

(1999) 03 AHC CK 0040
In the Allahabad High Court
Case No : C.M.W.P. No. 4940 of 1999

Anupam Chakravorty

APPELLANT

Vs

VIth Addl. District Judge, Varanasi and others

RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Limitation Act, 1963 — Article 113, 67
Transfer of Property Act, 1882 — Section 106, 111
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 12(2), 14, 20(2), 25, 25(2)

Citation : (1999) 2 AWC 1467

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : P.K. Ganguly and Murlidhar, for the Appellant; S.C. and S.K. Jaiswal, for the Respondent

Judgement

Sudhir Narain, J.—The petitioner seeks writ of certiorari quashing the order of the Judge, Small Causes Court dated 1.5.1995. decreeing the suit for recovery of arrears of rent, ejectment and damages against the petitioner and the order of the revisional court dated 20.1.1999, affirming the said Judgment in revision.

2. The plaintiff-respondents filed Suit No. 274 of 1981 for recovery of arrears of rent, ejectment and damages against the petitioner and other defendants on the ground that the petitioner had sublet the disputed accommodation and made material alterations in the building. The trial court decreed the suit on 1.5.1995. The petitioner preferred a revision and it has been dismissed by the revisional court on 20.1.1999. The version of plain tiff-respondent No. 3 was that the petitioner had inducted Sri. J.N. Mehrotra and Smt. Kamla Chakravorty as partners of the firm M/s. Chakravorty and Company in the year 1972. He again inducted Sri J.L. Tandon as partner in the year 1975 without the landlord's consent and knowledge. On 27.5.1976 Ritam Chakravorty and Smt. Prakash Rani Mehrotra were inducted as partners. The first floor portion of the house was sublet to Sri Salil Bhattacharya and Nilotpal Bhattacharya on 1.4.1989 who were

running a firm styled as M/s. Potters and Company. The eastern portion of the first floor was sublet on 26.5.1976 to firm M/S. C.T.D, comprising of partner P. N. Dutta and J. S. Tandon and others and on 5.4.1977 in this partnership R.K. Kapur and Ritam Chakravorty were inducted as partners. The Judge. Small Causes Court believed the version of the plaintiff and found that the tenant petitioner having sublet the accommodation was liable for eviction.

3. The contention of learned counsel for the petitioner is that the landlord had given the notice terminating the tenancy on 1.9.1980 on the ground of subletting. The suit was filed in the year 1981 but subletting was done three years prior to the service of notice terminating the tenancy and, therefore, it was barred by Article 113 of the Limitation Act, 1963. This submission is based on the ground that the bar for filing a suit against the tenant is provided u/s 20, of the U. P. Urban Buildings (Regulation of letting. Rent and Eviction) Act 1972 and under this Section, various grounds have been given on the basis of which a tenant can be evicted. Section 20 (2) e), provides that if the tenant has sublet in contravention of the provisions of Section 25, or as the case may be of the old Act the whole or any part of the building, he shall be liable for eviction. The subletting is cause of action for filing the suit against him. There is no provision under the Limitation Act, 1963, providing for limitation in filing suit against a tenant when a ground for eviction exists under a Statute. It is contended that the residuary Article 113 should be taken as the limitation for filing the suit which provides that any suit for which no period of limitation is prescribed elsewhere in the Schedule, it can be filed within three years when the right to sue accrues.

4. The limitation for filing the suit for eviction against the tenant is provided under Article 67 of the Limitation Act, 1963, which reads as follows :

Description of suit.

Period of initiation

Time from which period begins to run

67.

By a landlord to recover possession from the tenant

12 years

When the tenancy is determined. "

There is no Article under the first Schedule of the Limitation Act which provides for the limitation for determining the tenancy by a landlord. The tenancy is terminated u/s 106 of the Transfer of Property Act. Section 111 of the Act provides various other modes of determination of the tenancy and one of the modes is under clause (h) of Section 111 when the tenancy is determined by a notice to quit the property leased, given by one party to the other. Sub-section (2) of Section 20 of the Act provides the various grounds for eviction of a tenant but except the notice of demand as contained under clause (a) of Section 20 (2)

of the Act, none other ground provides for giving a notice by the landlord to the tenant intimating about the cause of action for filing the suit against him. The landlord can file a suit on the ground of subletting but while giving the notice u/s 106 of the Transfer of Property Act terminating the tenancy, he is not required to give the grounds for determining the tenancy because it is a notice simpliciter u/s 106, of the Transfer of Property Act.

