
(2019) 07 UK CK 0246
In the Uttarakhand High Court
Case No : Second Appeal No. 133 Of 2015

Sate Sing	Vs	APPELLANT
Roop Singh & Another		RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Delhi Rent Act, 1995 — Section 5(3), 5(11), 13, 15, 15A
Evidence Act, 1872 — Section 116
Code Of Civil Procedure, 1908 — Order 41 Rule 31 (d)

Citation : (2019) 07 UK CK 0246

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : S.K. Posti, I.P. Kohli, Rangoli Purohit

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. A very peculiar circumstance has arisen for consideration before this Court in the instant Second Appeal. The brief facts for consideration as involved herein are that in relation to the property in dispute, which has been more particularly described in the plaint as contained in paragraph 2, constituting of Khasra No. 1484 was having a total area of 1.153 hectares of land, out of it a small piece of land measuring about 0.008 hectare of land, which admittedly was recorded as property belonging to Kesherehind, was admittedly in occupation of the plaintiff over which he contends that he has raised a small pucca construction by way of shop from where he claims was running his fair price shop. Later on as per the plaint averments it is contended by the plaintiff that over the super structure, which was created on the land which was belonging to the Kesherehind, he has let out the said shop constructed by him to the defendants on a rent, which was payable at the rate of 7,000/- per annum to the plaintiff w.e.f. January, 2001.

2. There is a specific case pleaded by the plaintiff/appellant to the effect that ever since the creation of tenancy with regard to the super structure over the

land in question the defendant admittedly had remitted the rent consistently for the years 2001, 2002, 2003 and also for some part of the year 2004, the rent was remitted partially for a few months. Later on it was stopped to be paid to the plaintiff by the defendant.

3. It is the case of the plaintiff that thereafter after paying the rent upto 2004, the defendant had stopped the remittance of the rent. Consequently, in order to restore back the possession of the shop by terminating the tenancy, which according to the plaintiff has been let out to the defendant, there had been series of proceedings including the one as drawn by way of Case No. 588 of 2007 'Roop Singh vs. Mohan Singh' under Sections 323, 504 and 506. Though the reference to the proceedings on a criminal side may not be having any bearing as far as the decision pertaining to the present second appeal is concerned as its altogether a different proceeding under criminal law having altogether different legal consequence.

4. In the Suit thus instituted on 30.08.2010 it was contended by the plaintiff that on account of the fact that he has created a tenancy by the defendant in 2001 in favour of the defendant and since they have stopped remitting the rent since 2004 and on account of the fact that despite of having given notice on 24.09.2007 due to default and terminating the tenancy since the vacant possession of the property was not handed over to the plaintiff/appellant herein the necessity arose for the plaintiff for institution of the Suit for the following reliefs:

"10. यह कि, वादी न्यायालय से निम्न अनुतोष चाहता है-

(अ) यह कि, प्रतिवादी को ग्राम बणसू के खसरा नम्बर 1484 के 0.008 हे0 भूमि जिसे नजरी नक्शे में अक्षर अ,ब,स,द से दिखाया गया है वादी द्वारा निर्मित दुकान से बेदखल कर वादी को दुकान का कब्जा दिलाया जाय।

(ब) यह कि, वादी के पक्ष में प्रतिवादी के विरुद्ध इस आशय की डिक्री पारित की जाय कि प्रतिवादी अथवा उसका कोई प्रतिनिधि/ऐजेन्ट वादी द्वारा निर्मित दुकान में किसी तरह का हस्तक्षेप न करें और न इसका कारण बनें।

(स) यह कि, वादी को प्रतिवादी से दावे का खर्चा दिलाया जाय।

(द) यह कि, वादी अन्य अनुतोष जो न्यायालय उचित समझे प्रतिवादी से वादी को दिलाने की कृपा की जाय।"

