
(1966) 12 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Second Appeal No. 21 of 1966

Punun Mal

APPELLANT

Vs

Durga Singh

RESPONDENT

Date of Decision : 29-12-1966

Acts Referred:

Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27
Jammu and Kashmir Houses and Shops Rent Control Act, 1966 — Section 11(I)
Transfer of Property Act, 1882 — Section 106

Citation : (1966) 12 J&K CK 0002

Hon'ble Judges : J.N. Bhat, J

Bench : Single Bench

Advocate : D.N. Mahajan and Sodagarmal, for the Appellant; J.L. Sehgal, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhat, J.—This is a Plaintiff's second appeal who originally brought a suit for ejectment of the Defendant from a house as well for arrears

of rent. His suit for ejectment has been dismissed by both the Courts but his claim for rent to the extent of Rs. 52, has been decreed.

2. The facts giving rise to this suit are that the Plaintiff brought the suit against the Defendant with the, allegation that the Defendant took on rent the

suit house at Rs. 12 in a, month from 1st Baisakh 1997 by means of a rent deed with its precious owner S.D. Chopra Later on the rent was

increased to Rs. 17 a month The Plaintiff who comes from Maluchak on the border was uprooted from that place in the year 1947 and started a

small shop in the city of Jammu. He has since the partition of India been living in Jammu in a rented house. The landlord of that house had served a

notice of ejectment upon him on 12th March 1963 the Plaintiff purchased the house for Rs. 13,000 of He does not own any other house. He sent

a number of notice to the Defendant at notices were not served upon him as he avoided service. Then another notice was got affixed on the outer

door of his residence Hence the suit for ejectment.

3. The suit was contended by the Defendant on a number of grounds. His plea was that he had been living in the house since 1997 Bikrami) the

Plaintiff did not require the house for his occupation: at any rate the comparative disadvantage to the Defendant would be much more than the

advantage to the Plaintiff He could not be ejected from this house His brother Hoshnak Singh with his family also lived in this very house and very

great hardship would be caused to the Defendant if he were turned out of this house. He had not received any notice of ejectment as contemplated

by law The suit should be thrown out.

4. The trial Court framed four issues in the case which were as under:

1. Whether the Plaintiff reasonably requires this house for his personal necessity keeping into consideration the comparative advantage and

disadvantage of the parties? OPP

2. Has the Plaintiff served any valid notice on the Defendant and so he is entitled to a decree for ejectment? OPP

3. Is the present suit against the Defendant alone not competent when the rent deed is admittedly executed by him alone: if so on which ground?

OPP

4. Relief? OPP

5. The first two issues were only the subject-matter of argument The trial Court decided issue 1 against the Plaintiff and held that it will not be

proper to eject the Defendant from the house because the comparative disadvantage to him would be much more than to (he Plaintiff if the relief of

ejectment were refused to him On the second issue the trial Court held that the notice was not proper and not properly served. On this issue the

lower appellate court affirmed the finding of the trial Court, whereas it set aside its finding on the first issue holding that the Plaintiff did require the

house reasonably for his own requirement The result was that as the issue of notice was decided by both the courts against the Plaintiff, his suit for

ejectment was thrown out

6. I have heard the learned Counsel for the parties. The case of the Plaintiff is that he was a refugee from Mulachak Tahsil R.S. Pura which is on

the Pakistan border. He had been carrying on business for the last 16 years and was residing in the city of Jammu. He had no other accommodation

of his own and after spending a huge sum of Rs. 13,000 he purchased this house for his residential purposes. He has a family of ten members. The

landlord in whose house he puts up at the present moment had served a notice of ejectment on 24-4-1963 on him. He has to pay a rent of Rs. 30

for the house where he lives at the present moment. The Defendant who is a tenant of the house in dispute pays Rs. 17 a month. The Plaintiff

reasonably requires the house for his personal use. He should be granted a decree.

