
(2006) 09 AHC CK 0082
In the Allahabad High Court

Bishwa Nath Prasad Verma

APPELLANT

Vs

Jagdish Narain Srivastava (D) through L.Rs.

RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106, 111, 114

Citation : (2007) 1 AWC 885

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Judgement

Poonam Srivastava, J.—Heard Sri Bhagwati Prasad Singh, earned Counsel for the revisionist, and Sri U.N. Sharma, Senior advocate, assisted by Sri Sachindra Mohan, advocate for the contesting plaintiff-respondent.

2. Counter and rejoinder-affidavits have been exchanged which are on record.

3. The defendant-revisionist is a tenant of the upper portion of the House No. 11, C.Y. Chintamani Road, Allahabad (hereinafter referred as disputed premises) which was let out by the plaintiff-respondent. According to the revisionist, the tenant instituted a Suit No. 1127 of 1996 against the plaintiff-respondent on 20.11.1996 claiming a decree for injunction restraining the landlord from ejecting the revisionist. It is submitted that the said suit is still pending. Another Case ,No. 4 of 1997 was preferred by the tenant to restore the water supply or alternatively for permission to take a fresh connection u/s 27 of Act No. 13 of 1972. The plaintiff served a notice on the tenant-revisionist u/s 106 of the Transfer of Property Act claiming arrears of rent w.e.f. 1.5.1994 at the rate of Rs. 2,500 per month and terminated the tenancy vide notice dated 5.12.1996. The tenant sent a reply denying default of payment of rent. It was stated in the reply to the notice that the rent was paid up till November, 1996. The rate of rent was denied and also that the notice terminating the tenancy by the landlord was on mala fide ground on account of institution of the injunction suit. An eviction suit was instituted on 16.1.1997 which was numbered as Suit No 2 of 1997. Written

statement was filed by the tenant denying the plaint allegation and also claiming that the rate of rent was Rs. 1,500 per month and that there was no default. Since the money order was refused by the landlord as such the rent was deposited u/s 30 of the Act No. 13 of 1972 and is regularly deposited. A counter-claim was also set up by the tenant claiming damages for new water connection due to the curtailment of the amenities by the landlord. The suit was decreed vide judgment and order dated 30.4.2002 for arrears of rent and damages w.e.f. 1.5.1994 at the rate of Rs. 2,500 per month. The said judgment was passed by the Additional District and Sessions Judge, Court No. 10, Allahabad.

4. Sri Bhagwati Prasad Singh has raised a number of arguments. He has emphatically disputed the rate of rent to be Rs. 2,500 per month. According to the counsel for the revisionist, the rate of rent was Rs. 1,500 per month and also the period since when the rent was due was challenged. It is also argued that the building was covered under the Act No. 13 of 1972 and alternatively in case the Rent Control Act is not applicable, benefit of Section 114 of the Transfer of Property Act, 1882 has been claimed since the entire rent and decretal amount has been deposited and he continues to deposit the same.

5. The court below framed a number of issues on the question of rate of rent, whether it is Rs. 2,500 or Rs. 1,500 per month and also whether any rent was due or not? It is submitted that the contract of tenancy between the landlord and tenant was on the intervention of Late Hari Mohan Srivastava, retired District Judge, who was father-in-law of the tenant. Since he is no more alive, the question of rate of rent was to be established by the landlord himself. He examined himself as P.W. 1 and specifically stated that the rate of rent was Rs. 2,500. He examined Satya Prakash as P.W. 2 and Jai Prakash as P.W. 3 who supported the claim of the landlord. The court below while holding that the rate of rent of Rs. 2,500 came to this conclusion that there are seven rooms on the first floor and one garage on the ground floor in his tenancy, which has not been disputed by the defendant-tenant. The disputed premises is situated in Darbhanga Colony which is a posh locality of Allahabad. In the year when the tenancy was entered into, the rate of rent for accommodation of seven room and one garage cannot be said to be excessive by any stretch of imagination. The landlord admitted in his statement that though at the relevant time the going rate of rent was Rs. 4,000 per month but since Late Hari Mohan Srivastava, retired District Judge was involved in the transaction, therefore, the rent was fixed at a lower rate. The court below recorded a specific finding to the effect that rate of rent was Rs. 2,500 per month. This finding has been assailed by Sri B.P. Singh. He has emphatically stated that prior to the revisionist tenant came in occupation of the disputed accommodation, N.T.P.C. was the previous tenant who used to pay the rent at the rate of Rs. 1,800 per month plus Rs. 200 towards water charges, meaning thereby Rs. 2,000 per month. On this basis it is argued that since it is an admission of the landlord that he had agreed to accept lower rent, the rate of rent was necessarily to be below Rs. 2,000. The landlord filed counterfoils of the cheques in evidence in support of the rate of rent given by

