

(1999) 05 AHC CK 0203
In the Allahabad High Court
Case No : C.M.W.P. No. 17264 of 1985

Jhurai Lal

APPELLANT

Vs

Vth Addl. District Judge, Jhansi and others

RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 109, 130, 8
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 20

Citation : (1999) 3 AWC 2382

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : Sankatha Rai and K.N. Tripathi, for the Appellant; S.C., B.N. Agarwal and Shashi Nandan, for the Respondent

Final Decision : Dismissed

Judgement

Yatindra Singh, J.—What is the nature of arrears of rent? Should it be transferred only along with transfer deed? Does its transfer require registration? These are the questions involved in the present writ petition. This is how these questions arise.

FACTS

2. Petitioner is a tenant at the rate of Rs. 8.50. Initially one Ram Singh was owner and landlord of the premises in dispute. He transferred the property in dispute on 14.12.1981 in favour of present respondent No. 3 (plaintiff). He also executed an agreement on 18.1.1982 assigning the right to realise arrears of rent to the plaintiff since 1976. Respondent No. 3 sent a notice dated 19.1.1982, which was served on the petitioner on 14.2.1982 demanding the arrears of rent from December, 1976 and terminating his tenancy. According to the petitioner, he paid the rent till December, 1981 to the previous owner Ram Singh and thereafter he sent a money order for the remaining period to the plaintiff. This

was refused by the plaintiff; on the pretext that entire arrears of rent have not been sent. Subsequently plaintiff filed a suit for eviction on the ground of arrears of rent. The trial court by its order dated July 17, 1984 held that :

-- the notice terminating the tenancy was valid ; the entire rent from December, 1976 is due and no rent has been paid to Ram Singh previous owner :

-- the right to realise arrears of rent has been assigned to the present plaintiff by the agreement dated 8.1.82 (Ext. 2);

-- neither the rent has been paid nor the amount has been deposited u/s 20 (4) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as the Act).

In view of the finding the suit was decreed. Petitioner's revision was dismissed by the Vth Additional District Judge, Jhansi, on August 7, 1984. Hence the present writ petition for quashing of these orders.

Points for determination

3. I have heard counsel for the parties. Following points arise for determination :

(i) Was rent due from December, 1976?

(ii) Can arrears of rent be transferred? Can it be done by a separate deed?

(iii) In case of transfer, does it remain arrears of rent or is it a debt? What is its nature? Does transfer of actionable claim require registration?

1st Point From What Date Rent Is Due?

4. The Courts below have held that tenancy of the petitioner was rightly terminated. There is no Illegality in the notice. The Courts below after looking.

-- into the statement of previous owner Ram Singh :

-- the fact that the plaintiff filed some counterfoils of the rent receipt for some month and no rent receipt has been filed by the petitioner for any month from December 1976.

have held that rent from December 1976 has not been paid. This is a finding of fact. There is no illegality or perversity. It cannot be interfered in the writ Jurisdiction. There is neither any case that the amount as contemplated u/s 20 (4) of the Act was deposited nor any arguments on this question were advanced.

2nd Point Arrears of Rent--Can it Be Transferred?

5. The landlord is entitled to the rent. In case of transfer by a landlord, the new owner/landlord is entitled to the rent from the date of transfer. This is clear from the reading of Sections 81 and 109; of the Transfer of Property Act (hereinafter referred to as the T. P. Act)- But this is subject to any contract to the contrary. This is clear from the use of words "unless a different intention is expressed or

necessarily implied," in Section 8 and use of words "in the absence of a contract to the contrary" in Section 109, This has been so held by the Apex Court in *Girdhari Lal v. Hukum Singh*" and three Division Benches of Allahabad High Court.

Is Transfer By Separate Deed Valid?

6. The contract could be the part of the same transfer deed or could be a deed other than the transfer deed. It is not necessary that it should be part of the same transfer deed. There were separate contracts/deeds in *Bhagwan Singh*'s case and in *Smt. Rukaya Khatoon*'s case. In *Smt. Rukaya Khatoon*'s case, this question was specifically gone into and the Bench had upheld such separate transfer deed.

3rd Point Arrears of Rent--Its Nature

7. Arrears of rent are debt actionable claim within the meaning of this word as defined under the T. P. Act, II can always be transferred. Section 130 of the T. P. Act says so. There is no dispute about it. But there is some dispute as to its nature. The Calcutta High Court and Madhya Pradesh High Court have taken the view that arrears of rent though can be transferred as actionable claim ceases to be arrears of rent. It is debt simpliciter and is recoverable as such. The tenant is not liable for eviction for failure to deposit. But the Allahabad High Court has held it otherwise. In *Ram Prakash*'s case, it was held that "Every arrears of rent is also a debt and it is transferable as a debt. But that does not mean that the character of the liability changes because of its having been transferred from one hand to another. The method of transfer cannot change the nature of the liability." This observation of the Division Bench has been consistently followed by later decisions of the Allahabad High Court. The arrears of rent is a debt and is transferable as debt and if it is not paid, then the tenant would be liable for eviction.

8. Does a transfer deed for arrears of rent require registration? It "is not clear from the reading of the judgment in *Bhagwan Singh*'s case and *Smt. Rukaya Khatoon*'s case, if the subsequent deed was registered or not. The deed, subject-matter of controversy before the Apex Court in *Girdhari Lal*'s case was not registered but that was by a compromise decree which in any case is not required to be registered. Actionable claim can be transferred u/s 130 of the Transfer of Property Act. It can be transferred only by an instrument in writing. It cannot be done orally. There is no necessity that it should be registered. Neither Section 130 of the Transfer of Property Act says so nor Section 17 of the Registration Act makes it mandatory. At least no provision is brought to my notice that such deed requires registration. A transfer of debt or actionable claim does not require registration. It was not necessary for the assignment deed dated 18.1.1982 assigning the arrears of rent to the present plaintiff to be registered.

CONCLUSION

9. The writ petition has no merit and it is dismissed with costs. However, the petitioner may not be evicted from the premises in dispute for a period of six months from today.