

(2014) 08 AHC CK 0279

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 64670 of 2012

Rafiq

APPELLANT

Vs

Khodeja Bibi

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25, 27
Registration Act, 1908 — Section 17(1)(c)
Transfer of Property Act, 1882 — Section 106, 107

Citation : (2014) 9 ADJ 714 : (2014) 106 ALR 646 : (2015) 2 AWC 1526 :
(2014) 125 RD 719

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : J.J. Munir and Shibli Naseem, Advocate for the Appellant; Rajeev Kumar Srivastava, Amrendra Pandey, Pankaj Agarwal, Vijay Kumar Pandey and M.K. Gupta, Advocate for the Respondent

Judgement

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Pankaj Mithal, J.—Petitioner who is a tenant has invoked the extraordinary jurisdiction of this Court for quashing of the judgment and order dated 30.4.2007 passed by the Civil Judge (Senior Division), Jaunpur exercising powers of the Small Causes Court and the judgment and order dated 22.9.2012 passed by the Additional District Judge dismissing the revision arising there from. The dispute is regarding house No. 92-B situate in Mohalla Shaikhmohamir, Jaunpur. Respondent is the owner and landlord of the said house. She had let out the said house to the petitioner on 5.5.1992 for a period of three years w.e.f. 4.5.1995. Before expiry of the said period, on 12.4.1995 a rent note was executed before a notary permitting the petitioner to reside in the said house for a further period of three years i.e., upto 4.5.1998 on a rent of Rs. 300 p.m. with a clear stipulation that the tenancy would be on month to month basis. On the expiry of the above period when the petitioner failed to vacate the house the respondent by a registered notice dated 22.1.1997 terminated his tenancy under section 106 of

the Transfer of Property Act, 1882 and instituted S.C.C. Suit No. 18 of 1999 for his eviction.

2. The suit was contested by the petitioner accepting that the provisions of U.P. Act No. 13 of 1972 are applicable but denying the service of any notice terminating the tenancy and contending that as the tenancy was on month to month basis he is not liable to eviction unless the tenancy is properly and validly terminated.

3. The suit was decreed on 30.4.2007 with the finding that the rent note dated 12.4.1995 is a unilateral document which was executed only as a memorandum and is not a lease deed. The notice dated 22.1.1997 was deemed to be served upon the petitioner by refusal and, as such, the tenancy was held to be validly terminated. Accordingly, the suit was decreed for eviction of the petitioner and for payment of arrears of rent as well as damages.

4. The petitioner aggrieved by the aforesaid judgment and order preferred revision No. 4 of 2007 under section 25 of the Provincial Small Causes Court Act, 1887. The revision has been dismissed vide judgment and order dated 22.9.2012 affirming the finding of the Court of first instance that the rent deed dated 12.4.1995 is simply a memorandum which does not require registration and that under the said rent note tenancy was for a fixed period which ended on 4.5.1998 and, therefore, no notice terminating the tenancy was necessary. The service of the notice, however, was not held to be sufficient but the revision was dismissed upholding the decree of the Court below as notice was not necessary.

5. I have heard Sri J.J. Munir, learned Counsel for the petitioner and Sri Pankaj Agarwal for the respondent. Both have agreed for final disposal of the writ petition on the basis of the pleadings already exchanged between them.

6. On their submissions, one of the point which arises for adjudication is whether under the facts and circumstances, when the rent note dated 12.4.1995 has been held to be a memorandum which does not require registration, the tenancy would still be for a fixed period of three years or it will be deemed to be on month to month basis. In other words, the first question is whether the tenancy between the parties is for a fixed period of time exceeding one year. The other point is whether the notice terminating tenancy was served upon the petitioner by refusal.

7. The rent note is Annexure-1 to the counter-affidavit and it recites that the tenancy starts from 5.5.1995 and would continue till 4.5.1998 during which period the landlord would not evict the tenant and that the tenancy would be on month to month basis. The relevant extract of the rent note containing the above condition is quoted below:

The aforesaid rent note may have created the tenancy for a period of three years and the landlord may have undertaken not to evict the tenant for the said three years, nonetheless in view of clear recital that the tenancy is on month to month

basis, it cannot be said that the parties intended to create tenancy for a fixed period of three years.

