

(1980) 08 AHC CK 0008
In the Allahabad High Court
Case No : Civil Misc. Writ No. 4861 of 1979

Smt. Savitri Devi and Others

APPELLANT

Vs

II Addl. District Judge and Another

RESPONDENT

Date of Decision : 19-08-1980

Acts Referred:

Provincial Small Cause Courts Act, 1887 — Section 25
Transfer of Property Act, 1882 — Section 106, 113
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 21, 21(6)

Citation : (1980) AWC 609

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : S.D. Dubey and C.B. Misra, for the Appellant; Dharmpal Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

A.N. Varma, J.—This is a landlords' petition. It arises out of a suit filed by the Petitioners against Respondent No. 2 Sri K.K. Dixit, the tenant of the premises in suit, for the latter's ejectment as well as for recovery of arrears of rent and damages.

2. Shortly stated, the plaint case was that the Respondent No. 2 was a tenant of the Petitioners on the first floor of house No. 43/16, Narial Bazar, Kanpur. The house originally belonged to one Gopal Dass and some others. It was purchased by the Plaintiffs on 29-3-75. The Defendant fell into arrears of rent. The Plaintiffs thereupon served a composite notice of demand and termination of tenancy dated 20-4-1976 u/s 106 of the Transfer of Property Act, which was duly served on the Defendant. The Defendant neither paid the arrears of rent within time, nor vacated the premises; and hence the suit.

3. The suit was contested by the tenant, who asserted that there were no arrears of rent due and that in any case, the notice served by the Plaintiffs had been

waived by them subsequently.

4. On the pleadings of the parties, necessary issues were framed by the trial court. It was held that the Defendant had committed default in the payment of arrears of rent demanded, that the notice served on the Defendant was valid, and that it had not been waived by the Plaintiffs. On the issue whether the Defendant had paid the sum of Rs. 700/- as arrears of rent to the Plaintiff's predecessor, the trial court believed the evidence of the Defendant and held that the Defendant had paid the arrears of Rs. 700/- to the Plaintiff's predecessor and consequently, the Plaintiffs were not entitled to a decree for this amount. With these findings, the suit of the Petitioners for ejectment was dismissed. It was, however, decreed for recovery of arrears of rent for the period 29-3-75 till 26-5-76 as well as damages for use and occupation from 27-5-76 till the date of the institution of the suit. The rest of the claim of the Plaintiff was also dismissed.

5. Aggrieved by the decision of the trial court, the Plaintiffs filed a revision u/s 25 of the Provincial Small Cause Courts Act which has been allowed by the learned II Additional District Judge, Kanpur. Hence this writ petition.

6. The learned District Judge set aside the findings of the trial court on the question of waiver and held that in view of what was stated in the reply of the landlady dated 15-12-76 (Ex. A. 7), the notice dated 20-4-76, on which the suit was based, must be deemed to have been waived within the meaning of Section 113 of the Transfer of Property Act. On the ground that the notice u/s 106 of the Transfer of Property Act had been waived by the Plaintiffs/the suit for ejectment was dismissed by the learned District Judge. The learned District Judge also disagreed with the trial court on the issue whether the Defendant had paid the sum of Rs. 700/- to the Plaintiff's predecessor. The result was that the Plaintiffs' revision was allowed in part. While the suit for ejectment was dismissed, it was decreed for the entire arrears of rent claimed by the Plaintiffs.

7. Counsel of the Petitioners contended that the findings of the learned District Judge on the ground of waiver of notice, is manifestly erroneous in law.

8. Having heard Learned Counsel for the parties, I am clearly of the view that the learned District Judge fell into a patent error in construing the reply given on behalf of the landlady dated 15-12-76 (Ex. A. 7) as amounting to waiver of the notice in question.

9. In the first place, I may mention that Ex. A. 7 is a notice sent on behalf of the landlady to the tenant. It was only a reply given on her behalf by her lawyer to the Defendant in response to the latter's notice dated 13-10-76. This notice dated 13-10-76 had been given on behalf of the tenant to the landlords calling upon them to restore a beam which was alleged to have been removed at the instance of the landlady. It was alleged in the notice that the accommodation under tenancy was just above the shop of the landlady's house. With a view to causing harassment to the tenant, the landlady had caused the beam fixed on the roof of the said shop to be removed exposing the building under tenancy to

grave risk. The notice demanded from the landlady that she should restore the beam and make the building safe within fifteen days of the notice failing which if any harm was caused to the tenant, the landlady would be held responsible for it. It is in response to this notice that a reply dated 15-12-1976 was sent on behalf of the landlady. This reply has been described by the learned District Judge as the notice dated 15-12-76.