5. The Suit in question was contested by the defendant by filing a written statement paper No. 19ka denying the plaint averment and from the view point that the plaintiff since is not the owner of the property, because he has occupied the land of the State Government recorded as Kesherehind, on which the super structure has been created by him by way of shop, but what is more important is that while denying the contents of paragraph 3 of the plaint with regards to the remittance of the rent by the defendant to the plaintiff for the year 2001, 2002, 2003 and partially for the year 2004 was not denied specifically by the defendant in their written statement. Meaning thereby, this fact itself if would be inferred that there existed a relation of landlord and tenant between the plaintiff and defendant. Though in paragraph 12 of the written statement, which was filed by

the defendant, they do have contended that there existed no relationship of landlord and tenant between them for the reason that the plaintiff was not the owner of the property, i.e. the shop and land on which the shop in question, which was let out to the respondent was constructed and as such in the absence of there being any title vested with the plaintiff over the land, he will not be entitled for grant of any relief in the nature of the decree of eviction, which has been sought by him in the plaint instituted on 30.08.2010 before the Court of Civil Judge (S.D.), Rudraprayag, being Suit No. 26/2010 'Mohan Singh vs. Roop Singh'.

6. The Suit after the contest being put in and after exchange of pleading it came up for consideration before the learned Trial Court, who after framing the issues to the following effect, had ultimately held that in view of an agreement which was executed between the plaintiff and the defendant which constituted as to be paper no. 76ka it establishes the existence of relationship of landlord and tenant and the fact that tenancy subsisted amongst them:

"9. प्रतिवादीगण की ओर से अभिलेखीय साक्ष्य में सूची फेहरिस्त 75क के माध्यम से निम्न दस्तावेजी साक्ष्य प्रस्तुत किये गये:-

1. वादी एवं प्रतिवादी के मध्य हुये इकरारनामे की मूल प्रति, कागज संख्या 76क।

2. वादी द्वारा प्रतिवादी के पक्ष में दिनांकित 20/12/2002 को किये गये विक्रय पत्र की मूल प्रति, कागज संख्या 77क।

3. वादी द्वारा हस्तलिखित प्राप्ति रसीद की मूल प्रति, कागज संख्या 78क।"

7. Ultimately the Suit as preferred by the plaintiff/appellant was decreed by the Court of Civil Judge (S.D.) by the judgment dated 9.12.2013, holding thereof that in terms of the finding, which has been recorded on issue no. 1 the finding, which has come is that no doubt admittedly the land belongs to the State Government, further it has also observed that the State has not extended any such assurance to the plaintiff of vesting him with any right or title in relation to the land in question, but the fact remains that as far as the existence of the shop by way of super structure on the said land lying in Khata Khatoni No. 1484 is concerned is the said fact was not specifically denied by the defendants in the written statement. The defendant no. 1 in the written statement had further not specifically denied the fact with regards to the remittance of the rent for the years as referred therein and had also not denied that after the partial payment of rent for the year 2004 they had not further paid the rent in relation to the shop in question, which was let out to the defendant/respondent by the plaintiff/appellant.

8. Considering the aforesaid plea, the learned Trial Court exclusively had decreed the Suit and consequently after having held that atleast considering the fact that the land on which the shop was constructed by the plaintiff was a land recorded with the State, hence, for the super structure existing on the land is concerned, it was held by the Trial Court that the plaintiff/appellant does hold a right though it might have been unauthorizedly raised on the State land, but this Court is of

the view that this in itself will not dilute the relationship of landlord and tenant, which was created inter se between them, by virtue of an agreement paper no. 76 ka, which was placed on record and particularly when it was admitted that rent was paid to plaintiff/appellant..

9. The learned Trial Court further considered the fact that as far as the remittance of the rent by the defendant to the plaintiff is concerned, there had been no evidence to the contrary nor a pleading to the effect that a rent for the said period, which was referred in the plaint, was never remitted by the defendant/respondent to the plaintiff/appellant. Consequently, it held that though the plaintiff may not be having an ownership over the land on which the super structure was constructed, but the tenement in question, has been constructed by the plaintiff, but that in itself will not lead to a conclusion that in the absence of there being a title vested over the land in question with the plaintiff/appellant he will also simultaneously seize with his relationship of landlord and tenant with the defendant/respondent, which was created between the plaintiff and the defendant, by virtue of an admitted agreement paper no. 76 ka, which was placed on record before the Court below by way of evidence by the plaintiff/appellant.

