
(1989) 11 AP CK 0006

In the Andhra Pradesh High Court

Case No : Second Appeal No. 454 of 1985

Saladi Srirama Murthy

APPELLANT

Vs

Kavali Swaminaidu and Others

RESPONDENT

Date of Decision : 24-11-1989

Acts Referred:

Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27
Transfer of Property Act, 1882 — Section 106

Citation : (1992) 1 ALT 555

Hon'ble Judges : Lakshmana Rao, J

Bench : Single Bench

Advocate : P. Rajagopal Rao, for the Appellant; P.V. Sessaiah, for the Respondent

Judgement

Lakshmana Rao, J.—This Second Appeal preferred by the plaintiff arises out of O.S.No. 526 of 1972 on the file of the II Addl. District Munsif, Narsapur. That suit was filed against Kavali Adinarayana, the predecessor in interest of the respondents herein for possession of the plaint schedule property and for recovery of rent.

2. The plaintiff leased out the plaint schedule land in favour of the defendant Kavali Adinarayana under Ex.A-1 lease deed dt. October 4, 1955 for a period of five years from September 21, 1955 to September 20, 1960 on a monthly rent of Rs.8-54 as payable by the 21st day of every month. It is an admitted fact that after the expiry of the said period of five years, no further lease deed was executed and the defendant continued in possession.

3. The plaintiff got issued Ex.A-4 registered notice February 20, 1972 to the defendant u/s 106 Transfer of Property Act calling upon him to pay the arrears of rent and hand over vacant possession of the plaint schedule land by March 22, 1972. That registered notice was returned with a postal endorsement that the defendant avoided to take delivery of the same. As the defendant avoided to take delivery of the same and as the defendant failed to pay the arrears of the

rent and deliver vacant possession of the site, the plaintiff filed the suit. On the basis of the oral and documentary evidence, the trial court held that Ex.A-4 notice was valid and the defendant was liable to pay the arrears of rent of Rs. 175/- for the period from June 21, 1969 to February 24, 1971. The suit was accordingly decreed directing the defendant to remove the shed in the plaint schedule property and deliver vacant possession of the same to the plaintiff within twelve months from the date of that Judgment.

4. Aggrieved by the judgment, the legal representatives of the defendant filed A.S.No. 116 of 1977 in the Court of the Subordinate Judge, Narasapur. The learned Subordinate Judge held that the defendant continued in possession of the suit site as a tenant holding over, after the period of lease had expired. However, the learned Judge held that Ex.A-4 notice issued u/s 106 Transfer of Property Act was not valid since the tenancy was from year to year and six months" notice as required u/s 106 was not given. Regarding the payment of rent, it was held that the defendant was liable to pay an amount of Rs. 158-33 ps. as damages for occupation of the suit site by him. Consequently, the suit was partly decreed only to the extent of payment of arrears of rent.

5. Questioning the validity of the judgment, this Second Appeal was preferred. This Court called for a finding from the Lower Appellate Court on the following point.

"If the lease is from month to month, whether the notice issued by the lessor to the lessee determining the lease is valid u/s 106 of the Transfer of Property Act."

6. The Lower Appellate Court recorded a finding and transmitted it to this court. It was held that there was no valid service of notice on the defendant. However, the learned Judge held that if the postal endorsement on Ex.A-4 that the defendant avoided service of notice was considered as amounting to service of notice, then Ex.A-4 notice was in accordance with the provisions of Section 106, Transfer of Property Act.

7. It is submitted by the learned counsel for the appellant that the Lower Appellate Court had committed a grave error in holding that the lease was for manufacturing purpose, and therefore, it was a lease from year to year terminable by six months" notice. In Ex.A-1 lease deed, it was specifically mentioned that the lessee was entitled to use the land and the shed erected therein for the purpose of keeping the car and other things belonging to him. There is no indication in Ex.A-1 that the suit site was leased out for any manufacturing purpose. As per the terms of the lease deed, rent is payable by 21st of every month. After the expiry of the lease period of five years on September 20, 1960 the defendant had been continuing in possession of the suit site as the tenant holding over. Admittedly, it is not a lease for agricultural purpose. Having regard to the contents of Ex.A-1 lease deed and that the defendant has been continuing in possession ever since September 21, 1960 as a tenant holding over, it has to be held that the lease is from month to month

terminable by 15 days notice.

8. Then the question that arises for consideration is whether Ex. A-4 notice is valid. It was sent by registered post by the plaintiff to the defendant on February 25, 1972. The registered letter was returned to the plaintiff with an endorsement of the postman that the addressee was avoiding to take delivery of notice. The various endorsements made on Ex. A-4 by the postman show that the addressee (defendant) was not available for service of notice on several occasions as mentioned therein whenever the postman went to him to serve the notice. Ultimately on March 9, 1972, he returned the letter with an endorsement that the addressee was avoiding to take delivery of notice. In that notice, the plaintiff called upon the defendant to vacate the premises by March 22, 1972. The Lower Appellate Court held that the endorsement "avoiding to take delivery" did not amount to refusal to receive the notice. Therefore, it was held that there was no valid service of notice.

