
(1953) 11 RAJ CK 0007
In the Rajasthan High Court
Case No : Second Appeal No. 1 of 1953

Baluram Sohanlal	Vs	APPELLANT
Bhag Chand and others		RESPONDENT

Date of Decision : 10-11-1953

Acts Referred:

Citation : (1953) 11 RAJ CK 0007

Hon'ble Judges : B.N. Nigam, J.C.

Bench : Single Bench

Advocate : Mukut Behari Lal Bhargava, for the Appellant; Swarup Narain Agarwal for Respondent No. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Nigam, J.C.

1. Sir Bhag Chand Soni and another filed Civil Suit No. 170 of 1947 against Jankilal and Baluram claiming a decree for ejectment from the premises in suit, a decree for Rs. 865/12/- on account of arrears of rent and excess amounts realized by the tenants from the sub-tenants and a decree for future rent and excess recoveries. The suit was contested and the learned Second Additional Subordinate Judge decreed the suit as prayed.

Against that judgment and decree, Baluram, defendant no. 2, filed an appeal before the District Judge (Civil Appeal No. 80 of 1948). This appeal was disposed of by the learned Additional District Judge by his judgment dated 25-10-1952. The learned Additional District Judge upheld the decree for ejectment and for Rs. 624/5/6 on account of arrears of rent and mesne profits, assessing mesne profits at Rs. 110/- per month. He also granted mesne profits at Rs. 110/- per month from the date of the suit till recovery of possession, this part of the decree being executable only on payment of additional court-fee.

Against that judgment and decree, Baluram, defendant no., 2, has come up in second appeal. I have heard the learned counsel for the appellant and the

learned counsel for respondents 1 and 2. Respondent no. 3 has not put in appearance despite service of notice and the appeal has been heard ex parte against him.

2. Only two questions have been raised in this appeal. The learned counsel for the appellant has urged that Jankilal, respondent no. 3, was not served with a notice of ejectment. The notice that was sent to him is Ex. 18. There is an endorsement on the envelop indicating that Jankilal had disappeared in order to avoid taking the registered letter. P.W. 4 Kan Singh stated that when he went to Jankilal's shop, he did not find him and then made the endorsement. The learned counsel has referred me to the decision in - "Sheo Ram v. Rameshwar Lal", AIR 1954 Ajmer 45 (A). Then relying on - "Govinda Chandra v. Dwarka Nath", AIR 1915 Cal 313 (B) and "Raja Udrum v. Khanbeg Amirbeg. AIR 1918 Nag 202 (C), I had held that evidence indicating the actual tender of the letter to the defendant and its refusal by him should have been adduced.

The learned counsel for respondents 1 and 2 has urged that the terms of S. 106 require that the notice should be sent by post to the party. When a notice is sent by post and evidence given that the notice is so sent, a presumption arises that the letter in question reached its destination if the evidence also indicates that it was not received back undelivered. In the present case, no such presumption can be raised as the letter has been received back undelivered, and has been produced by the plaintiffs. If evidence is produced to show that the letter was tendered and refused by the addressee, it may be presumed that it was served on him. There is no such evidence on the record. As such, it must be held that the notice was not "sent by post" to Jankilal.

3. The learned counsel for the appellant has relied on - Bejoy Chand Mahatab Vs. Kali Prasanna Seal and Others, and has urged that in the absence of service of notice on both the joint tenants, service must be deemed to be insufficient. In the present case, the notice was sent separately to each of the two joint tenants and I have held that one of the joint tenants was not served. It must, therefore, be held that the tenancy was not] validly terminated.

4. The learned counsel for respondents 1 and 2 has urged that the tenancy was created in favour of the firm Jankilal Baluram and as such, service of notice on one of the partners must be held to be sufficient service on the firm. There is no evidence to indicate that the premises were rented by a partnership firm. Rent note Ex. 20 indicates that the premises were rented by two individuals who were proprietors of the firm Jankilal Baluram. In the Khatas (copies Exs. 40 and 41), there is no mention of the partnership firm as the tenant of the premises in suit. In receipts Exs. 26-37, there is no mention of the partnership firm being the tenant of the premises in question. As such, I find no evidence in support of the contention that the premises in suit were rented by a partnership firm and not by the two defendants individually.

5. It, therefore, follows that the plaintiffs were not entitled to a decree for

ejectment.

6. The second contention of the learned counsel for the appellant is that the learned Additional District Judge was wrong in granting a decree for mesne profits. The learned counsel points out that in the plaint the plaintiffs claimed rent upto 10-3-1947. They also claimed a decree for future rent and excess recoveries. The learned counsel has urged that the plaintiffs did not claim any mesne profits or damages for use and occupation. It is also pointed out that a suit for rent on the basis of a subsisting tenancy is different from a suit for mesne profits or damages for use and occupation against a trespasser. The learned counsel has referred me to - "Umrao v. Mt. Mahadevi", 1935 AMLJ 4 (E). I am of opinion that the plaintiffs, not having come to court claiming damages for use and occupation or mesne profits but having sued on the basis of a subsisting tenancy are not entitled to a decree for mesne profits.

7. The learned Additional District Judge has already repelled the contention that the plaintiffs were entitled to claim the excess amount realized by the defendants from the sub-tenants. There is no cross-appeal or cross-objection on that point.

8. No other point has been pressed before me.

9. Accordingly, I accept this appeal in part and direct that the plaintiffs' suit for ejectment and for excess amount claimed by them at the rate of Rs. 58/- per month be dismissed. The plaintiffs will be entitled to a decree for Rs. 560/5/6 on account of arrears of rent and cost of notice with proportionate costs. The plaintiffs will also be entitled, on payment of the necessary court-fee to a decree for future rent, i.e. rent upto Kartik Badi 4, S. 2010, i.e., 26-10-1953 at the rate of Rs. 70/- per lunar month. Of course, if any court-fee has already been deposited by the plaintiffs after the institution of the suit, they will be entitled to get that amount deducted from the amount now required.

10. In this Court and in the Court of the Additional District Judge, the parties will receive and pay costs in accordance with their final success and failure.