

(1959) 10 AHC CK 0014

Allahabad High Court (Lucknow Bench)

Case No: Second Appeal No. 630 of 1959

Sardar Kartar Singh

APPELLANT

Vs

Smt. Phoolwati

RESPONDENT

Date of Decision: Oct. 14, 1959

Acts Referred:

- Transfer of Property Act, 1882 - Section 106, 114
- Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Section 3(1)

Citation: AIR 1961 All 95

Hon'ble Judges: B. Upadhya, J

Bench: Single Bench

Advocate: Mohd. Husain, for the Appellant;

Final Decision: Dismissed

Judgement

B. Upadhya, J.

This is a second appeal arising out of a suit for arrears of rent and ejectment. The only ground urged by learned counsel for the appellant is that the courts below have taken an erroneous view of the law in holding that Section 114 of the Transfer of Property Act did not apply to the facts of the case where the provisions of Section 3 (1) (a) of the U. P. Control of Rent and Eviction Act were applicable. The facts very briefly are that the plaintiff after acquiring title to the property brought a suit for ejectment and for arrears of rent and alleged that the defendant was in willful default in respect of a demand for arrears of rent made by the plaintiff.

The defendant pleaded that the notice of demand had not been received by him. But this contention was not accepted by the courts below. The courts found that the defendant was in willful default within the meaning of Section 3 (1) (a) and there was no impediment in the way of the plaintiff bringing a suit for his ejectment. The court further found that by a valid notice u/s 106 of the Transfer of Property Act the defendant's tenancy had been determined. Learned counsel's contention is that

even if the defendant had not said arrears of rent he was entitled to protection afforded by Section 114 of the Transfer of Property Act and he was entitled to pay the rent that had not been paid and save himself from ejectment.

Section 114 of the Transfer of Property Act applies to cases where the forfeiture relied upon by the plaintiff is one incurred under the terms of the lease; The removal of a bar from the way of the plaintiff landlord's instituting a suit for ejectment mentioned in Section 3 (1) (a) of the U. P. Control of Rent and Eviction Act is not in any sense a forfeiture of any rights under the lease or under the terms of the tenancy which the defendant held. Learned counsel has referred me to three cases, two of them are of the Calcutta High Court one reported in [Ahindra Nath Chatterjee Vs. L.T. Col. E.K. Twiss, Luxmi Spinning and Weaving Mills Ltd. Vs. Md. Ibrahim, Mutwalli](#), Laxmi Spinning and Weaving Mills Ltd. v. Md. Ibrahim.

In both these cases the lease under which the defendant held the property contained a term that in the event of a certain default in payment of rent the lease might be terminated. The plaintiff claimed that the lease had been determined as forfeiture had been incurred by the tenant according to the terms of the lease. It is on such facts that Section 114 of the Transfer of Property Act was held to be applicable. The third case is an Allahabad case Northern India Coal Co. v. Bitti Kuer reported in 1949 All WR 539. That was a decision of a learned Judge of this Court in which the terms of the lease are not mentioned and the question which is now before me relating to the applicability of Section 114 of the Transfer of Property Act was neither pleaded nor decided. This case, therefore, affords no guidance. The language of Section 114 is very clear. It says, to begin with,--

"Where a lease of immovable property has determined by forfeiture for non-payment of rent and the lessor sues to eject the lessee ... "

In the instant case it is not claimed by the plaintiff that the lease of the property had determined by forfeiture for non-payment of rent. In fact it was alleged that the tenancy had been determined by a notice u/s 106 of the Transfer of Property Act. It is open to a lessor and a lessee to agree that the landlord's usual right of re-entry would be restricted by a term in the lease and such term may be that so long as the tenant goes on paying rent in the manner mentioned, the landlord would not have the right of re-entry or the right of ejectment.

If the parties did not choose to enter into any such agreement the right of the landlord to re-enter is there and if he does decide to enforce this right, the law lays down that he may do so by terminating the tenancy in a manner mentioned in Section 106 of the Transfer of Property Act. In the instant case no term of the lease reserved any such right in favour of the tenant. In the absence of any specific term to the contrary the landlord's right to terminate the lease was available to him and if the tenancy was terminated by a valid notice u/s 106 of the Transfer of Property Act, I am unable to see how the provisions of Section 114 of the Transfer of Property

Act can be brought into aid to protect the tenant from ejection.

2. In the light of the above observations I am of opinion that there is no force in this appeal and it is rejected under Order 41, Rule 11, C. P. C.