7. On the other hand the case of the Defendant is that he is a tenant of the house for the last 25 years. His own family which consists of 8 members

lives in this house and his brother Hoshnak Singh whose family consists of six members also lives in the same house. There is no pressure on the

Plaintiff to leave the house where he is residing at the moment. If the Defendant is ejected from the house he will face a very great hardship and his

inconvenience and disadvantages will be many more than the corresponding inconvenience and disadvantages to the Plaintiff.

In para 3 of his plaint the Plaintiff has clearly averred that he has been given a notice of ejectment by the landlord. The Defendant in his written

statement as well as his statement has admitted the issue of a notice to the landlord. Plaintiff by his landlord, but his contention is that the notice has

been got issued at the instance of the Plaintiff himself to create evidence against the Defendant. The parties led some evidence. Also the Plaintiff's

witnesses support his case and the Defendant's witnesses his. The trial Court has been influenced by the fact that the Defendant has been living in

the house for the last quarter of a century. He lives in this house along with his brother Hoshnak Singh and his family.

The trial Court has further held that considering the advantages and the disadvantages the Plaintiff's case does not seem to be based on indefatigable

grounds. No doubt, further the trial Court has held both the Plaintiff as well as the Defendant have their families who live with them and in case the

suit was decreed the Defendant along with his family may be rendered she tearless and thrown on the road for at least such period which may be

considerable till they are able to find out another abode to live in On the other hand the Plaintiff will have to face no such, eventuality even if his

claim for, the eviction of Defendant was not sustained

The only edge he has over the Defendant is that he is called upon to pay higher rent to his landlord than he himself received from his tenant, the

Defendant. But the disadvantage appears to be so trivial that it can hardly be considered as a disadvantage under the Explanation to Section 11(1)

(h) The lower Court, I think rightly has not agreed with this reasoning of the trial Court.

8. The picture that emanates from the evidence of the parties and the findings of the two courts below is:

1. The Plaintiff was an original resident of Mulachak, on the Pakistan border where from he was uprooted during the disturbances of 1947

2. He came and settled in the City of Jammu where, he carried on some business.

3. Owning no property in Jammu where he could reside. he by means of a registered sale deed, dated 12-3-1963 purchased the house in dispute

for Rs. 13,000 The recital in the sale deed is clearly to the effect that the plaintiff requires this house very urgently for his residential purposes.

4. The Plaintiff himself lives in a rented house which has not got as much accommodation as the present house.

5. He pays a rent of Rs. 80 p.m. there.

6. He has been served with a notice to quit on 20-4-1963 by the landlord of that house.

7 The Plaintiff requires the house for his personal use and that of his family which consists of 10 members.

8. As against this, the Defendant has been a tenant of this house for the last quarter century.

9. The Defendant pays a rent of Rs. 17 a month for this house: some rent of the house is in arrears also.

10. Alongwith the Defendant his brother Horhnak Singh lives in this house with the Defendant:

11. The family of the Defendant consists of eight members and that of Hoshnak Singh six members.

9. We have therefore, to consider on the basis of these proved facts whether the Plaintiff' should be given a decree for ejectment or not. His case

is that in the words of Section 11(1)(h) of the Houses and Shops Rent Control Act he requires the house reasonably for his own occupation. On

the other hand emphasis on the part of the Defendant-Respondent is placed on the explanation attached to that Sub-section which says the Court

in determining the reasonableness of requirement for occupation shall have regard to the comparative advantages and disadvantages. of the

landlord and of the tenant. According to the Respondent's learned Counsel the Defendant has been living in this house for a long time. If he is

asked to leave the house, he will be put to very great inconvenience and hardship.

He with his family and that of his brother will become shelter less. The Plaintiff is comfortably lodged in a building which may be a rented one He is not

under very great pressure to leave the house. The difference in rent between Rs. 30 and Rs 17. i.e.. Rs 18 which is to be borne by the Plaintiff is a

small discomfort or disadvantage to him as compared to the grave hardship that ejectment will cause to the Defendant. About the notice which is

alleged to have been served by the landlord of the Plaintiff upon the Plaintiff for vacating the house which he occupies at the present moment, the

case of the Defendant is that it is a collusive notice. An argument was addressed before me that the landlord of the Plaintiff was not produced by

him as his witness. Therefore he had not proved the pressure upon him to leave the house.

