
(2006) 10 AHC CK 0188
In the Allahabad High Court

Smt. Vijaya Nigam

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 116

Citation : (2006) 10 ADJ 76

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Misra, J.—The petitioner has filed this writ petition for quashing the judgment and order dated 16.4.1990, passed by the court of Judge Small Causes Kanpur Nagar in S.C.C. Suit No. 598 of 1983, Smt. Vijaya Nigam v. Sudama Kumar, whereby the suit has been dismissed for ejectment of the defendants and allowed for recovery of arrears of rent and the judgment and order dated 12.4.1993, passed by the Xth Additional District Judge, Kanpur in S.C.C. Revision No. 99 of 1990, Smt. Vijaya Nigam v. Sudama Kumar, whereby the revision of the petitioner has been dismissed.

2. Heard Sri Avinash Swaroop earned Counsel for the petitioner and Sri Ramendra Asthana, earned Counsel appearing on behalf of the respondents. The petitioner who claims herself to be owner and landlord of the Shop No. 3 situate in Premises No. 62/3 Block 7, Govind Nagar, Kanpur, filed the suit on the allegations that the shop was constructed in the year 1978 and was given on a rent of Rs. 225 per month to the respondent No. 3 for a period of 11 months by a written agreement. The period of tenancy was extended by subsequent agreements of 11 months each. The period of the last agreement came to an end on 30.4.1983 whereafter the petitioner sent a notice dated 7.5.1983 to quit which was received by the respondent No. 3 on 16.5.1983. The tenancy is alleged to have been terminated upon the expiry of thirty days from the date of service of notice.

3. The respondent No. 3 contested the suit claiming therein that a permanent irrevocable tenancy had been created by virtue of the agreement and it would therefore continue forever unless any terms of the agreement were violated by the respondent. The trial court framed issues and on issue No. 1 as to whether plaintiff is owner and landlord of the premises in question, It held that the petitioner was not owner of the disputed shop inasmuch as it has been taken by the petitioner on lease of 99 years from the Kanpur Development Authority. However, the trial court found that the petitioner was landlord of the premises in question. On issue No. 2 as to whether the tenancy was permanent and irrevocable or a month to month tenancy, the trial court found that it was not a permanent irrevocable tenancy it being dependent upon the terms of the agreement and further held that it was a tenancy for 11 months created by separate agreements from time to time. On the issue as to whether the provisions of U.P. Act No. 13 of 1972 would apply to the premises, the trial court found that the shop in question was not governed by the Act on the date of institution of the suit. On the issue as to whether tenancy of the defendant had been legally terminated and whether notice was legal and valid, the trial court found that tenancy was not legally terminated and the notice was illegal and invalid. With respect to the issue of default in payment of rent, the trial court decided in favour of the tenant and found that he was not in arrears of rent. It also found that question of title was not involved in the suit and the defence of the respondent was not liable to be struck off under Order XV, Rule 5, Code of Civil Procedure. It therefore, decreed the suit for recovery of arrears of rent from 1.5.1983 to 18.7.1983 at the rate of Rs. 225 per month and for rent pendente lite from 19.7.1983 to 15.4.1990 at the same rate. However, the suit for ejectment of the defendant from the shop in question was dismissed.

4. The revisional court found that the finding recorded by the trial court on the question of fact and law were in accordance with law and therefore, it has dismissed the revision filed by the petitioner.

5. The argument on behalf of earned Counsel for the petitioner is that the notice u/s 106 of the Transfer of Property Act served by the petitioner upon the tenant was valid and legal and both the courts below have committed error in law in holding that the notice was invalid and therefore, the tenancy was not terminated. It is this question alone which has been canvassed by the earned Counsel for the parties.

