

(2005) 10 UK CK 0020
In the Uttarakhand High Court
Case No : Second Appeal No. 650 of 2001

Dinesh Chandra Khanna and Others	Vs	APPELLANT
U.P. Sainik Kalyan Evam Punarvas		RESPONDENT

Date of Decision : 27-10-2005

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 111, 14A

Citation : (2006) 2 UC 858

Hon'ble Judges : J.C.S.Rawat, J

Bench : Single Bench

Advocate : Rakesh Thapliyal, for the Appellant; C.D. Bahuguna, for the Respondent

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—This appeal has been filed against the judgment and decree dated 30-11-1989 passed by Sri S.K. Mishra the then District Judge, Pauri Garhwal in Civil Appeal No. 11/1988 dismissing the appeal arising out of judgment and decree dated 25-9-1988 passed by Sri D.P. Garola in Civil Suit No. 1/1986 decreeing the suit of the Plaintiff.

2. Brief facts of the case are that the Plaintiff/Respondent filed a suit for possession and ejectment of the Appellants/Defendant from the disputed shop on the ground that premises, were given to one-Pratap Singh (Defendant) on rent @ Rs. 300/- per month for the fixed period of five years w.e.f. 01-07-1980 by virtue of a lease deed dated 01-07-1980. The electric and water charges had to be paid by the tenant in addition to the rent. After taking the shop on rent, Pratap Singh joined the services in GRIEF (B.R.O.) and sub-let the said shop to Dinesh Chandra Khanna. But, after expiry of the lease deed of five years Pratap Singh did not vacate the shop. Thereafter, the Plaintiff/Respondent filed a suit against Pratap Singh. Pratap Singh died during the pendency of the suit. The suit was contested by the legal representatives of Pratap Singh and it was alleged in the written statement that it was not agreed in the agreement deed that if the

Defendant No. 1 - Pratap Singh would be re-employed, he would have to vacate the shop. It was further pleaded that Defendant No. 1- Pratap Singh was never re-employed and due to his illness he had obtained the services of Defendant No. 2- Dinesh Chandra Khanna and he was employed as a manager to look after the said shop. Pratap Singh did not sub-let it to Dinesh Chandra Khanna. The Defendant has also pleaded that as per the agreement he used to pay the rent to the Plaintiff's chaukidar and the chaukidar used to take it only after two - three months. When Plaintiff refused to take the said rent, the rent was sent through money order which was also refused by the Plaintiff. It was also alleged in the written statement that Pratap Singh applied for extension of term of the tenancy period, but it was not extended and as such the tenancy was determined by notice. It was further pleaded that three months prior notice was not given to the Defendant before vacation of shop.

3. The learned Munsif framed the necessary issues in the said suit. After framing the issues and after appreciation of evidence, the suit was decreed. Feeling aggrieved by this, the Defendant/Appellants preferred an appeal before the District Judge and the learned District Judge maintained the decree and judgment of the trial court. Both the courts below had held that the Plaintiff/Respondent adduced the evidence of PW1-Jag Mohan Singh, who has stated before the court that the tenancy deed was executed for a period of five years. Both the courts below relied upon the evidence of the Plaintiff. The trial court has further held that the Defendant also sent a letter to the Plaintiff on 13-6-1985 to extend the lease deed for further period of five years from the date of expiry of earlier deed. The said request of the Defendant/Appellant was rejected by the Plaintiff/Respondent on 19-6-1995. Both the courts below had relied upon the said agreement in which it was admitted that the tenancy was only for a fixed period of five years. Both the courts below had also held that the agreement was executed in between the parties, which clearly reveals that the tenancy deed was executed for a period of five years. The learned trial court as well as the appellate court had also held that the said building was sub-let to Dinesh Chandra Khanna. Both the courts below had relied upon the evidence of the Plaintiff and had also relied upon the written reply of the notice sent by Dinesh Chandra Khanna in which he has stated as follows:

? ? ? ? ? ? ?

4. The averments made in the said notice clearly reveal that the said shop was sub-let to Dinesh Chandra Khanna. The learned court below had also relied upon the evidence of Plaintiff and also found that the evidence of the Defendant/Appellants is not reliable. Both the courts below had held that the tenancy was to be determined by efflux of time. As such, the notice was not required. Both the courts below had given a concurrent finding and this Court cannot enter into the re-appreciation of evidence at this stage.