As I pointed out earlier, the Defendant in his written statement as well in his statement as a witness admits that the Plaintiff has got such a notice but

according to him it is collusive. Ordinarily collusion has to be proved by the persons alleging the same. A close reading of the statement of the

Defendant himself would show that the possibility of a collusion between the Plaintiff and his landlord has to, be ruled out They are not on good

terms\ there has been some bad blood between them For me even that matter is not very material The defence taken by the Defendant that he

would be dislodged and cannot find an alternative accommodation and therefore the Plaintiff should be refused a decree for ejectment does not at

all appeal to me. The Plaintiff who is a refugee has somehow or the other collected a little money and purchased this house for Rs. 13,000.

The sale deed also recites that the Plaintiff requires accommodation very badly for his residential purposes. He has to pay ' more rent for the, building which he is occupying at the present moment. There cannot be a more genuine, need or in the words of the section a more reasonable requirement for personal occupation than that of the present Plaintiff, If the language of this explanation were stretched-I should use the word distorted to this extent-it would make the whole institution of private property absolutely useless. The legislature never meant or could not have intended to lay down any such thing, in the present state of society so long as the institution of private property exists. The argument that the Defendant has lodged Hoshnak Singh Along with himself in this house is used as a weapon for resisting ejectment.

In my opinion that is a ground which should be for the ejectment of the Defendant rather than for protecting him from ejectment. The tenant is the Defendant, and if he has inducted another family into the tenanted property that should diminish the protection given to him rather than extend the protection to a person; who (has no ostensible right to remain on the property. If this were to be encouraged a tenant might induct a large number of persons in the same tenanted property and then try to defend his position pleading for the others so inducted who had no right notice there. The, facts on this aspect of the case are not very clear For aught we know the tenant may have sublet a portion of the house to Hoshank Singh, but that is not very material.

Hoshnak Singh admittedly is not a member of the joint family of the Defendant They have separate ration tickets and live separately in the house.

That they have separate ration tickets has been sought to be proved by the Defendant by the production of Bishami bar Das and by the Defendant in his own statement. Therefore the observations of the trial Court or the argument of the learned Counsel for the Respondent for that matter that the Defendant with his family and Hoshnak Singh and his family would be thrown on the road is devoid of any substance. The induction of Hoshnak, Singh should be an such a notice, but according to him it is collu- additional circumstance in favour of the Plaintiff, because the tenant does not bona fide require nor does he so use the object of tenancy personally and for the benefit of his family.

10. The other important aspect of the case is that the Plaintiff has invested about Rs. 14,000 for the purchase of the house. He is getting Rs. 17 a month. The Plaintiff is a businessman. It does not stand to reason that the Plaintiff would invest Rs. 14,000 and earn a profit of Rs. 17 a month thereon. This of course excluders the cost of repairs and wear and tear of the property by the tenant. Thus worked out, the interest that the Plaintiff gets on this investment, again I say without taking into consideration the cost of repairs and depreciation, would be about Rs. 1.40 per cent per annum. No body, much less a businessman with an iota of common sense, would enter into such a hazardous, profitless business which would only give him headache and mental pain.

11. The expression comparative advantages and disadvantages has to be interpreted in a rational and a reasonable manner. As has been laid down by this Court and other courts in India, reasonable requirement does not mean that there must be a dire necessity of a landlord or as has been put in some authorities that the Plaintiff should be on the roadside or absolutely shelter less before he can be given possession of his own property from a tenant. Of course, it is not the mere expansionist designs of the Plaintiff that would entitle him to a decree for ejectment, but reasonable requirement would mean requirement in an objective sense and not the whimsical and capricious desires of a landlord. Instances of capricious and whimsical desires for ejectment are given in reported cases. In a case reported as 1962 Jab LJ 457, an astrologer predicted to the landlord that he would not prosper in the house which was under his occupation and which was otherwise suitable and sufficient. The landlord believed this prediction. He brought a suit for ejectment on this very ground, but the court turned down the request considering his demand more sentimental and general. '