10. After rendering of the decree of eviction by the judgment of the Trial Court dated 09.12.2013 from the tenement in question by the Civil Judge (S.D.) by the judgment dated 09.12.2013. The defendant/respondent being aggrieved against the Trial Court judgment decreeing the Suit had preferred a First Appeal being First Appeal No. 01 of 2014 'Roop Singh vs. Sate Singh', which has been allowed by the impugned judgment and decree dated 29.05.2015 and judgment and decree of Trial Court dated 09.12.2013 was set aside.

11. Learned counsel for the plaintiff/appellant submits that the rationale, which has been adopted by the learned First Appellate Court while recording its finding to paragraph 10 pertaining to handing over of the possession of the shop constructed on the land as tenant to the defendant may not be accepted for the reason that as per the revenue records, which was available since the property stands recorded in the name of Kesharhind the plaintiff/appellant may not be treated as to be an owner of the land on which the super structure, i.e. the shop in dispute was constructed over which the defendant was enjoying the tenancy rights.

12. This Court need not to express its opinion on the fact that for the purposes of interpreting the implications flowing from the word landlord and owner of the property as dealt in the Rent Control Act it is altogether distinct when it comes to its interpretation in relation to the settlement of an inter se relationship of landlord and tenant because any landlord, who is the recipient of rent from a tenant occupying the tenement that in itself would suffice the purpose to entitle the landlord to initiate the proceedings for eviction on any of the grounds, which is available to him under law. The very fact that the specific pleading, which has been raised by the plaintiff/appellant in the Suit pertaining to the creation of

tenancy, pertaining to the remittance of rent has not been specifically denied except for the fact that a baldassertion has been made in paragraph 12 of the written statement that the defendant does not happen to be the tenant of the plaintiff/appellant, and also to the effect that since the plaintiff is not the owner of the land on which the super structure exists the Suit as preferred by the plaintiff/appellant for seeking eviction of the defendant/respondent from the tenement in question would not be sustainable.

13. In a judgment of 'Kanaklata Das & Others vs. Naba Kumar Das & Others' reported in 2018(2) U.D., 521 in its paragraph 14, 15 & 16 this issue has been dealt as follows:

"14. Second, the landlord (plaintiff) in such suit is required to plead and prove only two things to enable him to claim a decree for eviction against his tenant from the tenanted suit premises. First, there exists a relationship of the landlord and tenant between the plaintiff and the defendant and second, the ground(s) on which the plaintiff-landlord has sought defendant's-tenant's eviction under the Rent Actexists. When these two things are proved, eviction suit succeeds.

15. Third, the question of title to the suit premises is not germane for the decision of the eviction suit. The reason being, if the landlord fails to prove his title to the suit premises but proves the existence of relationship of the landlord and tenant in relation to the suit premises and further proves existence of any ground on which the eviction is sought under the Tenancy Act, the eviction suit succeeds.

16. Conversely, if the landlord proves his title to the suit premises but fails to prove the existence of relationship of the landlord and tenant in relation to the suit premises, the eviction suit fails. (See-Dr. Ranbir Singh vs. Asharfi Lal, 1995(6) SCC 580)."

14. In an another judgment in the case of 'Anita Enterprises & Another vs. Belfer Cooperative Housing Society Ltd. & Others' reported in (2008) 1 SCC 285 the view expressed in its paragraph 34 and 42 by the Hon'ble Apex Court is as follows:

"34. The Rent Act was enacted to amend and consolidate the law relating to the control of rents and repair of certain premises, of rates of hotels and lodging house and of evictions and also to control the charges for licence of premises etc. Section 5(3) of the Rent Act defines a 'landlord' to be a person who, for the time being, is receiving or entitled to receive rent of any premises from a tenant, which includes a licensee who is deemed to be a tenant within the meaning of Section 15A of the Rent Act. Section 5(11) defines 'tenant' to mean a person by whom or on whose account rent is payable for any premises which, inter alia, includes a licensee, who is a deemed tenant under Section 15A of the Rent Act but shall not include such a sub-tenant to whom interest in the premises has been purported to have been assigned or transferred in the absence of any contract to the contrary as required under Section 15of the Rent Act. Section 13

of the Rent Act enumerates the grounds for eviction of a tenant which includes bona fide need of the landlord. Section 15 of the Rent Act lays down that in the absence of any contract to the contrary, it shall not be lawful for any tenant to sublet the whole or any part of the premises in which he was inducted as a tenant. Section 15A lays down that if any licensee who was in occupation of the premises, in which he was inducted as a licensee, before the 1st day of February, 1973 and the licence was subsisting on that date, he shall be deemed to have become a tenant of the landlord in respect of the premises on that date i.e., 1.2.1973 when Maharashtra Act 17 of 1973 came into force whereby Section 15A was inserted in the Rent Act.