5. In view of the concurrent findings, the following questions of substantial law were framed by this Court.

First substantial question: 1. Whether on the present facts and circumstances of the case the suit of the Plaintiff/Respondent is legally maintainable in the absence of termination of the tenancy of the Defendants in accordance with the agreement after serving three months prior notice.

6. It was contended on behalf of the Appellant that the learned trial court failed to appreciate the fact that no notice for termination of the tenancy had been given to the Defendant/Appellants. It was further contended that according to the conditions of the lease deed, the Defendant/Appellants would have to be terminated after serving three months" prior notice. But, in fact the notice of termination of the tenancy was not ever served upon the Defendant/tenant and as such the court below has committed manifest illegality and material irregularity while holding that no notice is required. The learned Counsel for the Respondent contended that the present suit had been filed after the expiry of five years and there was an agreement between the parties that the Defendant would vacate the premises after a fixed period of five years i.e. 01-07-1985. The tenancy was determined due to efflux of time u/s 111 of the Transfer of Property Act and there was no need to serve or to give any notice to the Defendant. It was pointed out by the learned Counsel for the Plaintiff/Respondent that when the tenancy is for a fixed period the notice is not required. It is equally clear as provided by Section 111 of the Transfer of Property Act that the lease of immovable property determines by various modes therein prescribed. The lease of immovable property determines by efflux of time. The agreement arrived at between the parties only indicates that if the parties determine the lease during the subsistence of the said agreement, they will give a notice of three months to the other party. After the expiry of the agreement, it was the duty of the Defendant/Appellants to vacate the premises and comply with the conditions of the agreement arrived in between the parties. In view of the above, there was no need to give three months" prior notice.

Second Substantial Question: 2. Whether on the facts and circumstances of the case the judgment and decree passed by the courts below is legally justified when no notice of demand and notice terminating the tenancy u/s 106/111 of the Transfer of Property Act was not served on the Defendant/Appellant

7. It was contended on behalf of the Appellant that the lease deed was executed in between the parties in the year 1980 and in pursuance of the provisions laid down u/s 106 of the Transfer of Property Act, it was mandatory on the part of the Plaintiff to send a notice to the Defendant to vacate the premises. As such, the suit was not maintainable. Therefore, the findings of the court below are erroneous and unsustainable. It was further contended that the Plaintiff/Respondent have no locus-standi to institute and file a suit without terminating and determining the tenancy of the Defendant/Appellants. It was further contended that the Appellant gave a letter to the Respondent to extend the said tenancy for further period of five years, but the request of the Appellant was not considered by the Respondent/Plaintiff. As such, he had a right to remain in the

premises. The learned Counsel for the Respondent refuted the contention. Both the courts below had held that the said letter requesting to extend the tenancy was sent by the Appellant on 13-06-1985 to the Respondent and the said request was rejected on 19-6-1985. In view of the findings of the court below, the contention of the Appellant is not sustainable. Apart this, the Appellant could not be treated as tenant after 01-07-1985. It was admitted to both parties that no rent was received by the Plaintiff after 30-6-1985 and the Plaintiff was insisting to vacate the premises. Since the tenant was at sufferance after expiry of lease by efflux of time, no notice for termination of tenancy was required before evicting the tenant from the premises in question. The learned Counsel for the Appellant contended that the Appellants did not vacate the premises and contravened the terms and conditions of the agreement and as such u/s 14-A notice was required u/s 106 of the Transfer of Property Act. Learned Counsel for the Plaintiff/Respondent refuted the contention. Perusal of the record reveals that the Defendant had to vacate the premises after a period of five years. As such, the agreement executed in between the parties came to an end after expiry of the said period. Therefore, I am of view that no notice is required u/s 106 of the Transfer of Property Act.

Third Substantial Question: 3. Whether on the facts and circumstances of the case the suit of the Plaintiff/Respondent on the ground of sub-letting was maintainable without impleading the person to whom sub-letting is alleged.

8. It was alleged in the memo of appeal that the case of the Plaintiff/Respondent was decreed on the ground of sub-letting. This question of law was framed due to inadvertent mistake on the part of the learned Counsel for the Appellant. As a matter of fact, sub-tenant Dinesh Chandra Khanna was a party before both the courts below and he also appeared as a witness before the courts below.

9. In view of the foregoing discussions, I am of the view that the appeal devoids of merit and is liable to be dismissed. The Appellant is dismissed accordingly.