12. Reasonable requirement is a relative term. All the circumstances and conditions-of the Plaintiff landlord, the nature of his work, the state of his health, etc. would be necessary to determine whether a requirement is reasonable. It would mean a rational requirement according to the dictates of reason and not excessive or immoderate. Reasonable requirement postulates an objective element of judging the question and it is here that the court plays the primary role and strikes a balance between the arbitrary desire of

an individual as against his genuine requirement. This term has been the subject matter of adjudication in a number of cases.

In 1960 MPLJ 41, it was held that when the landlord who lived in a rented house wanted to occupy the tenanted premises on the ground that he

required the premises for his own use, the ground was held 1967 J. & K.10 (1) XII G-50 to be a genuine one. Similarly in another authority 1959

Raj LW 81, the landlord occupied a rented house at the rate of Rs. 13 a month. He had purchased the house in which his tenant was residing who

was paying him a rent of Rs. 3.80. It was held that the landlord's requirement of the house was bona fide. Similarly in another case, 1958 MPLJ

(Notes) 6, the landlord who was living in a village wanted to establish himself in a city where he had purchased the premises. His need was held to

be genuine.

13. In another authority Krishna Das Nandy Vs. Bidhan Chandra Roy, which was a suit instituted by Dr. B.C. Roy, late Chief Minister of West

Bengal, under the West Bengal Premises Rent Control Act of 1950 on which Act our Act is modelled the Division Bench of that Court held:

Reasonable requirement is a relative term. What is reasonable requirement for A may not be so for B and again what may not be reasonable

requirement for B. The status of the Plaintiff, the nature of his work of avocation, the state of his health, etc.-all may be relevant considerations for

judging his requirement and reasonableness of it.

14. In that case the Defendant had been 'carrying on, business, for a pretty long time of a considerable amount in the suit property value, but

nonetheless it was held that under the circumstances of the case the Plaintiff had proved reasonable requirement and that the comparative

disadvantages would be greater to the Plaintiff than to the Defendant if ejection was not ordered.

15. Other authorities may be mentioned very briefly because this point of reasonable requirement and comparative advantages and disadvantages

has very often cropped up for consideration before courts.

16. In AIR 1952 Sau 86, as a result of partition among the brothers one of the brothers had to shift from the house which he was occupying. He

therefore purchased 'a house and brought a suit for eviction of the tenants occupying that house. He was living by leave and license, in his

brother's house where his position was precarious, as being a mere licensee, he was liable to be ejected at any moment without any notice and

could not claim the protection of the Rent Act in defending his present occupation. On these facts it was held that he did require the premises

reasonably and bona fide for his use and occupation.

17. In a Full Bench case of the Punjab High Court *Sant Ram Das Raj Kalka Vs. Karam Chand Mangal Ram*, , it was held that the word 'requires'

as used in Section 13(3) (A)(i) of the East Punjab Urban Rent Restriction Act (3 of 1949) involves something more than a mere wish and it has in

it an element of need to an extent at least. In this case it was further held that if his needs in fact exist and are commensurate with his circumstances,

such as the size of his family, his social "status and style of living, and it is found that the landlord has sought eviction of the tenant in good faith, then

it is a case in which he requires the residential building, from which he seeks eviction of the tenant, for his own occupation, The only protection

given to a tenant is against arbitrary and whimsical eviction by a landlord and at the same time to ensure that the landlord has his requirements

fulfilled by asking for his own occupation a residential building under his tenant.