42. We now turn to the second question, i.e., as to whether the status of the appellants was that of tenant or sub-tenant. In view of our answer to question no. 1 that the status of the member was higher than a tenant and although de jure he was not an owner but, for all practical purposes, he was exercising almost all the rights of an owner, excepting absolute right of transfer, he not being the tenant, there is no question of his creating sub-tenancy in favour of the appellants. A member may not be an owner of the flat in the eye of law but he may still be a landlord within the meaning of the Rent Act which does not necessarily postulate a landlord to be an owner of the property, but if a person is entitled to receive rent or receiving rent he may be treated to be a landlord within the meaning of the Rent Act. The question arises as to whether such a member could create a tenancy right under law, meaning thereby whether the relationship of landlord and tenant between the member and the appellants was duly created so as to claim protection from eviction under the Rent Act."

15. This view as expressed by the First Appellate Court in paragraph 10 of the judgment runs contrary to a simplicitor interpretation of the term 'landlord' as it has been dealt with in the provisions contained under U.P. Act No. 13 of 1972, which in relation to a building, it means only a person to whom the rent is payable it also brings within its ambit the attorney or any such other person, who has been made entitled by the owner of the land to receive the rent on their behalf and, hence, for being a landlord it is not necessary that a person should also simultaneously be an owner of the property in question.

16. Thus the analogy which has been drawn by the First Appellate court in paragraph 10 of the judgment is to the effect that the plaintiff/appellant has occupied the said land of the State on which the construction has been raised by him of the shop in question. May it be that he is an unauthorized occupant of a land belonging to the State Government, its absolutely the prerogative and inter se relation between the State and the plaintiff, which would be governing the terms and conditions pertaining to the continuance of occupancy of property at the behest of the plaintiff over State's land, but that in itself will not at all effect the determination of tenancy as admittedly which was done by the plaintiff/appellant by issuance of notice of terminating the tenancy on account of the default committed by the tenant in remitting the rent after 2004.

17. During the course of arguments, the passing remark, which has been made by the plaintiff/appellant though also pleaded in the plaint was with regards to a simultaneous criminal proceedings drawn amongst the parties, wherein, according to the argument, which has been extended by the learned counsel for the plaintiff/appellant, the defendant has admitted his status as to be that of a tenant it cannot be borrowed read in for the purposes of deciding or determining the relationship of landlord or tenant in a civil proceedings, but still considering the rival contentions and the pleadings raised by the defendant in the written statement and the finding, which has been recorded by the Trial Court atleast the fact of establishment of relationship of landlord and tenant by virtue of a settled agreement since has not been specifically denied by the defendant in the written statement and the same has been accordingly held out by the Trial Court that there existed a relationship of landlord and tenant and there was a default committed after 2004 in remittance of the rent by defendant respondent the Suit of the plaintiff/apellant was rightly decreed by the learned Trial Court by the judgment dated 09.12.2013. However, the finding, which has been recorded by the Appellate Court in order to reverse the finding as rendered by the Trial Court is contrary to the provisions contained under Order 41 Rule 31 (d) because the finding of the fact pertaining to the remittance of the rent, which itself infers the establishment of relationship of landlord and tenant has not been reversed by the learned First Appellate Court and it has not been reversed specifically, interference by the Appellate Court was only on the ground that since the land stands vested with the State Government the plaintiff cannot claim himself to be the owner of the property in question. Once its is reiterated being 'landlord' or 'owner' of property are altogether two distinct and separate aspect.

18. Even otherwise also, when the tenant himself has remitted the rent voluntarily to the landlord for a specified period that itself will tantamount to be an admission of the existence of a relationship of landlord and tenant and its subsequent stoppage of rent by the tenant will derive the implications, which are flowing from Section 116 of the Evidence Act.

