
(1975) 04 AHC CK 0026
In the Allahabad High Court
Case No : Second Appeal No. 817 of 1968

Ramwati Devi

APPELLANT

Vs

Onkar Chand Gupta

RESPONDENT

Date of Decision : 14-04-1975

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 53A

Citation : (1975) 04 AHC CK 0026

Hon'ble Judges : M.P.Mehrotra, J

Final Decision : Dismissed

Judgement

M. P. Mehrotra, J.

This second appeal arises out of a suit for ejectment and for the recovery of a certain sum as arrears of rent and as water charges. The plaintiff landlady also claimed mesne profits for use and occupation.

The brief facts are these: The plaintiffappellant as the owner and landlady of the house in suit sought the ejectment of the defendant who was her tenant in the said house and whose tenancy was alleged to have been determined by a notice under section 106 of the Transfer of Property Act. The house in question was constructed in 1962 and hence the U. P. Rent Control & Eviction Act of 1947 was not applicable to this building. The plaintiff further averred that she got a water tap fitted in the house on the request of the defendant who had agreed to pay water charges. The plaintiff alleged that the defendant did not pay any water charges from March 1963. He did not pay rent from 11th December, 1963 at the agreed rate of Rs. 33/ per month. The plaintiff served a notice under section 106 of the Transfer of Property Act on the defendant determining the latter's tenancy. He gave a false reply alleging that the plaintiff had agreed to sell the house to him for a certain sum. The said allegations were absolutely incorrect and there was no such agreement between the parties.

The defence was that rent had been fully paid up to 10th December, 1963. On

11th December, 1963 there was an agreement between the parties where under the plaintiff was given Rs. 2,000/ as advance by the defendant and the former promised to sell the house by July 1964. In the agreement it was also agreed that till the sale was effected, the interest payable by the plaintiff to the defendant on the said sum of Rs. 10,000/ and the rent payable by the defendant to the plaintiff shall stand adjusted against each other. The plaintiff, therefore, was not entitled to any rent whatsoever. She did not execute the sale deed by July 1964 inspite of repeated request. The plaintiff had no right to eject the defendant as the possession of the latter was now as a purchaser and not as a tenant. No water charges were payable by the defendant to the plaintiff. No arrears of rent were due from the defendant to the plaintiff.

The trial court framed the necessary issues, tried the suit and decreed the same. Thereafter the defendanttenant filed an appeal and the same was partly allowed. The decree of the trial court in respect of ejectment and pendente lite and future mesne profits was maintained. The decree for the recovery of the arrears of rent and water charges was set aside and the claim in respect of the same was dismissed.

Now the plaintiff has come up in the instant appeal against the dismissal of her claim by the lower appellate court in respect of the arrears of rent and water charges. The defendanttenant filed crossobjections in respect of the decree for ejectment and pendente lite and future mesne profits which was granted by the lower appellate court in favour of the plaintiff.

I have heard the learned counsel for the parties. So far as the plaintiff's appeal is concerned, in my opinion, there is no merit in it. The lower appellate court held that the alleged agreement Ex. A. 1 dated 11th December, 1963 was proved and according to the terms contained in the said agreement, the rent payable by the defendant and the interest payable to the defendant by the plaintiff in respect of the sum of Rs. 2,000/ which was given by the defendant as advance to the plaintiff in accordance with the said agreement dated 11th December, 1963, stood mutually adjusted against each other. Therefore, the plaintiff was not entitled to claim any arrears of rent after 10th December, 1963. In my opinion, this conclusion inevitably follows once the plaintiff's plea that there was no such agreement between the parties was repelled by the lower appellate court. In my view, the lower appellate court placed the correct interpretation on the document dated 11th December, 1963 when it held that rent ceased to be payable by the defendant to the plaintiff as the same stood adjusted towards the interest payable by the plaintiff to the defendant on the sum of Rs. 2,000/ which had been advanced by the defendant to the plaintiff under the said agreement. Nothing has been shown to me that the finding of the lower appellate court in respect of the plaintiff's claim for water charges is in any manner defective. The finding on that point is a pure finding of fact. Therefore there is no merit in the appeal of the plaintiff.

So far as the crossobjections of the defendant are concerned, it has been

pressed on me that the benefit of section 39 read with section 40 of the U. P. Urban Buildings (Regulation of Rent, Letting & Eviction) Act, 1972 should have been extended to the defendantrespondent. In my opinion, this contention is without force. Admittedly, no amounts were deposited in accordance with section 39 within the prescribed time by the defendantrespondent. No application was moved claiming any benefit under section 39 read with section 40 and, therefore, there is no merit in the said contention.

Learned counsel next sought to contend that his client was entitled to the benefit of section 33A of the Transfer of Property Act and the lower appellate court's finding that he was not entitled because he had not expressed his willingness to perform his part of the contract, is incorrect. It appears that in the written statement even though a defence was taken based on the aforementioned agreement dated 11th December, 1963 and it was contained that in view of the conditions in the said agreement, the relationship of landlord and tenant between the parties came to an end with effect from 11th December, 1963 and that after July 1964 the defendant's possession was that of a purchaser of the property and not as tenant, no specific plea with reference to section 53A of the T. P. Act was taken. Though issues were framed with regard to the aforesaid agreement dated 11th December, 1963, no specific issue was framed as to whether section 53A of the T. P. Act was applicable to the facts of the case. In my opinion, the issue was rightly not framed because there was no specific plea in defence based on section 53A of the Transfer of Property Act. In this view of the matter, the lower appellate court should not have gone into the said question and its finding in respect of the applicability or nonapplicability of section 53A to the facts of the case was not called for. I should like to make it clear that I am not saying anything in regard to the finding about the factum of the aforesaid agreement dated 11th December, 1963 which was specifically the subjectmatter of dispute between the parties in regard to which specific issues were rightly framed. I am making the limited observation that so far as the specific plea under section 53A of the T P Act is concerned, it was not pleaded in so many words in the written statement and in this view of the matter there was no occasion or justification for the lower appellate court entering into that question. See *Itlikal Devasuom v. Pottakkati Narayana Raghavan* (5). The judgment of the lower appellate court, therefore, granting a decree for ejectment and mesne profits was justified but not on the ground which found favour with the lower appellate court. There being no plea under section 53A of the Transfer of Property Act the plaintiff was entitled to a decree for ejectment against the defendant on the short ground that the agreement dated 11th December, 1963 did not terminate the relationship of landlord and tenant between the parties. In this view of the matter, the tenancy was validly determined by the notice under section 106 of the Transfer of Property Act and the plaintiff was entitled to get a decree for ejectment and also for mesne profits for illegal use and occupation. The crossobjections also have no merit.

The appeal and the crossobjections both are hereby dismissed but in the

circumstances, there will be no order as to costs.