N.T.P.C. It is an admitted position that the garage was not given on rent to the N.T.P.C. It is argued that since it was a public undertaking, it is well known that the rate of rent is higher where such establishment are tenant whereas private persons are charged lower rate of rent. The landlord has failed to establish the rate of rent as Rs. 2,500 specially in absence of a written agreement between the revisionist and landlord. The court below has committed an illegality in coming to a conclusion that the rate of rent is Rs. 2,500 and consequently the applicability of the Rent Control Act. Emphasis has been laid on the statement of the landlord given before the court below wherein he has admitted in paragraph 8 that previously an Engineer Sri M.R. Gupta was the tenant at the rate of Rs. 1,850, besides the electricity and water charges. There was a written agreement but despite such an admission, the landlord did not bring it on record and, therefore, adverse inference was liable to be drawn. It is also submitted that D.W. 1 (revisionist) has stated on oath that he did not know Sri Satya Prakash Srivastava advocate and Jai Prakash Jaiswal who were adduced as witnesses by the landlord. The settled principle of law is that it is the burden of the plaintiff to prove the rate of rent and statement by the landlord is not sufficient.

6. Sri U.N. Sharma has disputed the arguments of Sri Bhagwati Prasad Singh. He has submitted that N.T.P.C. is a Government company and the common assumption that a corporate body pays higher rent cannot be accepted. The assertion of the learned Counsel for the revisionist to the contrary is farfetched. It is only private companies who pay exorbitant rent. Besides the previous tenant did not have the garage in his tenancy and the water and electricity charges was in addition to the rent. The revisionist was paying a consolidated rent inclusive of water and other charges. Besides he was given an additional accommodation as a motor garage. In the year 1994 the rate of rent inclusive of taxes for seven rooms and a garage, by no stretch of imagination can be said to be exorbitant. At the relevant time, the going rate of rent was Rs. 4,000 therefore, just because the landlord stated in his statement that he had given the accommodation at a lower rate of rent on account of intervention of Sri Han Mohan Srivastava, cannot be a basis to hold that the rate of rent was less than Rs. 2,000. At this stage, the revisionist has failed to point out any reason to come to the conclusion that the court below made a wrong assessment of the evidence on the basis of the pleadings.

7. I have considered the arguments of the respective counsel for the parties. So far the findings on Issue No. 1 is concerned regarding rate of rent, it cannot be said that the conclusion arrived at by the court below is either illegal or erroneous. Cogent reasons have been given by the court below while holding and concluding the rate of rent as Rs. 2,500 per month. Admittedly the extent of accommodation in his tenancy was more than, what was given to the previous tenant. It is also common knowledge that the rate of rent is always enhanced when a new tenant is inducted. Besides, the findings arrived at by the court below is a finding of fact which cannot be interfered in exercise of revisional jurisdiction unless and until it can be said that it is against the evidence on

record, therefore, I do not find any reason to interfere in the findings, so far issue No. 1 is concerned.