18 In another Full Bench authority of M.P., *Damodar Sharma and Another Vs. Nandram Deviram*, , it was held that a tenant is liable to be ejected

from the shop in his occupation on the ground that the landlord requires it for continuing or starting his own business, unless it can be shown that

any other non-residential accommodation in occupation of the landlord is suitable for the purpose of continuing or starting the landlord's own

business. ... If the landlord's business has in fact grown and there is a felt need to be determined objectively, for additional accommodation for the

purpose of continuing the expanded business, the tenant is liable to be ejected

19. In *Ramdayal Vs. Ram Narayan*, , it was held that the word 'occupation' must be interpreted in a wider sense. A building would be said to be

required for the occupation of the landlord even if he requires it for the purpose of carrying on business or for any other use which would be

beneficial to the landlord.

20. In *Govind Ram Vs. Abdul Wahab*, , it was held that the requirement of reasonable and bona fide personal necessity does not merely mean a

mere wish on the part of the landlord to go into occupation of his own property

wherever it suits his sweet will or pleasure to do so, it also does

not mean that the Plaintiff must establish absolute or 'dire' necessity for the occupation of the property in dispute for his or his family purposes.

21. In this authority it was further held that it is the duty of the Court to see that the premises are required both reasonably and bona fide. The

requirement has to be reasonable, and this introduces the objective element into the decision of this question, and it is he that the Court plays the

chief role, and this is how the law strikes a balance between the arbitrary and unbridled desire of an individual and the need of the community at

large.

22. In AIR 1962 Gau 148, it was held that if the landlord bona fide requires the house for his personal use, no amount of in-convenience to the

tenants will take away the landlord's right to evict them. But this case may not be quite helpful because the words in the Assam Urban Area Rent

Control Act (13 of 1949). are bona fide requirement and not reasonable requirement as used in an Act.

23. The above authorities and an examination of Section 11(l)(h) of the Houses and Shops Rent Control Act clearly connote to my mind that the

circumstances as disclosed in this case do without any shadow of doubt warrant the ejectment of the tenant. Otherwise as already indicated I

cannot conceive of a case where placing a reasonable interpretation on the provisions of this section, a landlord situate like the present, can ever

dream of getting back possession from a tenant of his property. This disposes of one aspect of the case.

24. The other aspect of the case which was very strenuously argued before me, was about issue 2 which runs, as follows:

Has the Plaintiff served any valid notice on the Defendant and is he entitled to a decree for ejectment? OPP.

The facts which are proved on this aspect of the case and which are not in dispute before me are as follows. The Plaintiff landlord first issued a

notice on 16-4-1963 to the Defendant by registered post. The postman has, from the endorsement on the back of the notice, said that he went to

the house and the shop of the addressee but the addressee had left without address and therefore he sent back the notice to the sender on 2-5-

1963. Two more notices one notice residential address of the Defendant and the

other on his shop address were sent again by registered post on 5-5-1963.

It has been further held by both Courts online evidence of reliable witnesses namely Narindra Singh and Gyan Chand that a copy of the notice of

5th May was affixed on the residence of the Defendant on 7th May, 1963. The notice of 5th May sent by registered post on the two addresses of

the Defendant had a chequered career. The notice addressed to him on his residential address was taken to the house of the Defendant more than

once. The postman has reported that he had informed the addressee about the notice, but he evaded to take delivery of the same, and in another

endorsement, dated 13-5-1963 the postman has reported that the addressee was not available at his home but the information of the notice was

kept at his home. On the last occasion, i.e., 15-5-1963 the post- J man reported that the addressee had been informed and he was concealing

himself from taking delivery of the, notice. The notice be returned.

Similarly the notice sent on his shop address was taken to, him five times, i.e.. on 11-5-1963, n 13-5-1963, 14-5-1963 and 15-5-1963. The last

endorsement on this notice is dated 16-3-1963 and the endorsement says that the postman went a number of times a the shop of the addressee.

He informed his brother also about the notice, but in spite of all this, the addressee would conceal himself before the postman reached his shop.

The notice was therefore returned as unserved. This is what has been held proved by both the Courts. These endorsements we have discovered

on the back of the registered notices with the help of magnifying glasses. The two Courts below have accepted the endorsements on the back of

the notices, but they have held that the postman has not been produced. Further it has not been proved that service by tendering;, the notice

personally on the Defendant was not practicable and hence the affixation of the notice on a conspicuous part of the building in dispute will not be

held to be sufficient notice. On this ground both the Courts have held the notice as not proved and therefore dismissed the Plaintiff's suit for

ejection.

