
(2004) 01 AP CK 0067
In the Andhra Pradesh High Court
Case No : SA No. 159 of 1997

Namala Ramachandra Rao	Vs	APPELLANT
Kakileti Bhaskara Rama Murthy and Others		RESPONDENT

Date of Decision : 07-01-2004

Acts Referred:

Evidence Act, 1872 — Section 114
Transfer of Property Act, 1882 — Section 106(3)

Citation : (2004) 2 ALD 558 : (2004) 3 ALT 812

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; T. Bheemsen, for the Respondent

Final Decision : Dismissed

Judgement

B.S.A. Swamy, J.—The defendant in O.S. No. 277 of 1984, on the file of the Principal District Munsif, Kakinada is the appellant before this Court. Having lost in both the Courts below, he filed the present appeal.

2. The respondent herein filed suit for eviction of defendant from the plaint schedule property and also for recovery of arrears of Rs. 1,250/- and future mesne profits by contending that about 20 years back an open site admeasuring 700 square yards was given on lease to the appellant herein on a monthly rent of Rs. 50/- for starting a lime grinder. The appellant was neither paying rents nor vacating the said premises.

3. The appellant herein, contested the suit stating that plaintiffs have no title to the property and he perfected the possession over the property by adverse possession. His further contentions are that the notice Ex-A5 was not served on him and the Court fee paid was also not sufficient. On the above pleadings the Trial Court framed the following issues:

1. Whether the plaintiffs are entitled for recovery of possession of plaint schedule

property?

2. To what relief ?

On 7.11.1989 the Trial Court framed additional issues:

Whether the defendants perfected his title by adverse possession ?

4. The trial Court examined P.Ws.1 to 5 and marked Ex-A1 to A11 on behalf of the plaintiffs. On behalf of defendants D.Ws.1 to 3 were examined and Ex-B1 to B7 and Ex-C1 to C3, Ex-X1 to X4. Ex-X1 is the memo filed by the Commissioner of Kakinada Municipality and Exs-X2 to X4 are the Photostat copies of the receipts of property tax.

5. On appreciation of both oral and documentary evidence, the Trial Court held in favour of the respondents herein and decreed the suit. Aggrieved by the said judgment and decree the appellant herein, carried the matter in appeal by filing A.S. No. 28 of 1992 on the file of the III Additional District Judge's Court, Kakinada, who in turn confirmed the judgment and decree of the Trial Court dated 27.12.1991. Hence the present Second Appeal.

6. Mr. O. Manohar Reddy raised two contentions in this Second Appeal. The first point argued by him is that Ex-A5, i.e., the suit notice got issued by the plaintiffs to the defendant is not in conformity with Section 106 of the Transfer of Property Act and the same was not served on the defendant before filing of the suit. Ex-A5, the suit notice was sent by registered post on 27.7.1983 and the respondents herein marked the Postal receipt as Ex-A6. It is true that the respondents herein did not file any acknowledgement in proof of service of notice. But both the Courts below relying on Section 114 of the Indian Evidence Act held that the notice sent in accordance with the legal requirements should be presumed to be served on the appellant unless the contrary is proved.

7. Admittedly, except denying that he has not received the notice, the appellant did not produce any evidence to show that the same was not issued notice by the respondents herein. Apart from Section 114 of the Indian Evidence Act, u/s 27 of the General Clauses Act, 1897, when a document is required to be served by post, unless different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document unless the contrary is proved. It should be presumed that the letter is delivered in ordinary course of post. It is useful to extract Section 27 of the General Clauses Act, 1897.

Meaning of service by post: Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the

letter would be delivered in the ordinary course of post.

8. The learned Counsel for the respondent relied upon a decision of M/s. Madan and Co. Vs. Wazir Jaivir Chand, , wherein it is contended that unless the landlord serves a notice, the amount, if any, payable by the tenant cannot be deemed to be treated as arrears. Their Lordships of the Supreme Court having relied on Section 27 of the General Clauses Act, held that the proviso to Section 11(1) of Bombay Rent Control Act insists that before any amount of rent can be said to be arrears, the notice has to be served by post to comply with the proviso of posting a pre-paid registered letter with acknowledgement due or otherwise containing the tenant's correct address. Once he does this and the letter is delivered to the Post Office, he has no control over it. It is then presumed to have been delivered to the addressee u/s 27 of the General Clauses Act. Now it is useful to extract Paragraph 6 of the judgment stated in M/s. Madan and Co. (supra), which is to the following effect:

"We are of opinion that the conclusion arrived at by the Courts below is correct and should be upheld. It is true that the proviso to Clause (i) of Section 11(1) and the proviso to Section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through post. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the Post Office, he has no control over it. It is then presumed to have been delivered to the addressee u/s 27 of the General Clauses Act. Under the rules of the Post Office, the letter is to be delivered to the addressee or a person authorized by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorized to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorized to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court O.V of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the Post Office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the

addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, as addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for sometime, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for sometime until he returns or to forward them to the address where he has gone, or to deliver them to some other person authorized by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the word "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter."

9. In the light of the said decision of the Supreme Court, since the respondent herein discharged the obligation cast on him by proving that the registered letter was sent to the appellant to his correct address and nothing contra was elicited from the respondents by the appellant, it has to be presumed that the letter has been served on the defendant. This issue is accordingly answered.

10. Sri O. Manohar Reddy, secondly contended that even assuming that such a notice was given, from the recital of Ex-A5 it is seen that he was given one month's time to vacate the premises i.e., quit notice, treating it as a residential building. But, as he is using the premises for converting the raw lime into wet lime by using the grinder, it should be presumed that it is a manufacturing process. In such an event u/s 106 of the Transfer of Property Act, six month's notice has to be given but not one month's notice and hence the quit notice suffers from illegality of not issuing the notice as required under law. Sub-section (3) of Section 106 of the Transfer of Property Act reads thus:

"A notice under Sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that subsection."

11. Though, this Section came into force with effect from 31.12.2002, the amendment was given retrospective effect and the amendment applies to the pending appeals also. In this case, though the Ex-A5 notice was given on 27.7.1983 to vacate the premises by 31.8.1983, the suit was filed only on

12.4.1984 i.e., long after expiry of six months quit notice, to be given u/s 106 of Transfer of Property Act for terminating the lease involved in the manufacturing process. On this ground also, the appellant cannot succeed in this case and the Second Appeal is liable to be dismissed confirming the judgment and decree passed by the Courts below.

12. Accordingly, the Second Appeal is dismissed as devoid of merits. No order as to costs. The appellant is given three months time from today to vacate the premises and handover the vacant possession of the said premises to the respondent/plaintiff.