8. It may be relevant to note that the tenancy between the parties had started on 5.5.1992 and was up till 4.5.1995 whereupon it was extended/renewed for another three years on month to month basis. This fact also reflects that the respondent never had any intention to limit the tenancy for any fixed period.

9. Section 107 of the Transfer of Property Act, 1882 provides for manner of making lease deed in respect of immovable property. It provides that a lease of immovable property from year to year or for any term exceeding one year can only be made by a registered instrument.

10. Section 17(1)(c) of the Indian Registration Act mandates registration of the lease of an immovable property from year to year or for a term exceeding one year.

11. The rent note dated 12.4.1995 is not a registered instrument. Therefore, it cannot create a lease of year to year or for any term exceeding one year. It is, therefore, to be construed to be a lease from month to month.

12. Punjab National Bank Vs. Ganga Narain Kapur, , lays down that the legislature intended that a lease of immovable property for a period of more than one year should be made by a registered deed but if a lease of immovable property for a term of more than one year is not made by a registered deed, then in such cases the presumption about the duration of lease under section 106 of the Transfer of Property Act, 1882 will apply.

13. Section 106 of the Transfer of Property Act, 1882 provides that in the absence of any contract to the contrary a lease of immovable property for any purpose other than agricultural or manufacturing shall be deemed to be a lease from month to month terminable on part of either of the party to the lease by a notice.

14. In view of the above decision in Punjab National Bank (supra) and the provisions of section 106 of the Transfer of Property Act, 1882 the lease in question would be a lease from month to month which can be terminated only by a notice.

15. The Revisional Court as such fell in patent error of law in holding the lease to be for a fixed period which required no notice for its termination.

16. The respondent alleges to have terminated the tenancy vide registered notice dated 22.1.1997 under section 106 of the Transfer of Property Act, 1882. The service of said notice has been denied by the petitioner. The respondent filed carbon copy of the notice (paper 8 Ga) and proved the same. The receipt of sending the notice by registered post to the petitioner (paper 7 Ga) was also brought on record. The Court of first instance after careful examination of the above documents as well as the rent note (paper No. 9 Ga) came to a definite

conclusion that the notice was sent to the petitioner at his correct address as was mentioned by him in the rent note. It was not accepted by the petitioner and was returned on 31.1.1998 with the endorsement "refused".

17. The law is well settled that a notice under section 106 of the Transfer of Property Act, 1882 which is sent by registered post at the correct address and is refused by the addressee shall be deemed to have been served in view of section 27 of the General Clauses Act. The mere denial that the notice was not refused by the petitioner is not enough to rebut the presumption until and unless the petitioner brings some material evidence to prove the contrary as has been held by the Supreme Court in *Anil Kumar Vs. Nanak Chandra Verma*, . It is also not necessary to produce the postman vide *Birendra Kumar Baruha v. A.D.J. Allahabad* 1999 (2) ARC 651. In *Noor Mohammad and Wasi Ahmad Vs. XIVth Additional District and Sessions Judge and Others*, , where the Revisional Court held that it is duty of the sender to examine the postman, this Court reversing the view taken by the Revisional Court held as under:

"In respect of endorsement of refusal by the postman, there is no necessity to examine the postman to prove that. If there is any such duty then it is for the person denying tender by the postman."

18. The petitioner has not produced any evidence to rebut the above presumption and to prove that the notice could not be deemed to be served upon him.

19. Thus, the Revisional Court committed an error in holding that the notice has not been proved to have been served.

20. It is accordingly held that the rent note dated 12.4.1995 is not a lease deed which may require registration. It is simply a memorandum creating tenancy from month to month terminable by notice under section 106 of the Transfer of Property Act, 1882. The tenancy stood duly determined vide notice dated 12.1.1997 which is deemed to be served upon the petitioner by refusal.

21. In view of the aforesaid facts and circumstances, the Revisional Court erred on both the above points but as the judgment, order and decree of the Court of first instance decreeing the suit has been affirmed, there is no occasion for interfering with the decree so passed. The writ petition is dismissed with no order as to costs.