
(1960) 08 AHC CK 0012
In the Allahabad High Court
Case No : Second Appeal No. 1187 of 1952

H.C. Mukerji

APPELLANT

Vs

K.P. Goswami and Another

RESPONDENT

Date of Decision : 04-08-1960

Acts Referred:

Contract Act, 1872 — Section 69, 70
Uttar Pradesh Municipal Water Supply Rules — Rule 3

Citation : AIR 1961 All 195

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : Shambhu Prasad, for the Appellant; A. Sanyal and S.K. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Tandon, J.—The short point in this second appeal is as regards the right of a tenant living in a rented accommodation to realised from the landlord the amount which he was compelled to pay to the Municipal Board on account of charge for excess supply of water spent on the premises.

2. The facts as found by the two courts below are that the appellant is the landlord owner of the premises which are occupied by a number of persons. The main building happens to be in the occupation of the respondent but the out houses which as appears are large in number are held as tenants from the landlord himself by persons numbering over twenty. The accommodation is situated at Allahabad the Municipal Board of which place besides levying a water rate charges price for any excess water supplied to the occupiers. A certain quantity of water the price whereof amounted to Rs. 53/- was consumed by the persons living in this accommodation.

The Municipal Board demanded this amount and threatened in the event it was not paid, to cut off the water connection. The respondent who was one of the tenants living on the accommodation deposited the amount in the Municipal

Board and thus saved disconnection. In a suit which the landlord sometime later commenced against him for recovery of arrears of rent, he pleaded adjustment of this amount which has been allowed to him (defendant). The plaintiff-appellant feeling dissatisfied with the above decision has come up in second appeal.

3. The appellant's line of reasoning is that the sum of Rs. 53/- being the price of excess water consumed by the persons living on the accommodation they and not he was responsible for its payment. He proceeds to contend that if, therefore, these persons of whom the respondent is one were responsible for its payment he cannot be asked to reimburse it. In this connection it may be of interest to refer to Rule 3 of the U. P. Municipal Water Supply Rules which is to the effect that where any fee or charge is payable under those rules and is made recoverable from the occupier of the building or land and there are more occupiers than one "the owner of the building or land shall be deemed to be the occupier".

4. It is not disputed that the particular charge in question was recoverable from the occupier, who, according to the appellant, must be the persons living on the accommodation as they are in its actual occupation and also consuming the water. Rule 3 has created a legal fiction and it has done so obviously to avoid the confusion which otherwise is bound to result in cases where there happen to be more than one person living on an accommodation. The fiction created in it is that where more persons than one are occupying an accommodation the owner of the building shall be deemed to be the occupier.

In the eye of law, therefore, the owner, even though he may not be actually living on the accommodation is in such cases the occupier of the accommodation. And if the law has placed the responsibility for the payment of this fee or the charge on the occupier, a fact not disputed in the instant case, the appellant who is the owner of the accommodation is liable for the payment of the amount.

5. The question may, however, arise whether the respondent also is responsible for the payment of the amount or of any portion thereof. Because in that case he himself will be a person liable for proportionate payment and may not be said to be one who can claim reimbursement for the whole amount or he was one who paid what was not his liability but of the person asked to reimburse.

6. A large number of persons are living on the accommodation and evidently every one of them is consuming water. It was nowhere alleged or pleaded at any time that any agreement existed between the parties as saddling responsibility for the payment of the amount in whole or proportionately on the respondent. There is no finding either that any portion of the excess water for which the amount of Rs. 53/- had been claimed had indeed been in excess of water consumed by the respondent.

Thus it is not possible upon the material on the record to hold that the respondent was liable for any portion out of the amount of Rs. 53/- for which he

claimed reimbursement. At the same time, Rule 3 aforesaid has laid the liability for the whole of the amount on the appellant. Under the circumstances the respondent has rightly been allowed deduction of the amount paid by him.

7. The appeal has, therefore, to fail. It is accordingly dismissed with costs.

8. Leave to appeal to a Division Bench is asked and is granted.