Chandra Sheikhar and Others Vs Gopi Nath

Court: Allahabad High Court

Date of Decision: March 29, 1962

Acts Referred: Contract Act, 1872 â€" Section 29

Citation: AIR 1963 All 248

Hon'ble Judges: S.S. Dhavan, J

Bench: Single Bench

Advocate: Radha Krishna, for the Appellant; N.A. Rahman, for the Respondent

Final Decision: Dismissed

Judgement

S.S. Dhavan, J.
This is a landlord''s second appeal against the decree of the Second Temporary Civil Judge, Meerut, dismissing his suit for

the ejectment of the tenant. The plaintiff-appellants alleged in their plaint that they had let out a house to the defendant-respondent Gopi Nath on a

rent of Rs. 11/8/- p. m. The defendant-respondent stopped paying rent after 3oth November, 1952. The landlord sent a notice of demand but the

arrears were not paid; hence the suit. The defendant resisted the suit and raised a number of pleas. He contended that his son was the tenant and

not he, and the contract of tenancy was with the son. He also alleged that his son had taken the house in a dilapidated condition and the landlord

permitted him to construct a new baithak and install a gate and adjust the cost against rent which was enhanced by agreement from Rs. 5/- to

11/8/- p. m. The defendant claimed that a sum of Rs. 302 /- had been spent on these constructions and improvement and this sum was adjustable

against the rent. But as the rent was not as much as the amount spent on the constructions no rent was due and no default committed.

2. The trial Court held that the defendant and not his son was the tenant. It also found that the defendant spent a sum of Rs. 195/7/6 on

constructions and improvement, but the defendant was not entitled to deduct this amount from the rent because no agreement allowing him to do

so had been proved. As the tenant admitted that he had not paid the rent demanded, the trial Court held that he was guilty of default and decreed

the suit for ejectment. In appeal the learned Civil Judge did not agree with the trial Court that no agreement for adjustment of rent against the

amount spent by the tenant on the construction has been proved. He held that the constructions were made by the tenant under an oral agreement

with the landlord who permitted to adjust the cost against rent. He allowed the appeal and dismissed the suit of landlord who has come to this

Court in Second Appeal.

3. Mr. Radha Krishna, counsel for the appellant, urged one point before me. He conceded that it was not open to him to assail the finding of the

appellate Court on the existence of the agreement between the parties as it was one of fact, but argued that the agreement was void. Learned

counsel relied on Section 29 of the Contract Act which provides that an agreement which is not certain or capable of being made certain is void.

He pointed out that under the agreement the parties had not fixed the amount which the tenant was to spend on the constructions and adjust against

rent. I do not think that this omission makes the agreement void for uncertainty.

The terms of the agreement were that the tenant was to construct a baithak and install a new gate and deduct the cost from rent which was

enhanced from Rs. 5/- to Rs. 11/8/-per month. The cost of the constructions was not known to the parties at the time, but it is obvious that they

agreed that the entire cost, whatever the amount, would be adjusted against rent. The agreement was, therefore, capable of being made certain and

did in effect become certain when the constructions were completed and the amount spent was known. The purpose of Section 29 of the Contract

Act is to ensure that the parties to a contract should be aware of the precise nature and scope of their mutual rights and obligations under the

contract. There are many agreements in which the exact obligation of one of the parties cannot be measured at the time of the agreement but can

be ascertained afterwards. Illustration (e) of Section 29 is an example of ''such an agreement.

A agrees to sell to B one thousand maunds of rice at a price to be fixed by C. As the price is capable of being made certain, there is no

uncertainty here to make the agreement void.

This principle will govern the agreement under consideration. The parties agreed that the entire cost of the constructions would be adjustable

against rent. As soon as the cost was known the agreement became certain. This argument, therefore, fails.

4. No other point was urged before me. The appeal is dismissed with costs.