
(2009) 08 AHC CK 0124
In the Allahabad High Court
Case No : Civil Revision No. 295 of 2000

Brij Bhushan Rai

APPELLANT

Vs

Devendra Nath Verma

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Stamp Act, 1899 — Article 35(i), Schedule 1

Citation : (2011) 1 CivCC 71

Hon'ble Judges : Prakash Krishna, J

Judgement

Prakash Krishna,J.

The present revision has been filed against the order dated July 4, 2000 passed by the XIIIth Additional District Judge, Varanasi whereby and whereunder it has been held that the instrument in question which is in the nature of a rent agreement is duly stamped. The plaintiff opposite party instituted the suit No.6 of 1993 against the present applicant on the allegations that the plaintiff is the owner of newly constructed three shops towards the west of premises No. CK 64/98, Heerapura, Varanasi. The defendant applicant herein is the tenant thereof w.e.f. 1st of June, 1987 at a monthly rent of Rs.2,000/-. The tenancy of the defendant began on the first date of each month and ended on the last date of the same month. The tenancy was oral and it was accompanied with the delivery of possession. It was agreed that there would be enhancement in the rent by 15 per cent after every five years. The defendant is in arrears of rent from July, 1992 and has failed to pay enhanced rent for the period earlier to it. The tenancy has been terminated. The relief for ejectment, a decree for recovery of Rs.14,471/ being rent for the month of January, 1992 and mesne profit amounting to Rs.4,600/ from 6th of January, 1993 up to the date of suit, pendente lite and future mesne profit etc. has been claimed. In the written statement the defendant applicant pleaded that the plaintiff landlord agreed to let out the said accommodation to the defendant subject to the condition that there may be no allotment intervening the contract of tenancy and the defendant tenant will make a security deposit of Rs.1 Lakh with the plaintiff without any to

the effect which would be refundable at the time of end of the tenancy without any interest thereon. The agreement of tenancy was oral which was subsequently reduced in writing.

The suit is still pending decision before the trial court. The plaintiff opposite party filed a document dated 4th of May, 1987 which is in the form of an agreement executed by the defendant applicant in favour of the plaintiff opposite party. An application No. 33 C, giving rise to the present revision was filed by the defendant applicant on the ground that the said document dated 4th of June, 1987 is deficiently stamped. The said document is in respect of indeterminate period of lease and therefore, the stamp duty should have been paid accordingly. But the same has not been paid and therefore, the said document be impounded and should be sent to the competent authority for recovery of the stamp duty.

The court below by the order under revision has rejected the said application and has found that there is no question of compounding the said document or sending it to a competent authority as it is in the nature of a memorandum. Challenging the aforesaid order, the present revision has been filed.

Heard the learned counsel for the parties and perused the record. The learned counsel for the applicant in support of the revision has placed reliance upon a judgment of the Apex Court in Avinash Kumar Chauhan Vs. Vijay Krishna Mishra : 2009 Allahabad Civil Journal 478. He submits that on a reading of document as a whole it is but obvious that through the said document, a lease for indeterminate period has been created. In contra, the learned counsel for the plaintiff landlord, on the other hand, submits that the said document is in the nature of memorandum of an agreement to lease and as such the proper stamp duty amounting to Rs.6/ has been paid thereon. At the relevant point of time the prescribed stamp duty on such document was Rs.6/ only.

Carefully considered the submissions of the learned counsel for the parties. A copy of the document dated 4.6.1987 has been annexed as Annexure 6 to the affidavit filed in support of the stay application. Preamble of this document provides that the accommodation in question detailed in the schedule of the document has been taken by the executant of the document namely Shri Devendra Nath Verma on rent as monthly tenant. It reads that to put on record the terms of tenancy, as desired by the landlord, the document was executed. Thereafter, the terms of the tenancy have been enumerated from condition nos. 1 to 8. On a reading of the document as a whole, it is obvious that the tenancy between the parties was month to month tenancy. The said fact also finds mention in the very opening part of the document. The condition No.8 provides that "that the terms of the tenancy shall be for 11 months." The condition No.7 on which much emphasis was laid by the learned counsel for the applicant provides that "that the rent payable by me shall be enhanced by 15 per cent every five years in case the tenancy continues." The only argument put by the learned counsel for the applicant is that by the said document it creates a lease for indefinite period. A reading of the document as a whole leaves no room of

doubt that the tenant took the accommodation in question on rent and he became its monthly tenant. In view of the specific provision as contained in clause 8 that the tenancy was for only 11 months, the argument of the learned counsel for the applicant that since there is an enhancement clause for enhancing the rent by 15 per cent every five years, the tenancy was for indefinite period, has got no substance. In this regard the specific clause is clause no.8. At the most the clause no.7 is suggestive of the fact that there will be enhancement of rent by 15 per cent after five years in case the tenancy continues. However, it has nothing to do with the duration of the lease. Apart from the above, Section 107 of the Transfer of the Property Act provides the manner of making leases. A lease of immovable property from year to year or for any term exceeding one year or reserving yearly rent, can be made only by a registered instrument. All other leases of immovable property will be made either by registered instrument or by oral agreement accompanied by delivery of possession. The learned counsel for the applicant has admitted that in the present case, there is no registered instrument. It is own case of the defendant tenant applicant in the written statement that there was an oral agreement between the parties which was accompanied by delivery of possession. Reference can be made to paragraph Nos. 17, 18 and 21 of the written statement. The tenor of the instrument dated 4th of June, 1987 also corroborates that the lease was created by oral agreement accompanied with delivery of possession and only terms of the lease were reduced in writing, on the asking of the plaintiff landlord. The instrument in question is not the basis of the suit nor it has been referred anywhere in the plaint. The argument that the lease was for indefinite period and as such it was required to be stamped accordingly as provided for under the clause 8 of Article 35 of Schedule I of the Stamp Act has got no substance. The lease in question was for a period of 11 months and the stamp duty was payable as per Article 35 (i) of the Schedule I of the Stamp Act. It is not the case of the applicant that the stamp duty has not been paid accordingly.

The argument of the learned counsel for the opposite party that this was an agreement to let and therefore, the stamp duty is not payable, is not correct. Article 4 of Schedule I of Act I of 1879, dealt with an agreement to lease and provided for the same duty as a lease. The present Article about lease including also an agreement to lease. An agreement to lease is chargeable as a lease even though it made mention of the execution of a normal lease deed later. The further argument that the instrument in question is chargeable under the Article 5 of Schedule IB as amended in the State of U.P. is legally untenable. The said Article provides changeability of "agreement or memorandum of an agreement". It does not talk about the agreement to lease. For agreement to lease stamp duty has been provided by Article 35 of Schedule I of the Stamp Act. Article 35 is specific Article dealing with the proper stamp duty as applicable to a "lease". This being a specific Article, all the leases will fall under the said Article.

Avinash Kumar Chauhan Vs. Vijay Krishna Mishra (supra) provides only this much that unstamped document can be impounded and it cannot be admitted in

evidence, even for collateral purpose. The said decision has no application to the controversy on hand. In Hindustan Steel Limited Vs. M/s. Dilip Construction Co. AIR 1969 SC 1238 it has been held by the Apex Court that the Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponents. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument.

In view of the above discussion, I find no merit in the revision. The revision is dismissed with cost. The trial court will do good by hearing and deciding the suit within a period of six months from the date of production of certified copy of this order. It shall not grant unnecessary adjournments to either parties. Adjournment to the defendant applicant, if necessary, should be granted on payment of heavy cost which shall not be less than Rs.500/ per adjournment. The case shall not be adjourned for a period more than two weeks at a time, as the suit is of the year 1993.