
(1990) 05 OHC CK 0007
In the Orissa High Court
Case No : Second Appeal No. 282 of 1989

Sri Tankala Raghunath Patra	Vs	APPELLANT
Sri Labani Charan Dey and Another		RESPONDENT

Date of Decision : 17-05-1990

Acts Referred:

General Clauses Act, 1897 — Section 27
Transfer of Property Act, 1882 — Section 106, 109

Citation : (1990) 70 CLT 806

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : C.V. Murty, C.M.K. Murty and S.K. Rath, for the Appellant; S.C. Roy and N. Roy, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Defendant No. 1 is the Appellant in this Second Appeal against a confirming judgment which has been admitted on the sale substantial question of law as to whether lease in favour of Defendant No. 1 has been terminated by a valid notice u/s 106 of the Transfer of Property Act (hereinafter referred to as "the Act").

2. As the findings of fact stand now Plaintiff is the owner of the disputed property. Defendant No. 1 was a monthly tenant under Defendant No. 2 on the basis of an agreement and as per such agreement period of tenancy expired on 31-12-1972. In the agreement there is a term that in default of payment of rent for 3/4 months Defendant No. 2 was entitled to evict, Defendant No. 1 by serving notice of seven days. After the expiry of the period of tenancy as per agreement but during continuance of Defendant No. 1 in possession, Defendant No. 2 sold the disputed land to Plaintiff on 28-10-1977 and gave notice of such transfer to Defendant No. 1 on 17-4-1978. Advocate for Defendant No. 1 sent notice dated 8-6-1978 by registered post u/s 106 of the Act which returned undelivered.

3. Absence of service of notice dated 8-6-1978 on Defendant No. 1 which

returned undelivered is the main basis of challenge to the decree of eviction by Mr. C.V. Murty, learned Counsel for the Appellant which according to him is non-compliance with the requirement of Section 106 of the Act. Mr. Sovesh Roy, learned Counsel for the Plaintiff-Respondent No. 1 submitted that no notice was required u/s 106 of the Act since term of tenancy as per agreement had expired as early as after 31- 12-1972 and even if it is assumed that notice u/s 106 of the Act was precondition for eviction, the same has been complied with.

4. First contention of Mr. Sovesh Roy has no force in this case. Defendant No. 1 issued notice dated 17-4-1978 as required u/s 109 of the Act. Plaintiff makes out a case that he demanded rent several times. Plaintiff also sent notice for eviction through his Advocate. These three facts make it clear that Plaintiff's case from the beginning was that notice u/s 106 of the Act was necessary. In that view of the matter, I am not inclined to accept contention of Mr. Sovesh Roy that no notice was necessary.

5. Next question for consideration is the validity of notice. It is now found as a fact that notice u/s 106 of the Act was sent by Advocate for the Plaintiff on his behalf by registered post on 8-6-1978. There is no dispute in this case that Advocate was competent to send the notice and the registered letter was sent in correct address of Defendant No. 1. There is also no dispute that registered letter was returned to sender undelivered with endorsement dated 21-6-1972 that Defendant No. 1, the addressee remained absent. Appellate Court found as fact that post man) went to deliver the letter to Defendant No. 1 on 9-6-1978, 10-6-1978, 12-6-1978, 13-6-1978, 14-6-1978, 16-6-1978, 17-6-1978, 19-6-1978 and 20-6-1978. Case of Defendant No. 1 was that he was receiving other registered letters during this period and Plaintiff in collusion with the Postman suppressed the letter and got the endorsement.

6. Collusion like a Criminal charge is to be proved by the party alleging beyond reasonable doubt. Defendant No. 1 depends upon presumption on account of the fact that he was available in the address and received other registered letter during this period. No registered letter said to have been received by Defendant No. 1 has been proved in this case. Therefore, I am not inclined to draw a presumption as claimed by Defendant No. 1 Appellate Court rightly found that Defendant No. 1 on his own statement was available in the address during the period when postman went to deliver the letter. Postman's endorsement that Defendant No. 1 remained absent when he went to deliver the letter cannot also be doubted in this case.

7. Effect of return of the notice u/s 106 of the Act undelivered in the aforesaid circumstances is to be considered. Legislature never intended that a landlord would suffer where he was done all that he could by posting a prepaid registered letter in the correct address of the tenant. Once he delivers such a letter to the post office he has no further control over it. No other fact is available, on proof of the fact that the reregistered letter delivered to the post office in the correct address of the tenant it shall be presume that such letter was delivered. This is

the presumption contained in Section 27 of the General Clauses Act, 1897 which provides that in case a letter is sent by post to be served on the addressee if such letter is posted by registered post by prepaying and properly addressing, it shall be deemed to have been delivered to the addressee. Of course, in this case Section 27 has no application since it has been proved that the letter was not delivered. But after posting it, Plaintiff having no control over the letter, he becomes helpless since acceptance or refusal to accept the same is the choice of the addressee. If the letter is accepted, matter is complete. If such letter is declined to be accepted, a presumption can be drawn that knowing contents of the letter be declined to accept the same as has been held in the decision reported in AIR 1981 S.C. 1284 (Har Charan Singh v. Shivrani and Ors.). Where however, the postman despite visiting the place of address given in the letter several times, finds the addressee absent, a different situation arises. This situation has been met in the decision reported in M/s. Madan and Co. Vs. Wazir Jaivir Chand, , where it has been observed:

... Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decide to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on and receipt by the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee, he is not expected to detain the letter until the addressee chooses to return and accept it and he is not authorised to affix the letter on the premises because of the Assessee"s absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under O.V. of the Code of Civil Procedure. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been, actually delivered to the addressee we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, as addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not in found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a

registered letter addressed to a personal 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.

Supreme Court was considering a legal provision where the requirement is that the landlord serves the notice. Serve through Post Office under a registered cover in the context of what has been observed as extracted earlier was interpreted to mean sent through Post Office under registered cover. When the word "servet" was interpreted to mean "send", observation of Supreme Court shall have full force to a notice u/s 106 of the Act where legislature in its wisdom used the word "sent".

8. In conclusion, when the registered letter containing the notice u/s 106 of the Act was returned to sender after the post man having gone several times with the registered letter containing the notice u/s 106 of the Act beginning from 9-6-1978 to deliver the same to Appellant failed to deliver the same finding the Appellant absent, it shall be treated to be sufficient compliance of requirement of Section 106 of the Transfer of Property Act;.

9. Mr. C.V. Murty, learned Counsel for the Appellant submitted that on 20-6-1978 the letter having been returned, notice of 15 days expiring with the end of 9 months of the tenancy has not been satisfied. Once it is accepted that notice sent by registered post is sufficient, delivery of the letter to the post office amounts to sending the same if the address given is correct and fifteen days would be calculated from that date. Besides, under the agreement period of notice was provided to be seven days. From 20-6-1978 more than seven days notice has been given to the Appellant. Accordingly, I am not inclined to accept contention of Mr. Murty that period of notice provided u/s 106 of the Act has not been complied with.

10. In the result, there is no merit in this Second Appeal which is accordingly, dismissed with costs.

Appeal dismissed.