6. Upon going through the findings recorded by the courts below the tenancy by virtue of the last agreement admittedly was up to 30.4.1983. whereafter no fresh agreement was entered into between the parties. The notice to quit was served on the respondents on 16.5.1983 and therefore, the tenancy stood terminated after expiry of thirty days of service. The courts below have concurrently held that the tenancy was not a permanent irrevocable tenancy but was governed by the terms of the agreement. The agreement period of 11 months expired on 30.4.1983. The courts below have however, held that since

there has been no breach of any condition of the lease deed, therefore, the notice to quit could not have been given to the respondents validly and legally. The courts below found that the terms and conditions as enumerated in the lease had not been violated by the respondents and therefore, the petitioner was not entitled in law to terminate the tenancy. It also found that since no default had been committed in payment of rent the notice to quit was illegal.

7. In support of their contention earned Counsel for the parties have placed reliance on the decision of the Hon"ble Supreme Court in the case of *Jiwan Dass v. Life Insurance Corporation of India and Anr.* 1994 (Supp) (3) SCC 694, and contended that a notice to quit u/s 106 of the Transfer of Property Act in a month to month tenancy does not contemplate of giving any reason for terminating the tenancy. It is therefore, contended that upon expiry of the 11 months lease period, the occupation of the tenant would be month to month. Placing reliance upon a decision of the Hon"ble Supreme Court in the case of *Shri Janki Devi Bhagat Trust, Agra Vs. Ram Swarup Jain (dead) by LRs.,* , it has been contended that when a lease was for a period not exceeding one year it was not registerable and could be looked into only for collateral purposes.

8. Relying upon a decision of this Court in the case of *Bank of Baroda Vs. Sardar Arvinder Singh and Another*, it has been contended that after expiry of the lease period when no fresh lease deed is executed the tenancy becomes a month to month tenancy and can be terminated by giving notice u/s 106 of the Transfer of Property Act. Placing reliance upon a decision of this Court in the case of *Smt. Prakash Rani v. VIth Additional District Judge and Ors.* 2005 (61) ALR 865, it has been contended that for termination of month to month tenancy one month's notice u/s 106 of the Transfer of Property Act can be validly given and it is not necessary that the tenant must be a defaulter.

9. It is settled law that when a lease is of a fixed period with a stipulation that it can be extended by consent of the parties, then, in the absence of such consent there cannot be any implied renewal of the tenancy. The option for renewal even if exercised by the lessee, who continued to remain in use and occupation of the premises, could not claim that he was holding over as a lessee since it cannot be said to be a conduct signifying assent of the lessor to continue the tenancy even on expiry of lease period. The renewal has to be done with express agreement or assent of the lessor and hence, there can be no implied renewal in the absence of such agreement or assent. In the present case the petitioner has neither expressly nor impliedly agreed for renewal. There was no mutual agreement for renewing the lease after it had expired on 30.4.1983. Therefore, in the present case the respondent cannot even claim to be a lessee by holding over within the meaning of Section 116 of the Transfer of Property Act since the essential ingredient of the lessor's assent to his continuing in possession is absent, and therefore, possession of the lessee in the absence of any agreement to the contrary would only amount to a month to month tenancy as specified u/s 106 of the Transfer of Property Act which could be terminated by notice. The courts

below found that the tenancy was governed by the terms of the agreement which expired on 30.4.1983. It has also found that the tenancy was not permanent nor irrevocable. It was a month to month tenancy after expiry of the term. Reasoning given by the courts below that since no violation was committed by the tenant of the terms of the lease and since the tenant was not in default in payment of rent therefore notice u/s 106 of the Transfer of Property Act was invalid and illegal is clearly not sustainable. The said view of the courts below is illegal.

10. For the aforesaid reasons, the writ petition succeeds and is allowed. The impugned judgment and orders dated 16.4.1990, passed by the Court of Judge Small Causes Kanpur in S.C.C. Suit No. 598 of 1983 and the Judgment and orders dated 12.4.1993, passed by the Xth Additional District Judge, Kanpur Nagar in S.C.C. Revision No. 99 of 1990 are hereby quashed. The suit of the petitioner for ejectment stands decreed. No order is passed as to costs.