19. Hence, in that view of the matter too, it would be deemed that the defendant/respondent, who was occupying the shop, was in the capacity of a tenant and that too a tenancy which was admittedly created by the landlord in pursuance to an agreement, which was the subject matter of consideration before the Trial Court while deciding the issue no. 1. Thus, the finding recorded by the Appellate Court for reversing the judgment of the learned Trial Court and dismissing the Suit is perverse and contrary to the settled preposition of law, which is required to be taken into consideration while determining the relationship of landlord and tenant. For which only determination required under law as to who was receiving the rent would be the landlord, entitled to maintain the proceedings for eviction.

20. Consequently, the Second Appeal is allowed. The impugned judgment dated 29.05.2015 as rendered by the First Appellate Court in Civil Appeal No. 01 of 2014 is set aside, and as a result thereto, the Suit for eviction, which has been

instituted by the plaintiff would stand decreed. It becomes a duty of the Second Appellate Court to deal with the substantial question of law on which the Appeal was admitted on 17.09.2015. The following substantial question of law, which was pleaded to be involved in the adjudication of the present Second Appeal, which is quoted hereunder:

"A. Whether in the facts and circumstances learned lower appellate court was justified in holding that the suit was filed by plaintiff regarding the disputed land, while in fact the suit was for eviction of tenant from the shop of plaintiff?

B. Whether in the facts and circumstances, learned lower appellate court was justified in holding that the plaintiff is not entitled to evict the defendant from the shop in question, because the plaintiff is not owner of the land in which the shop is constructed?

C. Whether in the facts and circumstances, learned lower appellate court was justified in holding that the learned appellate court was justified in law where accepting the finding that, defendant is tenant but not giving the right to plaintiff to evict the defendant from the shop in question?"

21. As far as the substantial question of law no. 1 is concerned, that has already been answered in the aforesaid paragraph, which dealt with that what would be the impact if the landlord is held to be not the owner of the land on which the super structure was created over which the tenancy was created by virtue of an agreement of tenancy and when admittedly rent was paid in pursuance to it. In answer to it and in addition further that when the respondent defendant tenant had accepted his tenancy right in pursuance to an agreement dated 76ka in relation to a tenement constructed on the land belonging to the State Government, then the determination as to the fact as to whom the land on which the super structure has been constructed becomes irrelevant for the purposes of determination of tenancy rights of the defendant/respondent because even if at all there is any dispute persisting between the land owner and the landlord it is altogether distinct to the determination of the relationship of the landlord and tenant as it has been involved in the instant Suit in question because its not necessary under law that every landlord has to be owner of the property.

22. The second question was as to whether the plaintiff/appellant was entitled to get the defendant/respondent evicted from the shop in question. In answer to this question it is quite simplicitor that when the defendant/respondent by his action and act himself has remitted the rent and admits the existence of relationship of landlord and tenant and that in itself confers the right with the plaintiff/appellant to institute the proceedings for eviction of a tenant from over the structure for which the rent has been paid by him to the landlord.

23. In view of the reasons, which have been assigned above, the substantial question of law as framed by the Court on 17.09.2015 is answered in favour of the plaintiff/appellant. Thus, the Second Appeal is allowed. The impugned judgment rendered in First Appeal No. 01 of 2014 'Roop Singh vs. Sate Singh'

dated 29.05.2015 is set aside and the Suit is decreed for eviction and the defendant/respondent is directed to vacate and handover the vacant and peaceful possession of the property in question within 30 days from the date of presentation of certified copy of this order before the Trial Court to the plaintiff/appellant. The defendant no. 2 to the Suit, i.e. the State Government as a measure of precaution has sought a slight clarification in the judgment rendered today so far it related to the determination of relationship of landlord and tenant relationship between the defendant no. 1 and the plaintiff/appellant. Any finding recorded pertaining to an establishment of relationship of landlord and tenant will not come in the way in case if in an event if the State so decides to initiate any proceedings against the plaintiff/appellant for eviction over the land, which belongs to the State Government.

24. Subject to above observation the Second Appeal is allowed.

25. However, there would be no order as to cost.