25. Some authorities have been cited and discussed by the learned Counsel for the parties and I also have studied the law on the point with regard

to service of notice as required u/s 106 of the T.P. Act. The only dispute in this

case is with regard to the service of the notice. The validity of the notice otherwise has not been questioned at any stage in this case. Service of a notice is the subject-matter of Part II of Section 106 of the T.P.

Act. This reads as under:

Every notice under this section must be in writing signed by or on behalf of the person giving it, and either be sent by post to the party who is

intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence or (if such

tender or delivery is not practicable) affixed to a conspicuous part of the property.

The only point for determination in this case is what would be the value of the endorsements on these notices and what will be the effect of the

affixation of a copy of the notice on the outer door of the residence of the Defendant. There are different sets of authorities which will be discussed

but I do not think that in view of the admitted findings of the Courts below any nice discussion about the mode of service and the value to be

attached to the endorsements need be gone into. It is the case of the Plaintiff, held proved by both the Courts below, that the first notice of 16-4-

1963 was returned with the endorsement that the addressee had left without address.

The words used in this Sub-section are "'if such lender or delivery is not practicable'". If a person leaves without any address (who has a residential

house as well as a shop running in the town) it can very safely be said that personal service in such a case is not practicable because he has gone to

an unknown destination. If it were disclosed' to the postman that he had gone to a particular place and the Plaintiff had not sent him a notice on that

definite address, it could be said that the Plaintiff had failed to give him a proper notice. Obviously on this endorsement it was not practicable for

the Plaintiff to deliver or sent a notice by post to the Defendant whose whereabouts were not at all known (if we assume the endorsements as

correct). The legislature has used a very convenient word in the expression 'practicable'. It has not used the word Dossible because what may not

be practicable may still be possible.

26. Therefore in my opinion, apart from the legal argument, whether the endorsements will be held sufficient without examining the postman in

support of the same, when on 7th May, 1963, the notice was affixed on the outer

door of the residence of the Defendant, it was sufficient notice in the eyes of law to him. But the Plaintiff has taken more card and has made, more attempt to get the notice served on the Defendant personally. The two notices of 5-5-1963, the one sent on the residential address and the other on the shop address of the Defendant have been taken to the Defendant a number of times for service) upon him. His brother has been informed; his people have been informed, but every time' the postman meant to serve the Defendant he concealed himself.

In this state of affairs it was not only not practicable but impossible to serve the notice personally on the Defendant. Again the word used in this

Sub-section is tender; ""'tender'1 in its dictionary meaning would be to offer, to stretch out and according to certain authorities an actual tender is

dispensed if the party was ready and willing to pay it, but is prevented by the other's declaring that he with not receive it. (Vide Odum v. R. Co.,

94 Abs 488, 10 South 222). Presence of the debtor with the money ready for delivery is enough if the creditor be absent from the appointed place

at the appointed time of payment (Vide Gikmore v. Holt, 4 Pick (Mass) 258), or if the tender is refused (Sands v. Lyon, 18 Conn 18).

27. In this view of the matter according to me the affixation of the notice on 7th of May on the outer door of the residence of the Defendant after

the notice of 16-4-1963 would be sufficient compliance with the terms of Section 106 of the T.P. Act. But there have been further attempts,

numerous in number, on the part of the postal serving agency to get the notices served on the Defendant personally and if the Defendant succeeded

every time in concealing himself both at his residence and at the shop, the delivery of notices to him personally would be impossible. In that event

also the affixation of a copy of the same notice on his residence would be a sufficient compliance with the requirements of law. The Courts have

allowed themselves to be outwitted and made helpless by the nefarious conduct of the Defendant.

28. Now let us turn to some relevant authorities on this point. The following authorities may be cited on behalf of the Defendant.

Asutosh Roy Vs. Ananta Ram Bhattacharjee and Others, .