5. Section 20 (2) of the Act further does not provide that the cause of action which may arise at one point of time for filing the suit for eviction on the ground mentioned u/s 20 (2) of the Act should continue till the filing of the suit. If the tenant has raised construction or made any other material alteration which had diminished the value of the property but by the time of filing of the suit or subsequently thereafter it is removed, he cannot plead that the cause of action which did arise, has disappeared before filing the suit or subsequent thereto. Similarly when a tenant has sublet an accommodation, the cause of action for filing the suit arises and it is not necessary that the sub-tenant must continue till the date of filing of the suit, if the tenant has used an accommodation for inconsistent user, he might have again changed the user but the bar created u/s 20 (2). of the Act for filing the suit for eviction is removed. The Act does not provide for any period of limitation for filing the suit on the grounds mentioned therein. In *Sallu Lall v. Mani Ram*. 1962 ALJ 44 (Summary), the Court interpreting Section 3 (1) e), of U. P. (Temporary) Control of Rent and Eviction Act, 1947, which provided that if the tenant who has sublet the whole or any portion of the accommodation without permission of the landlord was liable for eviction, held that as soon as the tenant sublets the accommodation or any part thereof without permission of the landlord, the bar created by Section 3, against suing for ejectment without permission of the District Magistrate is removed and it thereafter becomes open to the landlord to exercise his right to sue for ejectment. The mere fact that a landlord may not, even after coming to know that the tenants has sublet the accommodation or any part thereof, institute a suit for ejectment, would not deprive the landlord of his right to institute such a suit if and when he is pleased. Article 113 of the Limitation Act. 1963, will not be applicable because the right to sue against the tenant arises only after determination of the tenancy. Section 20 (2) of the Act only creates a bar to file a suit for eviction even though the tenancy has been determined as provided under the Transfer of Property Act. Once the bar is removed, the suit can be filed for eviction within twelve years from the date of determination of the tenancy.

6. The second submission of learned counsel for the petitioner is that there were two separate tenancies but the tenancy was terminated by a single notice and only one suit was filed which is not permissible under law. The petitioner was inducted as a tenant of the premises in question in the year 1936 under an agreement dated 25.3.1936. Later on the petitioner was let out the first floor of the premises in the year 1960 following the allotment order dated 26.2.1960. The petitioner since the year 1960 paid the rent jointly. The trial court recorded a finding that after the first floor was let out, the tenant paid the rent jointly for

both the portions and one receipt was issued in respect of the whole building. It has also relied upon a letter of N. L. Chakravorty, father of the petitioner, in which he had stated that he was tenant of the entire premises on a rental of Rs. 100 per month. The rent of both the portions was Rs. 100 per month. If originally one portion was let out and later on another portion was let out separately but the tenant agrees to pay the rent Jointly and the intention of the parties is to create one tenancy, a single notice determining the tenancy can be given and one single suit is maintainable for eviction. In *Smt. Samundri Devi and another v. Nand Kishore Marwah and others*. 1987 ALJ 255, it was held that where there were two distinct tenements, the tenancy can be terminated by a single notice u/s 106 of the Transfer of Property Act and one single suit in respect of the two tenements was maintainable. The Court relied upon the decision in *Murari Lal Agarwal v. Mithan Lal* 1977 41 AWC where the Court upheld the plea that the termination of three tenancies created separately in favour of the same defendant-tenant by a single notice u/s 106 of the Transfer of Property Act was not invalid. In *Kishan Lal Singhania Vs. District Judge, Kanpur Nagar and another*, , the Court upheld the validity of the notice terminating the tenancy and filing one single suit by the landlord even though two portions of the same building might have been let out on different dates for different rents as the landlord was, entitled to composite rent of both the flats, may be that amount might have been paid on different dates or in two cheques. Learned counsel for the petitioner has placed reliance upon *Babulal Shamrao Joshi Vs. Manubhai C. Bhatt and Others*, , wherein it was held that if there were two different tenancies, they cannot be clubbed by Court for fixing mesne profits. This case has no application to the facts of the present case. In view of the factual backdrop and the legal position the suit filed by the plaintiff-respondent after terminating the tenancy by a single notice in respect of the premises in question was valid.

7. The last submission is that the landlord had acquiesced in the sub-tenancy and the suit should have been dismissed on the ground of waiver of the rights created in favour of the landlord. It is urged that Section 12 (2) of the Act provides that in case of a non-residential building where a tenant carrying on business in the building admits a person who is not a member of his family as a partner or new partner, as the case may be. the tenant shall be deemed to have ceased to occupy the building. But this provision does not prohibit the landlord to give consent to the tenant to admit a partner in writing. It may be implied consent and if there is such an implied consent the landlord cannot turn and say that this admission of a partner amounts to subletting u/s 25, of the Act as sub-section (2) of Section 25, of the Act does not contemplate any consent of the landlord in writing. It is not necessary to further examine this aspect as the Courts below have recorded a finding that the landlord never gave consent to subletting. It is further urged that erstwhile owner and landlord of the property had not raised an objection in regard to subletting, the purchaser from such owner cannot seek eviction of the tenant on the ground of subletting. This submission cannot be sustained. The right of a purchaser is not restricted under

any law in regard to filing of the suit on any of the grounds mentioned under the Act.

8. One of the grounds is that those persons who have been accepted as a tenant are entitled to the benefit of Section 14 of the Act as they were inducted as tenant with the consent of the landlord. As noted above, the Courts below have recorded a concurrent finding that the landlord had not given the consent for admitting any other person as a tenant or a partner, this plea is not open to the petitioner.

9. In view of the above discussion, I do not find any merit in this writ petition. It is accordingly dismissed. The parties shall bear their own costs.