8. The next issue decided by the court below is the period for which the rent was due, whether the tenant had deposited the rent up till November, 1996 or he was in arrears w.e.f. 1.5.1994. It is submitted that the proceedings initiated by the landlord was mala fide on account of the reason that the tenant had preferred an injunction suit and also a suit on account of curtailment of amenities. Admittedly, the landlord had not given any rent receipt and therefore, there is no basis to claim arrears w.e.f. 1.5.1994. It is also submitted that since the landlord had refused to accept the rent, it was being deposited u/s 30 of the Act No. 13 of 1972. He was not defaulter and rent was deposited up to November 1996, on refusal to accept the rent tendered to the landlord. Assuming the submission of the counsel for the revisionist to be correct, that in absence of rent receipts and also the fact that the rent was being deposited u/s 30 of the Act No. 13 of 1972, even then it is an admitted fact that the rent was deposited at the rate of Rs. 1,500 per month. I have already come to a conclusion that the rate of rent was Rs. 2,500 per month, therefore it cannot be said that there was no arrears whatsoever. Besides the findings recorded on issue No. 2 by the court below is also a finding of fact and I do not think that it is appropriate to enter into the realm of reappraisal of evidence in exercise of jurisdiction u/s 25 of the Small Causes Courts Act.

9. Counsel for the revisionist has emphatically argued that the tenant was entitled to the benefit of Section 114 of the Transfer of Property Act since the Court was of the view that the Act No. 13 of 1972 was not applicable. The tenant was automatically entitled for the relief u/s 114 of the Transfer of Property Act. Since the court below failed to exercise its jurisdiction to award benefit of the said provisions, the judgment stands vitiated in law. This question was never raised before the court below but Sri Bhagwati Prasad Singh has stated that the Ground No. 7 in this revision has specifically been raised and it is a legal question therefore, he is entitled to advance argument. Ground No. 7 of the grounds of revision is quoted below:

(vii) Because in any view of the matter, even assuming without admitting that the Act will not apply, the defendant-applicant is entitled for the benefit of Section 114 of the Transfer of Property Act.

Section 114 of Transfer of Property Act is quoted below:

114. Relief against forfeiture for non-payment of rent.--Where a lease of immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against forfeiture; and

thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

10. Reliance has been placed on a number of decisions. The first decision is, *Surjeet Singh v. A.D.J. Haridwar* 1993 ARC (V.2) 470 : 1994 (1) AWC 17. The second decision is *Baldeo Raj v. V.S. Shukla, A.D.J., Roorki, Haridwar and Ors.* 1993 (1) ARC 552. On the basis of the aforesaid two decisions, it is argued that this Court has specifically ruled that in the event, a conclusion is arrived at that the provisions of U.P. Act No. 13 of 1972 are not applicable then the tenant immediately becomes entitled for benefit of Section 114 of Transfer of Property Act, on the condition that the requirements of the said provisions stands fulfilled; meaning thereby that where a lease of immovable property has been determined for non-payment of rent, and the lessor seeks to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessee, the entire arrears of rent together with interest and full costs of the suit. The Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee from an order of eviction. It is argued before me that the revisionist was depositing rent at the rate of Rs. 1,500 u/s 30 of the Act. Subsequently the rent was deposited at the same rent after the institution of the suit in the Court and subsequent to the judgment, the entire decretal amount stands deposited, and therefore, the decree of ejectment is liable to be set aside.

11. Sri U.N. Sharma has disputed this argument of Sri B.P. Singh and has submitted that in the instant case, there is no applicability of the provisions of Section 114 of Transfer of Property Act. The benefit could be extended only in a cases where there is a written contract followed by forfeiture. It is condition precedent specially in view of Section 111(g) of Transfer of Property Act. The word forfeiture has been elucidated in Sub-clause (g) which is quoted below:

111. Determination of lease.

(g) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself, (or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event), and in (any of these cases) the lessor or his transferee (gives notice in writing to the lessee of) his intention to determine the lease.

12. In the instant case, admittedly there is no written contract of tenancy, therefore, Section 114 of Transfer of Property Act will not come into play at all. In support of his argument, he has cited a number of decisions, in the case of *Sardar Kartar Singh Vs. Smt. Phoolwati*, it was held that Section 114 of Transfer of Property Act applies to cases where the forfeiture relied upon by the plaintiff is one incurred under the terms of 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. The next decision relied upon by Ram Bali Pandey (Decd.) through L.Rs. Vs. IInd Additional Judge, Kanpur and others, where it was held that in a suit for eviction on the ground of arrears of rent where the tenancy was terminated simplicitor u/s 106 of Transfer of Property Act then the provisions of Section 114 of Transfer of Property Act cannot be attracted.