29. The East Punjab authority, AIR. 1949 EP 295 (Supra), is a case under Order 5, Rule 17, and interprets the words 'After using all due and

reasonable diligence', as occurring in that rule. The ratio decided of this authority is that real and, substantial effort to find ' the Defendant is

necessary. In that case the process server went to the house of the Defendant but on being informed that the Defendant had gone to a neighboring

town at a distance of about two miles effected service in accordance with the provisions of Rule 17. It was held"" that it was the duty of the process

server to either wait for the Defendant or follow him to the town, and that the service was not sufficient. As compared with the words of this rule,

the words, in Part 2 of the T.P. Act are only 'practicable' and ""exercise of all due and reasonable diligence"" do not occur in this section. Therefore

this authority is of no assistance to the Defendant.

30. AIR 1956 Nag 266 (Supra), lays down that where there is no evidence before the Court as to how the registered cover containing a notice to

quit u/s 106, T.P. Act, was tendered and to whom or as to who made the endorsement on the cover, the suit cannot be decreed on the basis of

the presumption u/s 114, Evidence Act, and it was held that the Plaintiff must adduce evidence in this behalf. I do not agree with this enunciation of

law and my reasons for this will be given hereinafter after I discuss the relevant authorities.

31. In Asutosh Roy Vs. Ananta Ram Bhattacharjee and Others, , a civil Court peon went to serve a notice u/s 106, T.P. Act, upon two tenants,

one of whom was a pardanashin lady and the other a minor boy. Being told that the lady was indoors and that the boy had gone out to look after

cattle, the peon beat a drum, read the notice aloud and affixed a copy of the notice to the wall of the house. It appeared that there were servant;;

present, but no attempt was made to tender the notice to the servants or to find the boy and tender the notice to him. The instant case is clearly

distinguishable because in this case the postal peon not only informed the family of the Defendant and the brother of the Defendant, but took extra

care to serve, upon the Defendant personally.

32. In Raj Sahiban Shersingh Vs. The State of Rajasthan, , it was held that an endorsement on the envelope indicating that the tenant had

disappeared in order to avoid taking the registered letter, no such presumption could be raised as the letter was received back undelivered. This

authority, however, lays down that when a notice is sent by post and evidence is

tendered that the notice is so sent, a presumption arises that the letter reaches its destination. This authority further lays down that if evidence is produced to show that the letter was tendered and refused by the addressee, it may be presumed that the letter was served on the addressee. But this authority is distinguishable because it has not considered Section 27 of the General Clauses Act and Section 114 of the Evidence Act.

33. As against these authorities, there is a whole host of authorities to the contrary. I might to start with mention AIR 1918 PC 102. In that case it was laid down that notice sent by post is presumed to reach the addressee if its posting is proved. The presumption is still stronger in the case of a registered letter whomever may sign the acknowledgment. Their Lordships said that if a letter properly direct-ad containing a notice to quit, is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed and that presumption, would apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted but strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself.

34. This authority goes so far as to say that the notice need not be served on the addressee personally. Somebody else may receive the notice for him; even then he will be deemed, to have been served with the contents , of the notice.

35. In another authority, AIR 1926 Lah 520, it was laid down that where a notice be sent by post in registered cover is returned by the postman with the note that the addressee refused to receive it, and the posting of the . notice has been proved, the presumption u/s 114, that the addressee did refuse to receive it, arises.

36. In AIR 1939 11 (Privy Council) , their Lordships held that sending by post must mean sending by post to the tenant's proper address. Their Lordships also indicated that what was necessary was that the notice must be sent to the proper address of the addressee.

37. In, AIR 1940 Cal 536, it was laid down that where the summons was sent from the Court by registered post, and the cover was tendered by

the postal peon to the right person, who had refused to accept it the Court can infer that there was sufficient service.

38. In a Division Bench authority of the Allahabad High Court reported as Bhagwan Radha Kishen Vs. Commissioner of Income Tax, , it was held

that where a notice of hearing of appeal is sent by registered post to the Appellant but has come back with the endorsement of 'refused made by

the postal authorities, the mere endorsement is sufficient in the eye of law to justify the presumption of service of the notice on the Appellant.