10. The reply has necessarily to be read in the context of the notice which was sent on behalf of the tenant. In the reply dated 15-12-76, it was denied that the landlady had caused any damage to the building. However, it was said that the building was already in a dilapidated condition and was liable to collapse. It was further asserted that the landlady had got the building inspected by Engineers who had confirmed that the building should be demolished as it was in a very bad shape. On these assertions, it was claimed that the building was needed for being demolished and reconstructed, and that if the Defendant did not vacate the premises within fifteen days, the landlord would take appropriate steps for getting the building released for the purposes of being demolished and reconstructed and that if the tenant continued in occupation of the building, and any harm came to him, he would himself be responsible for it.

11. The learned District Judge read the aforesaid reply completely divorced from the notice of the tenant in reply to which the said communication had been sent on behalf of the landlady. It was not as though the landlady had, after determining the tenancy of the Defendant, given a notice to quit on her own. It was a reply given in response to the notice of the tenant containing the allegation that the landlady had deliberately caused damage to the building with a view to causing harm to tenant.

12. The learned District Judge emphasized the fact that in the reply given on behalf of the landlady a threat was given that she would institute proceedings for the release of the accommodation and held that this threat must, in view of the provisions of Section 21(6) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972(hereinafter refer to as U.P. Act No. XIII of 1972), be held to result in the waiver of the notice given by the landlords u/s 106 of the Transfer of Property Act. I do not agree. As mentioned above, the reply given on behalf of the landladies must be read in the context of the notice given by the tenant. So read, the reply cannot possibly be construed as indicating any intention of the landlady to treat the lease as subsisting. The mere circumstance that the tenancy of the tenant against whom proceedings are launched by a landlord u/s 21 of the aforesaid Act stands determined on the expiration of a period of thirty days from the date of an order u/s 21, cannot automatically or by itself lead to the inference that any threat given by or on behalf of the landlord, after he has determined the tenancy u/s 106 of the Transfer of Property Act, that he would launch proceedings u/s 21 of the Act against the tenant must in each case and as a matter of law, result in the waiver of the notice.

13. The crucial question to be determined in each case would be whether the

threat or act of the landlord betrays an intention on the part of the landlord to treat the lease as subsisting. In my opinion, in the present case, the reply given on behalf of the landlord not only shows no intention to treat the lease as subsisting, but it clearly indicates that the landlady did not desire that the tenant should continue in the building under tenancy, whether as a tenant or otherwise, any longer. Indeed the intention was that the tenant should leave sooner than the termination of the suit. The threat to launch proceedings u/s 21 of the Act did not, to my mind, in any way derogate from the intention of the landlady to treat the lease of the Defendant as having been lawfully determined. I would like to add here that even after determination of the tenancy of the tenant under the Transfer of Property Act, the tenant continues to be a statutory tenant not liable to be ejected in view of the protection afforded to him under U.P. Act No. XIII of 1972. That being so, on the facts and circumstances of the present case, the mere threat given on behalf of the landladies to the tenant to institute proceedings u/s 21 of the Act could not result in the waiver of the notice.

14. Learned Counsel for the Respondents placed reliance on a decision in the case of Tayabali Jaffarbai Tankiwala Vs. Asha and Co. and Another, and urged that the notice to quit given by the landlord on 15-12-1976 must be held to have resulted in the waiver of the earlier notice dated 20-4-1976. The decision cited by the Learned Counsel for the Respondent is clearly distinguishable. In (that case, after the landlord had given the first notice to quit on the ground of arrears of rent, the tenant continued in occupation till after the expiry of the period of the notice. Thereafter, a second notice, after about one year, was given demanding rent for the period between the first notice and the second notice, On these facts, it was urged that the notice stood waived. On the facts of that case, therefore, there could be no manner of doubt that the first notice stood waived for a number of reasons. The landlady had demanded rent for the period subsequent to the first notice. Furthermore, illustration (b) of Section 113 of the Transfer of Property Act was squarely applicable to that case. In the present case, the situation is materially different. The landlady gave no such notice to the tenant determining the tenancy of the Defendant subsequent to the giving of the first notice. Furthermore, illustration (b) of Section 113 of the Act would have applied only if the landlady had given the second notice to the tenant as lessee. The learned District Judge was, therefore, in error in applying the illustration (b) to the facts of the present case.

15. The result of the aforesaid discussion is that the trial court was right in holding that the notice had not been waived. The learned District Judge committed a patent error of law in holding to the contrary. The finding of the trial court that the Defendant had committed as default was not set aside by the revisional court. On the said finding, the suit of the Petitioner for ejectment was liable to be decreed. As, however, the tenant has filed no revision against the decree of the revisional court in so far as arrears of rent are concerned, the same is liable to be affirmed.

16. In view of what has been stated above, this petition succeeds and is allowed. The order passed by the learned Additional District Judge dated 14-2-1979 in so far as the decree for ejectment is concerned, is quashed. The decree passed by the learned District Judge for arrears of rent is, however, affirmed. The suit of the Petitioners for ejectment is hereby decreed. The tenant is, however, granted three months" time to vacate the premises.

17. The parties shall bear their own costs.