
(1964) 08 AHC CK 0011
In the Allahabad High Court
Case No : Civil Revision 1234 of 1961

Kanhiya Lal and Another

APPELLANT

Vs

Satya Narain Panday

RESPONDENT

Date of Decision : 19-08-1964

Acts Referred:

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 7, 7(2)

Citation : AIR 1965 All 496

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Advocate : M.N. Shukla, for the Appellant; V.K.S. Chaudhary, for the Respondent

Final Decision : Partly Allowed

Judgement

Mathur, J.—This is a revision u/s 115, C. P. C. by Kanhaiya Lal and another, plaintiffs, against the order of the Additional Civil Judge of Kanpur, dismissing their appeal and thereby confirming the order of the Munsiff, City, Kanpur, that the relief for permanent injunction amounts to a consequential relief and court-fee was payable on the market value of the bungalow in suit which had been allotted to Satya Narain Pandey, defendant, for occupation as tenant.

2. The plaintiffs had prayed for the reliefs: firstly, that it be declared that the allotment order passed by the Rent Control and Eviction Officer on 1-3-1960, which was confirmed on 25-7-1960, was void in law; and secondly, that the defendant be restrained by means of a permanent injunction from taking possession of the accommodation in question as a tenant on the basis of the allotment order referred to above.

3. The plaintiffs had, for purposes of jurisdiction, valued the suit at Rs. 600/-, the annual letting value of the bungalow, and for the first relief, paid the court fee as for a declaratory decree, and for the second, as for a relief for injunction. The second relief was not treated as a consequential relief. On an objection raised by the defendant, the Munsif ordered that the second relief was a consequential

relief and, consequently for both the reliefs court-fee was payable on the market value of the bungalow. The plaintiffs challenged this order in appeal and after the dismissal of the appeal, they have now moved this Court on the ground that the court-fee was payable on the annual letting value of the bungalow, and not its market value. It was conceded that the second relief for permanent injunction was, in the eye of law, a consequential relief, and consequently, the suit was rightly treated to be for declaration with a consequential relief. The plaintiffs applicants throughout placed reliance upon the case of the Chief Inspector of Stamps Vs. Sewa Sunder Lal, but the lower courts have distinguished this case on the ground that that was a suit by the tenant, and not by the landlord (owner).

4. Court fee payable in a suit for declaration with a consequential relief is computed in the manner laid down in Section 7(iv); of the Court Fees Act (to be referred hereinafter as the Act); in other words, the amount of court fee payable in such a suit shall be according to the amount at which the relief sought is valued in the plaint or memorandum of appeal. It is, however, provided in the first proviso to this subsection that

"where the relief sought is with reference to any immovable property, such amount shall be the value of the consequential relief and if such a relief is incapable of valuation, then the value of the immovable property computed in accordance with Sub-section (v), (v-A) or (v-B) of Section 7, as the case may be.

However, as laid down in the second proviso the valuation can never be less than Rs. 300/-. When clause (a) of Section 7(iv) is read along with the first proviso, it shall be clear that in cases not covered by this proviso, it is open to the plaintiff to give his own value of the consequential relief though not less than Rs. 300/-, but where the relief sought is with reference to any immovable property and the relief is capable of valuation, court fee shall be payable on the value of the consequential relief subject to a minimum of Rs. 300/- and if the consequential relief, is incapable of valuation, then the value of the immovable property shall be computed in accordance with Sub-section (v), (v-A) or (v-B) of Section 7, as the case may be, again subject to a minimum of Rs. 300/-.

5. The term ""immovable property" has not been defined in the Act, and unless there is anything in the subject or the context to suggest to the contrary, it can be given the same meaning as contained in the definition clause of the General Clauses Act. In Section 3(26) of the Central General Clauses Act, "immovable property" is defined to include "land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth." A similar definition is contained in Section 4 (23) of the U. P. General Clauses Act with the modification that "immovable property" shall not include standing timber, growing crops or grass. The definition is clearly illustrative and not exhaustive, and can cover buildings and benefits to arise out of buildings. Building is a thing attached to the earth and is by itself an immovable property. In the case of land, benefits to arise out of land are also "immovable property",

and consequently, in the case of buildings, benefits to arise out of buildings can be deemed to be "immovable property."

6. Benefits to arise out of building can be of various kinds depending upon the rights which can be enjoyed by the person. Owner of a building not in occupation thereof can exercise his proprietary rights by letting the accommodation to tenants and collecting rent from them. An owner in occupation of the building enjoys not only the proprietary rights but also the right of occupation. A lessee including tenant also enjoys benefits arising out of the building. He has the right to occupy the building on payment of the lease money till the tenancy is determined by the lessor or lessee. When the lessee (tenant) enjoys certain rights in the building, he is a person who is in enjoyment of benefits arising out of the building and the tenancy right shall by itself be an "immovable property".

7. This shall be apparent from the definition of "lease of immovable property" as contained in Section 105 of the Transfer of Property Act. Lease of immovable property is so defined to mean

"a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised or of money, or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms."

