, 1887 - Section 25
- Transfer of Property Act, 1882 - Section 106, 111

Citation: (2013) 3 ADJ 427 : (2013) 1 AWC 679

Hon'ble Judges: Pankaj Mithal, J

Bench: Single Bench

Advocate: Swapnil Kumar, for the Appellant; Atul Srivastava, for the Respondent

Final Decision: Dismissed

Judgement

Pankaj Mithal, J.

I have been called upon to revise the judgment and order dated 17.8.2012 passed by the Additional District and Sessions Judge exercising jurisdiction as Small Cause Court decreeing S.C.C. Suit No. 9 of 2006 (Chandu Lal and another v. Ram Lal) on the following two points:

- (i) Whether there exists relationship of landlord and tenant between the parties; and
- (ii) Whether notice dated 16.3.2006 determines the tenancy or is bad in law.

I would like to recapitulate some of the broad facts giving rise to the above suit and the present revision u/s 25 of the Provincial Small Cause Courts Act, 1887.

The dispute is between the father and son in respect of first floor portion comprising of one big room, two kitchens and a latrine-bathroom of house No. C-91 Sector 20

2. The father alongwith one other son Anil Kumar instituted S.C.C. Suit in question against his elder son Ram Lal claiming arrears of rent and for his eviction. It was contended that his son Ram Lal was an officer of the Canara Bank. The aforesaid portion was let out to the Bank for his residential purpose under the lease deed dated 1.9.1997 on a rent of Rs. 2,300 per month. The said lease was surrendered whereupon the son Ram Lal occupied it in his personal capacity on a rent of Rs. 3,000 per month under a separate rent agreement w.e.f. 31.8.2000. He stopped paying rent after some time and failed to vacate it despite notice dated 16.3.2006.

3. Ram Lal contested the suit contending that there is no tenancy agreement between him and his father. His father is not the exclusive owner of the house. The said house is a property of Hindu undivided family. He is occupying it as a co-owner. The notice determining tenancy is illegal.

4. The court below on the basis of the pleadings of the parties and in view of the judgment an order dated 22.2.2006 between the parties in an earlier suit (paper No. 16-Ga) held that the house is not a property of H.U.F. and that the Ram Lal is occupying it as a tenant. The notice was found to be valid. Thus, the suit for arrears of rent and eviction was decreed.

Parties are duly represented by their respective counsel. They have agreed for final disposal of the revision at this stage of admission itself on the basis of admitted facts and some documents brought on record which were part of the record in the courts below.

5. I have heard Sri Swapnil Kumar, learned counsel for Ram Lal (defendant-revisionist) and Sri Atul Srivastava, learned counsel appearing for the father (plaintiff respondents).

6. There is no dispute that the father had let out the aforesaid portion of the house to Canara Bank vide lease deed dated 1.9.1997 on monthly rent of Rs. 2,300 for the purposes of occupation by its officer who happened to be his son Ram Lal. The said lease was surrendered on 31.8.2000 whereupon the son continued to remain in occupation or is said to have forcibly occupied it or under a fresh rent agreement whereupon he started paying Rs. 3,000 per month as rent. He had stopped paying rent after some time to be precise after 31.12.2000.

7. The son had previously instituted Original Suit No. 138 of 2004 (Ram Lal v. Chandu Lal) for a decree of permanent injunction against his father not to evict him from the said portion, otherwise than following the procedure prescribed under law. The said suit was decreed vide judgment and order dated 22.2.2006 holding that the house is not the H.U.F. property and that despite relationship of son and father, Ram Lal was allowed to occupy it as a tenant. The occupancy of the said portion of the house as tenant irrespective of being son was accepted by him in his cross-examination.

Thus, In view of the above finding recorded in the previous suit, the court below committed no error in holding that the relationship of landlord and tenant exists between the parties.

8. The rent receipt (paper No. 26-Ga) was also brought on record which proved that Ram Lal had paid rent to the father @ Rs. 3,000 per month for the period 1.4.2000 to 31.3.2001. The slight discrepancy in the period for which the rent was paid would not make the receipt inadmissible for the collateral purpose of establishing the relationship between the parties. The said receipt also establishes the relationship of landlord and tenant between the parties. Ram Lal as D.W. 1 has accepted that though he had come to live in the said portion with his father but in order to help him financially he got the lease executed in favour of the Bank and through the said lease occupied it as tenant. The said statement is admission of tenancy on his part.

9. All the above facts lead to an inevitable conclusion that the property is not a HUF property and that the occupancy of the said portion by Ram Lal was in capacity as an officer of the bank and he continued to retain despite surrender of tenancy by the Bank, independently as tenant on rent @ Rs. 3,000 per month.

10. In relation to the second point the submission of the learned counsel is that the notice is invalid and it does not actually determine the tenancy so as to enable the father to institute the suit for evidence.

11. A combined reading of Section 111 with Section 106 of the Transfer of Property Act, 1882 postulates that the lease of immovable property for the purpose other than agricultural and manufacturing shall be deemed to be a lease from month to month basis which is terminable on part of either of the lessor or lessee by notice of 30 days in applicability to the State of U. P.

12. The notice allegedly determining the tenancy (paper No. 9-Ga) as on record apart from other things in paragraph 9 states as under:

that because of the reason mentioned above my client is (sic) not interested to have you as tenant any more.

