

(2007) 10 AHC CK 0129

Allahabad High Court

Case No: None

Ayub Ali

APPELLANT

Vs

Tahir Ahmad Khan and Others

RESPONDENT

Date of Decision: Oct. 25, 2007

Acts Referred:

- Evidence Act, 1872 - Section 116

Citation: (2008) 1 AWC 306

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

2. This is tenant's writ petition arising out of suit for eviction on the ground of default and for recovery of arrears of rent instituted by respondent No. 1 against him in the form of S.C.C. Suit No. 2 of 1984. J.S.C.C./Civil Judge, Pilibhit, decreed the suit through judgment and decree dated 24.10.1986. Against the said judgment and decree tenant-petitioner filed S.C.C. Revision No. 45 of 1986 which was dismissed on 7.10.1989 hence this writ petition. The first dispute in between the parties was regarding rate of rent. Landlord asserted that it was Rs. 75 per month however, tenant asserted that it was Rs. 50 per month. Both the Courts below decided the said question in favour of the tenant and held that the rate of rent was Rs. 50 per month.

3. The other contention raised by the tenant was that apart from him Mohd. Yusuf Ali also was the tenant. However, the contention was not accepted by the Courts below. Even otherwise no effect will be made on the decree for eviction and recovery of arrears of rent even if it is held that Mohd. Yusuf Ali was also joint tenant. The Supreme Court in [Harish Tandon Vs. Addl. District Magistrate,](#)

[Allahabad, U.P. and others,](#) and [Ashok Chintaman Juker and Others Vs. Kishore Pandurang Mantri and Another,](#) . has held that after the death of tenant his heirs inherit the tenancy jointly and notice of termination of tenancy given to one of the joint tenants is sufficient, similarly decree for eviction passed against one Joint tenant is binding upon the other non-impleaded joint tenants.

4. Petitioner had also pleaded that notice was invalid and that on 8.2.1976 respondent No. 1 owner-landlord had entered into an agreement for sale with the petitioner and his brother Mohd. Yusuf Ali for a consideration of Rs. 25,000 out of which Rs. 5,000 had been paid hence after execution of the agreement relationship of landlord and tenant ceased to exist. Tenant also pleaded that afterwards he paid Rs. 8,000 more however, this version of payment of Rs. 8,000 was disbelieved by both the Courts below.

5. In respect of. agreement for sale both the Courts below held that through the said agreement relationship of landlord and tenant did not come to an end and that tenant did not file suit for specific performance of the agreement for sale and that he could not show that he was always ready and willing to perform his part of the contract. As far as notice is concerned both the Courts below held that the notice was invalid as through the notice tenancy was terminated in praesenti. However, both the Courts below held that as tenant had denied the title of the landlord by asserting that after agreement neither he remained tenant nor respondent No. 1 remained landlord hence notice was not necessary.

6. The above two points regarding necessity and validity of notice and effect of agreement for sale have been argued by the learned Counsel for the petitioner in this writ petition. Third point has also been argued to the effect that in any case Rs. 5,000 had been found to have been paid by the petitioner to respondent No. 1 hence petitioner could not be held to be defaulter and unpaid rent should have been adjusted in the said amount. Learned Counsel for the respondent refuted all the arguments and supported the judgments of the Courts below. Learned Counsel for respondent No. 1 also argued that notice was perfectly valid and the Courts below committed error of law in holding otherwise. Copies of notice dated 15.10.1983 and agreement for sale dated 8.2.1976 were filed before the Courts below; their copies have also been filed alongwith supplementary counter-affidavit dated 9.7.2007, filed by the petitioner on 18.7.2007.

7. First I take up the question of validity of notice. Both the Courts below have placed reliance upon a Division Bench authority of this Court in [Abdul Jalil Vs. Haji Abdul Jalil](#). In my opinion the Courts below did not correctly interpret the said authority. The second paragraph of the notice in question dealing with termination of tenancy is quoted below:

Further my client does not want to continue your tenancy any more. Your tenancy is herewith terminated. You must deliver vacant possession of the house to my client

just after expiry of thirty days" period from the receipt of this notice failing which a suit for ejectment and arrears of rent and damages will be filed against you in a competent court of law and will also be liable for the costs of the suit. Please note.

(Italics supplied)

Under illustration "E" in the aforesaid Division Bench authority somewhat similar type of notice was considered and was held to be valid. The Notice which was subject-matter of the aforesaid Division Bench authority and which was held to be valid (quoted in Para 16 of the said authority) is quoted below:

Your tenancy is terminated by this notice. So after receipt of this notice you can remain in possession for thirty days upto the midnight and then deliver possession to the notice-giver and on your failure to do so a suit for ejectment shall be filed against you.