39. In another D.B. authority of the Assam High Court reported as Saligram Rai Chunilal Bahadur and Co. Vs. Abdul Gani and Others, , their

Lordships held that it was not obligatory for a lesser to prove service of notice upon a lessee if he sent the notice by registered post.

41. In Shanta Vs. Khalas Ramjibhai Chhotalal, , their Lordships held that the presumption u/s 27 of the General Clauses Act would also arise in

favour of a Plaintiff in a suit where the summons is sought to be served upon a Defendant by registered post.

42. In another authority, Kodali Bapayya and Others Vs. Yadavalli Venkataratnam and Others, , where the notice was sent by registered post but

was returned with the endorsement 'refused' the endorsement was held admissible in evidence even though the postman was not examined.

42. These authorities are based on Section 27 of the General Clauses Act and Section 114 of the Evidence Act. Section 27 of the General

Clauses Act says that when a document is served by post, whether the expression 'serve' or either of the expression '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 pre-paying 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.

43. All that this section requires is that the letter must be properly addressed, the postal charges must be prepaid and the posting must be proved.

If these things are proved. a presumption arises that it has been delivered to the addressee in the ordinary course of business of the post office. No

doubt this presumption is rebuttable by the evidence adduced by the addressee. u/s 114 of the Evidence Act (illus. (e)) it is to be presumed that

all judicial and official acts have been regularly performed. The effecting of service by a postman is a part of his official duties. Therefore under the

provisions of this illustration it will be deemed that the postman discharged the duties enjoined upon him on account of his office in a regular and a

proper manner. Of course again the presumption is rebuttable and can be negative by positive evidence.

Therefore in my opinion the mere endorsement on the back of a notice issued by post by the postman raises the following presumptions: (1) that the

endorsement was made by the postman whose endorsement is purports to be, (2) that the contents of the endorsement are correct, (3) for these

presumptions it is not necessary that the postman be examined as a witness. Therefore, as I said earlier, *Raj Sahiban Shersingh Vs. The State of*

Rajasthan, and AIR 1954 Raj 65, do not take notice of the statutory provisions of. Section 27 of the General Clauses Act and illus. (e) to Section

114 of the Evidence Act. The Privy Council as already indicated, has gone so far as to hold that if the acknowledgment form is signed by anybody,

the knowledge of the notice would be fastened upon the addressee.

44. In this case, as already indicated, there has been more than sufficient compliance with the provisions of Section 106 of the T.P. Act, in this

ease the presumption of service of the notice on the Defendant is further strengthened by the following facts proved and admitted in this ease.

45. The Defendant admittedly lives in the house of the Plaintiff where the notice was addressed, the carries on business in the city of Jammu. On

the relevant date when the notice were sought to be served upon him, it is not his case that he was out of Jammu. further the brother referred to by

the postman must be the same Hoshnak Singh who carries on joint business with the Defendant, and lives in this very house. This man also was

approached with the notice. Thus the whole series of events can lead to no other inference but that the Defendant purposely Evaded service of the

notice upon (himself, although he was cognizant of it. It has been found proved by the Courts below that the notice was affixed on the outer door

of his residence. In the circumstances to hold that notice is not proved to have been served upon the Defendant in terms of Section 106 of the T.P.

Act will be only to shut one's eyes to realities and probabilities and allow fraud to have the upper hand. The- notice therefore will be deemed to

have been properly served upon the Defendant.

46. No other ground was raised in this appeal. The decrees of both the Courts below are set aside, this appeal is accepted, and a decree for

ejectment of the Defendant Respondent from the suit premises is passed in favour of the Plaintiff Appellant. The Respondent will pay costs of this

appeal.

47. The learned Counsel for the Appellant is agreeable to give nine months' time to the Respondent to vacate the suit premises. It is therefore

ordered that the decree for ejectment will not be executed till nine months from the date of this order.