

(2008) 12 AHC CK 0148

Allahabad High Court

Case No: None

Vijay Kumar Chaddha and
Another

APPELLANT

Vs

Prem Lata Agrawal and Another

RESPONDENT

Date of Decision: Dec. 16, 2008

Hon'ble Judges: Sanjay Misra, J

Final Decision: Disposed Of

Judgement

Sanjay Misra, J.

Heard Sri S.K. Chaturvedi learned counsel for the revisionist and Sri Ashok Nath Tripathi learned counsel who has appeared on behalf of the respondentlandlords.

This revision has been filed against the judgement and order dated 07.05.02 passed in J.S.C.C. Suit No. 52/1996 (Sm Prem Lata Agarwal and others vs. Vijay Kumar Chaddha and others) by the Court of Additional District Judge, Court No. 14, Kanpur Nagar whereby the suit of the plaintiffrespondent has been decreed for possession over the accommodation in question.

Learned counsel for the revisionist has argued that the reply allegedly sent by one Sri Ramsewak Vyas Advocate to the notice given by the plaintiffrespondent was not under the authority of the revisionist and therefore, the admission made in such reply given by Sri Ramsewak Vyas Advocate on behalf of the revisionist could not have been taken into account for holding that the rent of the premises in question was not Rs. 300/ p.m. He further states that the Panchshala (five yearly assessment) recorded the rent of the premises in question to be Rs. 250/ p.m. and therefore, the finding recorded by the Trial Court that the rent of the premises in question was Rs. 1800/ p.m. is perverse and requires to be set aside. He has also submitted that the notice to quit and pay arrears of rent was never served upon him and he did not receive the under postal certificate notice as alleged by the plaintiffrespondent.

Learned counsel for the respondent has on the other hand contested the submission made by the revisionist and has supported the impugned order by stating that the notice was admittedly sent by registered post and under postal certificate. He states that the registered post notice was served upon the employee of the revisionist, namely, Sri Padam Singh who was the person sitting regularly at the shop in question. According to him once the acknowledgement bearing the signature of said Sri Padam Singh was filed before the court below as Paper No. 80(ga), the service of notice cannot be denied by the revisionist and the Trial Court has rightly recorded its findings on such aspect of the matter. He states that the reply to the notice given by Sri Ramsewak Vyas Advocate on behalf of the revisionist was not denied by the revisionist and the said reply clearly indicated that it was given on behalf of the tenant.

Insofar as the rate of rent is concerned, according to him, the written statement of the revisionist indicated that the rent was Rs. 300/ p.m.. The reply from the Advocate of the revisionist indicated the rent at Rs. 1000/ p.m. and the claim of the plaintiffrespondent was @ Rs. 1800/ p.m. which he has proved in his oral statement made before the Trial Court and by producing the counterfoils of the rent receipts. He further states that there was no other evidence available with respect to the rate of rent from the tenants side since admittedly there was no written agreement.

Having considered the submissions of learned counsel for the parties and perused the record, the fact that notice was received by Sri Padam Singh, the employee of the revisionist sitting in the shop in question regularly has been admitted by the revisionist and the signature of Sri Padam Singh on the acknowledgement due has been duly accepted by him. Under such circumstances, the denial of having received the notice under postal certificate would lose its significance since the registered notice has been received by Sri Padam Singh who was the employee of the revisionist sitting regularly at the shop in question. The signature of Sri Padam Singh on the acknowledgement due has also not been denied. Consequently, the findings of the court below regarding service of notice does not appear to be perverse or illegal in any manner.

Insofar as the reply given by Sri Ramsewak Vyas Advocate on behalf of the revisionist to the notice issued by the plaintiffrespondent is concerned, the same was not specifically denied in the written statement inasmuch as in paragraph 3 of the written statement, it has been clearly stated that no notice issued by the plaintiff was received by the tenant though Sri Ramsewak Vyas Advocate. Even in the oral statement of the defendant, it has not come that the reply sent by Sri Ramsewak Vyas Advocate on behalf of the revisionist was not on the instructions of the revisionist. The only vague statement available in the written statement as also in the statement of the revisionist is that Sri Ramsewak Vyas Advocate was not his legal advisor.

Under such circumstances, when there is no denial of the fact that the reply sent to the notice by Sri Ramsewak Vyas Advocate was not on the instructions of the revisionist, the Trial Court has recorded its findings and held that such reply was available on record and had been sent by Sri Ramsewak Vyas Advocate because the revisionist has not denied having sent the reply though Sri Ramsewak Vyas Advocate specifically and it cannot be disbelieved that the reply to the notice issued by the plaintiff was legally given by Sri Ramsewak Vyas Advocate on behalf of the revisionist. Under such circumstances, the finding of the Trial Court on the reply given on behalf of the revisionist cannot be said to be perverse inasmuch as there is no specific denial even though the revisionist was faced with the said reply during the trial.

Insofar as the quantum of rent is concerned, the written statement and the oral statement of the revisionist indicates that the rent was Rs. 300/ p.m. In the reply to the notice to quit, the amount was stated to be Rs. 1000/ p.m. The plaintiff has clearly stated that there was no agreement between the parties and there were rent receipts and has stated that the rent of the premises in question was Rs. 1800/ p.m. It is stated that the accommodation in question is a commercial accommodation. From the findings recorded by the Trial Court, it appears that the counterfoil of the rent receipts for the month of April, May, June, July, August, September and October were produced by the plaintiffrespondent which indicated that the rent of the premises in question was Rs. 1800/ p.m. The Trial Court while considering the said counterfoils and disbelieving the oral evidence of the revisionist has recorded that the rent of the premises in question was Rs. 1800/ p.m. The said findings being based on evidence and there being no evidence on behalf of the revisionist to resist the findings, no interference is required therein. For the aforesaid reasons the three findings recorded by the Trial Court requires no interference.

At this stage, learned counsel for the revisionist has made a prayer on behalf of the revisionist to be granted some time to vacate the premises in question because the revisionist is carrying on his business from the premises and it is his only source of livelihood. Learned counsel for the plaintiffrespondent has agreed to grant time of six months to the revisionist to vacate the premises in question provided he undertakes to do so.

In view of the aforesaid submissions, it is provided as under:

(1)The revisionist should file an undertaking before the trial court that he shall vacate the premises in question on or before 30.06.09 and handover vacant and peaceful possession of the premises in question to the plaintiffrespondentlandlord.

(2)The revisionist should undertake to deposit the entire decretal amount before the trial court within a period of two months from today subject to adjustment of any amount already deposited before the court below.

(3)The revisionist should continue to pay for use and occupation of the premises in question at the rate decreed by the trial court each month by the 7th of the month when it falls due.

(4)In the event of default of any of the aforesaid three conditions, the revisionist shall not be entitled to continue in the premises in question up to 30.06.09 and the decree shall be executed forthwith.

In view of the aforesaid circumstances, this civil revision is finally disposed of as above.

No order is passed as to costs.