
(1963) 03 AHC CK 0019
In the Allahabad High Court
Case No : Second Appeal No. 3899 of 1960

Badri Prasad

APPELLANT

Vs

Lakshmi Narain

RESPONDENT

Date of Decision : 12-03-1963

Acts Referred:

General Clauses Act, 1897 — Section 27

Citation : AIR 1964 All 426

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

Bench : Single Bench

Advocate : Gyan Prakash, for the Appellant; S.S. Bhatnagar, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is landlords' second appeal from the decision of Civil Judge, Meerut, dismissing his suit for the ejectment of a tenant. The plaintiff-appellant Badri Prasad Goel is the landlord of a shop in Meerut Cantt. of which the defendant-respondent Laxmi Narain is the tenant. He alleged in his plaint that the tenant fell into arrears of rent which he did not pay in spite of the service of a notice of demand. The defendant resisted the suit and denied that he had committed any default in payment of rent, and also pleaded that no notice was served on him. The trial Court believed the plaintiff and decreed the suit. On appeal the learned Judge held that the plaintiff had failed to prove that any notice was served on the tenant and dismissed the suit for ejectment, while upholding the decree for arrears of rent. The plaintiff has now come to this Court in second appeal.

2. Mr. Gyan Prakash for the appellant urged only one point in support of this appeal. He relied on Section 27 of General Clauses Act which provides:

"Where any central Act or regulations made after the commencement of this Act authorised or requires any document to be served by post..... then, unless a different intention appears, service shall be deemed to be effective by properly

addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the course of post."

Learned counsel argued that this section is divisible into two parts, (1) dealing with the mode of service and the other with the time of service. According to learned counsel, the mode of service prescribed under this section is to send a letter by registered post after properly addressing and prepaying it, and if this is done, "service shall be deemed to be effected" and no evidence to the contrary is admissible. He argued that the words "unless the contrary is proved" apply only when the time of delivery of such notice is in question. I cannot agree. In *In Re: L.C. De Souza*, it was held that the words "unless the contrary is proved" in Section 27 refer both to the service of the letter and the time of service and even when a notice has been posted, properly addressed and prepaid and in a register cover, the presumption as regards the service is not conclusive but rebuttable. In the present case the appellant proved that he had sent a letter by registered post, but the appellate Judge was not inclined to accept the testimony of the postman who deposed that he took the letter to the defendants who refused it. In view of this finding, which cannot be challenged in second appeal, Section 27 is of no avail to the appellant.

3. Moreover the question of presumption arises only in the absence of other evidence, but where the sender of the letter produced the postman who is alleged to have delivered it and he is disbelieved by the Court, no question of presumption u/s 27 can arise. To, allow the sender to fall back on the presumption after his evidence has been disbelieved would nullify the finding of the Court on the evidence itself.

4. No other point was urged.

5. The appeal is dismissed with costs.