9. u/s 114 Indian Evidence Act, the presumption would be that a letter posted by the sender would reach the addressee in usual course. Once a letter has been delivered to the post office, it is presumed to have been delivered to the addressee u/s 27 of the General Clauses Act. There is no dispute that Ex. A-4 registered letter was delivered to the post office on February 25, 1972 for the purpose of service to the addressee (defendant). It was returned with an endorsement dated March 9, 1972 that the defendant had been "avoiding to take delivery".

10. The defendant who got himself examined as D.W.1 admitted in his evidence that the postman had no enmity with him. Ex.A-4 contained number of endorsements made by the postman prior to March 9, 1972 that the addressee was not available. In such circumstances, the question to be considered is whether the failure on the part of the plaintiff to examine the postman would be fatal. As pointed out by the Supreme Court in *Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana*, .

"It is not always necessary in such cases to produce the postman who tried to effect service. The denial of service by a party may be found to be incorrect from its own admissions or conduct....."

Construing the expression "served through post", the Supreme Court pointed out in *M/s. Madan and Co. Vs. Wazir Jaivir Chand*, .

".....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 some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone, or to deliver them to some other person authorised 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. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by the tenant."

11. Thus, when a letter had been sent by post correctly and properly addressed to the defendant, the tender of the letter by the postman at the address mentioned in the letter shall be treated as receipt of the letter by the addressee. It is not the case of the defendant that either the address of the defendant was not correctly mentioned on the letter or that it was not sent by registered post. When the letter was sent by registered post correctly and properly addressed to the defendant it would be presumed that the postman had tendered the letter at the address mentioned in the letter. From the various endorsements made by the postman on Ex.A-4 letter, it is evident that the defendant was away from the premises for considerable time and he did not make any alternative arrangement by authorising some other person to receive the letter on his behalf. In such circumstances, it cannot be deemed that the letter was not tendered to the defendant by the postman. When the postman tenders the letter at the address mentioned in the letter, it is for the addressee residing at that address to take delivery of the letter. If the addressee makes himself scarce for considerable time at the address given in the letter and where he normally resides he cannot raise a plea that the letter has not been tendered to him and therefore, it cannot be treated as service.

12. It is, however, submitted by the learned counsel for the respondents that when the postman had endorsed on the letter merely that the defendant had been avoiding to take delivery such an endorsement cannot be treated as refusal to take delivery. According to the learned counsel. When the defendant who got himself examined as D.W.1 had deposed that the letter was not tendered to him by the postman, the presumption that the letter was served on the defendant had been rebutted and when the plaintiff had failed to examine the postman who made the endorsement to prove that the letter was tendered to the defendant, it has to be held that there was no proper service on the defendant. In support of his contention, the learned counsel has placed strong reliance on the decision of the Bombay High Court in Meghji Kanji Patel Vs. Kundanman Chamanlal Mehtani, and a decision of this court in C.R.P.No. 190 of 1968 dt. August, 19, 1969. The effect of both those decisions has been explained by the Supreme Court in Puwada Venkateswara Rao v. Chidamana Venkata Ramana (1 supra).

13. The plaintiff had sent Ex.A-4 letter by registered post to the defendant on February 25, 1972. There is no dispute that the address of the defendant mentioned in Ex.A-4 letter is correct. The various endorsements made by the postman on the letter show that the defendant was not available at the address

given in the letter when the postman went there to tender the letter. The letter was returned to the plaintiff on March 9, 1972 with an endorsement made by the postman "avoiding to take delivery". D.W.1 (defendant) admitted in his evidence that the postman had no enmity with him. In those circumstances, it has to be presumed that Ex.A-4 letter was served on the defendant.

14. The Lower Appellate Court itself had found that had Ex.A-4 notice was served on the defendant fifteen days earlier than March 22, 1972. It was a valid notice as per the provisions of Section 106 Transfer of Property Act. As per the terms of Ex.A-1 lease deed, the tenancy is from month to month commencing on the 21st of every month and expiring on the 20th of the succeeding month. The defendant was asked to vacate the premises by March 22, 1972 i.e., two days later than the last day of the tenancy month. Ex.A-4 letter was sent on February 25, 1972 and as it is evident from the postal endorsements made on it, it could have been served on the defendant had he not avoided to receive it, giving him more than 15 days time before the end of the month of the tenancy, to vacate the premises. Thus, Ex.A-4 registered notice issued by the plaintiff to the defendant is in accordance with the provisions of Section 106 of the Transfer of Property Act.

15. Regarding the rent payable by the defendant to the plaintiff, I do not see any ground to interfere with the finding recorded by the Lower Appellate Court and it is, therefore, upheld.

16. The Second Appeal is accordingly allowed and the judgment and decree of the Lower Appellate Court except to the extent relating to payment of rent, are set aside. The suit is accordingly decreed. There shall be no order as to costs.

17. The respondents herein shall vacate and deliver the vacant possession of the suit schedule land to the appellant herein within four months from today.