Lease is the transfer of a right to enjoy the immovable property and what has been transferred is the right of enjoyment.

Consequently, in cases of lease or tenancy, immovable property in dispute is the right of enjoyment of the property. As this is a benefit arising out of the building, the tenancy right is (in ?) an immovable property shall also be in (an ?) immovable property.

8. When the tenancy right in an immovable property is by itself "immovable property" and the relief is sought with reference to the tenancy right for payment of court fee ""immovable property" shall be tenancy right in the building and not the building itself the tenancy right of which is in issue.

9. Tenancy right is (in?) an immovable property is not and cannot, be capable of valuation. Subject to the terms of the agreement and the provisions of an enactment, if any, a tenant can determine the tenancy and vacate the accommodation at any time he likes. The owner can permit the tenant to occupy the accommodation for an unlimited periodic or he can, in accordance with the law, determine the tenancy. The period for which the bungalow shall remain in the occupation of the tenant is thus incapable of determination and for this reason the relief pertaining to tenancy right is incapable of valuation. Consequently, court fee for a declaratory decree or order with a consequential relief other than a relief specified in Sub-section (iv-A) of Section 7 of the Act, pertaining to tenancy right in an immovable property, shall be computed in

accordance with Sub-section (v), (v-A) or (v-B) of section 7, as the case may be. As already mentioned above, tenancy right in an immovable property is itself an immovable property and the second part of the first proviso to Section 7(iv) shall, in case of the tenancy right, have reference to tenancy right; and not the immovable property in which tenancy right was claimed or the tenancy right of which is in issue.

10. Sub-section (v) of Section 7 of the Act relates to suits for possession of lands, buildings or gardens and as provided therein, where the subject-matter is a building or garden. Court fee is payable according to the market value thereof. Tenancy right in a building is not land, nor is it a building. Consequently, Sub-section (v) of Section 7 is inapplicable and it cannot rightly be urged that the valuation for purposes of court fee be deemed to be the market value of the building even though the building is not the subject-matter of the suit and the dispute merely relates to tenancy right in such building.

11. Sub-sections (v-A) and (v-B) of Section 7 are also inapplicable to suits with regard to tenancy right in building as neither the building nor the tenancy right in such building is land and these sub-sections pertain to land and not buildings or gardens. In other words, therefore, if Sub-sections (v), (v-A) and (v-B) of Section 7 of the Act are given their ordinary meaning, it shall have to be held that the Act does not lay down any mode or computation of the value of a consequential relief pertaining to tenancy right in a building and the plaintiff can value the relief at any figure he likes, subject to a minimum of Rs. 300/-. The principle of Clause (c) of f Sub-section (v-B) and also Sub-section (xi) of Section 7 of the Act can, however, be made applicable, though not from a strictly legal point of view, as was done in Chief Inspector of Stamps Vs. Sewa Sunder Lal, and id a suit pertaining to tenancy right court fee shall be payable on the annual rent or annual letting value of the building. The Act was amended at many occasions since after the decision in the case of Chief Inspector of Stamps Vs. Sewa Sunder Lal, and the legislature apparently did not consider it necessary to amend the law and to make a special provision for suits in which tenancy right in a building was in issue. The rule laid down in the above case can thus be applied to all similar cases, that is, to suits pertaining to tenancy right in building.

12. The fact that Satya Narain Pandey, defendant, had no agreement of tenancy with the plaintiffs and he could occupy the bungalow by virtue of the allotment order of the Bent Control and Eviction-Officer, shall not make any difference. What the Bent Control and Eviction Officer does u/s 7 (2) of the U. P. (Temporary) Control of Rent and Eviction Act is to direct the landlord (owner) to let the accommodation to the allotted. It is by virtue of this order that the allotted can occupy the building as a tenant and it is necessary for the landlord to lease the building to the allotted. Though there is no direct agreement between the owner and the tenant, the allotted occupies the building as a lessee or tenant and whenever the right of occupation on the basis of the allotment order is challenged, it is the tenancy right which is in issue.

13. To sum up, the defendant was not and in the eye of law, could not be deemed to be a trespasser. He would have, by virtue of the allotment order, occupied the bungalow as a tenant. A tenant never acquires title by adverse possession to the property. He is the trespasser who can assert the right of ownership by adverse possession. Consequently, when the owner takes legal action against the allottee, the subject-matter of the suit is the tenancy right, and not full rights that any person can have in the building. As held above, where tenancy right in immovable property is the subject-matter of the suit, court fee shall be payable on the annual rent or letting value of the building. This shall be irrespective of whether the suit had been instituted by the owner or by the tenant. The lower courts thus acted illegally by distinguishing the decision in the case of AIR 1949 All 580 (supra).

14. The revision is partly allowed and partly dismissed and it is ordered that court-fee shall be payable as for declaration with a consequential relief and the value of the consequential relief shall be the annual rent or letting value of the building subject to a minimum of Rs. 300/-. Costs on parties. The lower Courts are directed to realise court-fee accordingly.