I hereby call upon you to pay arrears of rent within one month of receipt of this notice and also to handover the vacant possession of the house to my client.

13. Their Lordships of the Supreme Court in [Bhagabandas Agarwalla Vs. Bhagwandas Kanu and Others](#), laid down that a notice to quit must be construed not with a desire to find fault in it which would render it defective but it must be construed *Ut res magis valeat quam pereat* which means that an act may avail rather than perish. It further lays down that the notice to quit requiring the tenant to vacate the premises makes the intention of the notice clear that it intends to terminate the tenancy and therefore, determines the tenancy.

14. A Full Bench of the Allahabad High Court in *Gorakh Lal v. Maha Prasad Narain Singh and others*, AIR 1964 All 260 in construing the validity of the notice to quit held that the notice u/s 106 by the landlord to the tenant asking the tenant to vacate the premises within 30 days of the service of notice amounted to valid termination of the tenancy.

15. In *Ichcha Ram v. Parsindhi*, (1990) 16 ALR 703: 1990 (2) AWC 1276, it was held that use of the expression that the land-lord did not desire to continue the tenancy constitute a notice of determination of tenancy.

16. Another decision of the Allahabad High Court in [Vedpal Singh Vs. Harbansh Singh](#), in relation to notice to quit u/s 106 of the Transfer of Property Act, 1882 lays down that even if contents of the notice does not specifically terminate the tenancy but as the tenant is informed to vacate the premises within a month of the notice and deliver possession thereof, it clearly determines the tenancy and is, therefore, a valid notice.

17. Applying the principles as laid down by the above decisions to the facts of the present case it is manifest that the intention of the notice is clearly to terminate the tenancy and as such the notice cannot be faulted with.

18. Sri Swapnil Kumar, learned counsel has placed reliance upon a decision of the learned single Judge of this Court in [R.S. Negi Vs. Vishnu Sahai Verma and Another](#), wherein the notice demanding possession of the premises without expressly or impliedly terminating the tenancy was held to be bad.

19. Learned single Judge based her aforesaid decision on the Full Bench of this Court in [Atkinson Vs. Bradley](#), which ruled that in any notice to quit there must be clear explicit intimation to the tenant of the date after which his status will be of a trespasser.

20. The intention in the present case is explicit, inasmuch as, the notice herein clearly states that the landlord is not interested to keep the tenant any more and he is required to pay arrears of rent within a month of the receipt of notice and to handover possession of the house.

21. Recently, another Judge of this Court in [Syed Mustajab Husain, Mutwalli Masjid Dhuliaganj, Waqf No. 23, Agra Vs. Additional District Judge, Agra and Others](#), was called upon to consider a similar question whereupon he relied upon an earlier decision of this Court in [Suraj Prasad Vs. Smt. Kusumlata Sinha](#), and after quoting a paragraph therefrom which takes into account the aforesaid Full Bench decision laid down that the requirement of a valid notice is satisfied, if the lessor gives a notice expressing the intention that the lease shall stand determined on the expiry of the period mentioned in the notice.

22. The paragraph from *Suraj Prasad* (supra) is reproduced herein-below:

The learned counsel referred to an old Full Bench decision of this Court in the case of [Atkinson Vs. Bradley](#) . Much water has flown down the bridge since the Full Bench decided that case and I need not encumber this judgment by referring to the numerous cases in which the Full Bench decision in [Atkinson Vs. Bradley](#) , has been considered and explained. A notice calling upon the tenant to vacate the leased premises would always amount to a notice terminating the tenancy. Under Clause (h) of Section 111 of the Transfer of Property Act a lease of immovable property determines 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. Whether the lessor has given a notice expressing an intention that the lease will stand terminated or he by the notice calls upon the lessee to quit, that is, to leave, the legal consequence of both would be that the lease would stand determined. The provisions of Section 106 of the Transfer of Property Act lay down the manner in which such a notice is to be served and fixes the time before which it has to be given. In [Ram Chandra and Another Vs. Lala Dulichand](#) , a notice calling upon the tenant to vacate the premises let out has been held to be a notice which successfully determines the tenancy.

[Emphasis supplied]

23. In view of the above, I am of the opinion that there is no fallacy in the impugned notice. It may also be noted that Ram Lal, defendant revisionist in paragraph 27 of the written statement has casually mentioned that the notice given u/s 106 of the Transfer of Property Act. 1882 is not in accordance with the provisions but no specific reason has been assigned as to why It is illegal and as to which part of the provision has been violated by it. In the court below no specific plea for holding the notice to be bad was raised and naturally as such it was not considered though certain other aspects regarding notice was dealt with. Thus, the invalidity of the notice on the ground that It does not actually terminate the tenancy appears to have been set up for the first time in revision.

24. A plea of invalidity or defect in notice if not taken in the trial court, cannot be urged for the first time in the appellate or revisional forum vide [Shyam Lal Vs. Rasool Ahmed \(Dead\) by Lrs.](#) .

25. In the over all view of the matter, the submission regarding invalidity of the notice also has no substance. In view of the aforesaid facts and circumstances, judgment and order of the court below decreeing the suit suffers from no error of law much less jurisdictional error and as such need not be revised.

The revision lacks merit and is dismissed.