According to the learned Counsel for the petitioner the notice in question is like the notice given in illustration "D" of the aforesaid Division Bench authority. Notice "D" mentioned in the Division Bench authority is quoted below:

Your tenancy is terminated with effect from today and you are required to vacate the premises on the expiry of thirty days from the date of service of this notice on you.

8. I do not agree with this contention. If in the notice in question tenancy had been terminated with effect from date of service of notice then the notice would have been bad. However, the notice in question the only thing which was stated was that tenancy was being terminated by the notice. The word "herewith" does not mean forthwith. If the word forthwith had been used then of course notice would have been invalid.

Accordingly, I hold that the notice was valid.

9. The next question to be considered is that of denial of title. The tenant asserted that by virtue of the agreement for sale entered into during continuance of the lease, lease came to an end. Such type of assertion does not amount to denial of title even if assertion is found to be wrong legally. By virtue of Section 116 of Evidence Act denial must relate to the title of the landlord at the time of creation of tenancy. Subsequent developments can always be pleaded by the tenant. If suppose a landlord during continuance of lease transfers the property to another person and transfer is admitted by original-owner-landlord also then tenant would be liable to pay rent to the transferee and treat the transferee as his landlord. In that eventuality it cannot be said that tenant is legally bound to continue to treat the person who let him in as tenant as landlord.

Accordingly, I hold that there was no denial of title of landlord on the part of the tenant.

10. In view of the above wherein I have held the notice of termination of tenancy to be valid and that there is no denial of title, it is not necessary to express final opinion regarding the finding of the Courts below that in case of denial of title by the tenant it is not necessary to terminate the tenancy before filing the suit. However, I express my grave doubts about the correctness of the view of the Courts below in this regard.

11. The next question to be decided is the effect of the agreement. In this regard learned Counsel for tenant-petitioner has cited an authority of the Supreme Court in [R. Kanthimathi and Another Vs. Beatrice Xavier \(Mrs\)](#), In the said authority landlord entered into an agreement for sale with the tenant for Rs. 25,000 out of which substantial amount of Rs. 20,000 was received by the landlord. In the agreement it was specifically provided that "property demised has already been surrendered to your possession." Interpreting the said words the Supreme Court held that it meant that with effect from the date of the agreement nature of possession changed and from the said date the prospective vendee instead of tenant became possessor of the property in part performance of the agreement for sale. Supreme Court further held in Para 9 that:

Every conduct of the landlady right from the date of entering into agreement of sale, accepting money towards the sale consideration, delivering possession in lieu of such agreement all clearly indicates and has to be construed in law that she repudiated her old relationship of landlord and tenant.

12. However, in the instant case absolutely nothing was stated regarding possession or change of possession in the agreement. On the contrary in Clause 5 of the agreement it was stated that the second party, i.e., petitioner and Mohd. Yusuf Ali would continue to pay the rent to the first party, i.e., respondent No. 1 until registration of the sale deed. This clearly meant that there was absolutely no intention of the parties to change the nature of possession of the petitioner. Petitioner did not say that he made any offer for getting the sale deed executed after paying 80% balance sale consideration. Accordingly, it cannot be said that on and from the date of execution of agreement relationship of landlord and tenant came to an end and petitioner since then continued to occupy the premises in his capacity as prospective vendee/agreement holder.

13. The last argument of learned Counsel for the petitioner that the amount of Rs. 5,000 paid by him under the agreement should have been adjusted under rent is also not tenable. Neither there was any such agreement between the parties nor the petitioner asked the landlord respondent to do that.

14. Accordingly, the writ petition is dismissed.

Tenant-petitioner is granted six months time to vacate provided that:

1. Within one month from today tenant files an undertaking before the J.S.C.C. to the effect that on or before the expiry of aforesaid period of six months he will willingly vacate and handover possession of the property in dispute to the landlord.
2. For this period of six months, which has been granted to the tenant to vacate, he is required to pay Rs. 3,000 (at the rate of Rs. 500 per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the J.S.C.C. and shall immediately be paid to the landlord.
3. Within one month from today tenant shall deposit entire decretal amount due till date before J.S.C.C. for Immediate payment to landlord.
15. In case of default in compliance of any of these conditions tenant shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or decretal amount of Rs. 3,000 is not deposited within one month then tenant shall be liable to pay damages at the rate of Rs. 1,000 per month since after one month till the date of actual vacation.
16. Similarly, if after complying with the above conditions shop in dispute is not vacated on the expiry of six months till actual vacation tenants shall be liable to pay rent/damages for use and occupation @ Rs. 1,000 per month. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and to file execution application for execution of the decree.