It is an admitted position that the tenancy has been terminated by giving a notice u/s 106 of Transfer of Property Act and therefore, in view of the decision of this Court, it cannot be said to be a case of forfeiture u/s 111(g) of Transfer of Property Act.

13. The next decision cited by Ram Prasad Rai Vs. Raghunath Prasad and Another, while considering the relief u/s 114, it was ruled that the provisions contemplate tender or payment at the hearing of the suit, i.e., during the trial court before the suit is commenced. The deposit of decretal amount and payment made in pursuance to a decree of the Court cannot be taken into account for purpose of extending benefit u/s 114. Admittedly in the instant case, the entire arrears of rent has not been deposited before the suit proceeding commenced but the decretal amount was deposited subsequently and continues to be deposited during the pendency of this revision, in the circumstances, the claim of the revisionist cannot be allowed. Besides, it is also to be noticed that the relief u/s 114 against forfeiture is a discretionary power u/s 114. Since this was neither claimed before the court below nor the entire amount was deposited at the commencement of the suit, I am not inclined to grant the benefit of Section 114 of Transfer of Property Act.

14. There are several other decisions cited on behalf of the contesting respondent. Om Shanti Swarup Vs. Prasanna Kumar, It is argued that the revisionist did not lay any foundation or raised any question in respect of benefit u/s 114, he cannot be permitted to claim the benefit since he was liable to lay a foundation before the court below.

15. After considering the entire facts and circumstances of the case, I come to a conclusion that the submissions on behalf of the landlord is absolutely correct that it is not a case of forfeiture as provided u/s 111(g) of Transfer of Property Act. There is no written contract and the notice terminating the tenancy u/s 106 of Transfer of Property Act cannot be said to be a forfeiture contemplated by Transfer of Property Act.

16. In the facts and circumstances, I am not in agreement with the submission made by the counsel for the revisionist. Besides the revisionist is also not entitled for any discretionary relief whatsoever. The Apex Court as well as this Court has elucidated in a number of decisions the scope of revision u/s 25 of the Provincial Small Causes Courts Act. The findings of the court below are on the basis of the oral evidence adduced by the respective parties. The trial court has considered the evidence and it cannot be said that the approach is erroneous

whatsoever. The only basis on which the findings on the several issues of the court below has been assailed by Sri B.P. Singh is that the court below failed to take into consideration the conduct of the parties. The suit was instituted as a counterblast of the two suits preferred by the tenant against the landlord. This alone cannot be a good ground for setting aside the judgment of the court below. The appraisal of evidence by the trial court cannot be adjudged afresh specially when the trial court had an occasion to watch the demeanour of the witnesses. In the case of Dilawar Khan v. IVth Additional District Judge and Ors. and also Suresh Kumar Sahu v. Ram Chandra Sahu and Anr. this Court was of the view that normally the Court shall not interfere with the finding of fact unless and until it comes to a conclusion that the material finding has been ignored or the approach of the court below was erroneous. Nothing has been pointed out by the counsel for the revisionist. It has not been pointed out as to what is the relevant evidence that has been ignored or the approach of the court below is altogether erroneous. Merely on the pleading of "mala fide" on the part of the landlord the judgment of the court below cannot be set aside.

17. For the reasons discussed, I do not find any merit in the revision. It is accordingly dismissed.

18. After the judgment was delivered a request was made on behalf of the revisionist seeking some time to vacate the premises in question.

19. After hearing counsel for both the parties, I permit the revisionist to remain in occupation of the premises in question for a period of four months and handover its peaceful possession to the plaintiff respondent on or before 4.1.2007. The revisionist shall file an undertaking before the concerned court within three weeks from today in the court below that he will vacate the premises in question by 4.1.2006 and shall continue to deposits the damages at the rate fixed in the suit by the court below. The revisionist shall not be dispossessed from the premises in question subject to filing of the undertaking within three weeks from today.