
(2009) 01 AHC CK 0145
In the Allahabad High Court
Case No : Civil Revision No. 296 of 2008

State of U.P. through Collector, Bareilly and another	APPELLANT
Vs	
Ram Rani Jaiwal (Smt.)	RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Transfer of Property Act, 1882 — Section 106, 111(g), 114

Citation : (2009) 01 AHC CK 0145

Hon'ble Judges : V.K. Shukla, J

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Present J.S.C.C., revision has been filed questioning the validity of judgment and decree dated 9.5.2008 passed by Additional District Judge/Judge Small Cause Court, Court No. 3, Bareilly in Suit No. 04 of 2002 between Smt. Ram Rani Jaiswal and the State of U.P. and others.

2. Brief background of the case is that the revisionist defendants entered into an agreement with effect from 1.10.1979 for a period of three years, on monthly rent of Rs. 1,000/ in respect of premises in question situated at 35U/6, Rampur Garden, Civil Lines, Bareilly. After expiry of the lease period, the revisionist defendants continued their possession as tenants in the premises on month to month tenancy basis. An application was filed by the landlord under Section 21(8) of U. P. Act No. 13 of 1972, for enhancement of rent. Aforesaid application was allowed on 10.10.1986, enhancing the rent to the tune of Rs. 1,635/ per month and thereafter enhanced rent was paid. Thereafter, again an application was moved under Section 21(8) of U. P. Act No. 13 of 1972. Said application was allowed on 26.8.1988 and the rent was fixed at Rs. 3,310/ per month with effect from 1.3.1992. The appeal preferred by the defendant revisionists preferred against the said order was dismissed by IIIrd Additional District Judge, Bareilly on 17.11.1999, the said order attained finality. Thereafter, JSCC, revision in question was filed after terminating tenancy by giving notice dated 1.5.2001 under Section 106 of the Transfer of Property Act.

Said notice was replied on 6.6.2001. The suit was contested by contending that entire dues as claimed by the plaintiffrespondent was paid and revisionistdefendant was not surviving and in this background, suit in question cannot be decreed. After evidence had been led by both sides, suit was decreed. At this juncture present revision has been filed.

3. Sri Devi Prasad Mishra, learned Standing Counsel, appearing for the defendantrevisionists, contended with vehemence that in the present case entire amount in question has been paid; the provisions of Section 114 of the Transfer of Property Act were attracted, as such benefit of the said section ought to have been extended and the eviction ought to have been avoided and further amount in question had already been paid, as such without assigning any reason amount in question could not have been awarded, as has been done in the present case.

4. Countering the said submission, Sri Pankaj Naqvi, Advocate, appearing for the plaintiffrespondent, contended with vehemence that in the present case, the provisions of Section 114 of the Transfer of Property Act, are not at all attracted, as the lease period had already expired and the defendant revisionists had been holding the premises in question on monthly tenancy basis, as such by simpliciter notice to quit under Section 106 of the Transfer of Property Act, tenancy has been terminated, as such there is no occasion to interfere with the impugned order and as far as money decree is concerned, the same is conditional one and in this background, revision is liable to be dismissed.

5. The question to be adverted to is as to whether in the facts of the case benefit of Section 114 of Transfer of Property Act could have been extended to the petitioner or not. In order to appreciate the above contentions of the learned Counsel for the parties, it would be convenient to have a look to the relevant provisions of the Transfer of Property Act.

Section 106 of the Transfer of Property Act runs as under :

"In the absence of a contract or local law or usage to the contrary a lease of immovable property for agricultural or manufacturing purpose shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six month's notice expiring with the end of a year of the tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee, by fifteen days" notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the person, giving it and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party or to one of his family or servants, at his residence or (if such tender or deliver is not practicable) affixed to a conspicuous part of the property."

Section 111 reads as under:

"A lease of immovable property, determines :

- (a) by efflux of the time limited thereby;
- (b) whether such time is limited conditionally on the happening of some event by the happening of such event;
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends" only to the happening of any event by the happening of such event;
- (d) in case the interest of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to lessor by mutual agreement between them;
- (f) by implied surrender
- (g) by forfeiture that is to say (1) in case the lease breaks an express condition which provides that on breach thereof the lessor may reenter; or (2) in case the lessee renounces his character as such by setting up a title in a third person by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may reenter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;
- (h) on the expiration of a notice to determine the lease or to quit or of intention to quit, the property lease duly given by one party to the other."

Section 114 runs as under:

"Where a lease of immovable property has been determined by forfeiture for nonpayment of rent and the lessor sues to eject the lessee if at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree of ejectment, pass an order relieving the lease against the forfeiture and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred."

Section 116 of the Transfer of Property Act runs as under:

"116. Effect of holding over.If a lease or underlease of property remains in possession thereof after the determination of the lease granted to the lessee and the lessor or his legal representative accepts rent from the lessee or underlease, otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewal from year to year or from month to month, according to the purpose for which the property is leased, as specified in Section 106."

6. From the perusal of the above provisions, it would be seen that there are different ways of terminating tenancy. Under Section 106 of Transfer of Property

Act, a lease for year to year is terminable by giving six months notice by either party and a month to month tenancy may be determined by serving upon the other party one month's notice. Lease can also be determined in any of the modes laid down in Section 111 of the Transfer of Property Act and one of such modes being by forfeiture under Clause (g). The word "forfeiture" has not been defined under the Transfer of Property Act, but it means the loss of a legal right by means of some breach of an obligation. Forfeiture, is the divestiture of specific property without compensation in consequence of some default or act forbidden by law. Clause (g) provides that a lease may be determined by forfeiture, that is to say :

(1) Where the lessee

(a) breaks an express condition of lease and a right of reentry is provided on such breach; or

(b) denies the lessor's title; or

(c) is adjudicated as insolvent and the lease provides, on such contingency, for a right of reentry.

(2) And in any of these cases the lessor gives a notice in writing to the lessee of his intention to determine the lease. Thus, it is noteworthy that for determining the lease by forfeiture not only existence of one or more of the three aforesaid contingencies is necessary but the lessor wishing to determine the lease for forfeiture must also give a notice in writing to the lessee of his intention to determine the lease. The right of forfeiture is limited to those cases where the tenant has been guilty of some kind of misconduct which provided a right of reentry to the lessor.

7. On general principle, a suit for ejectment against a tenant is not maintainable unless a previous notice to quit or a notice demanding possession either under Section 106 or 111 (g) of the Transfer of Property Act is given. There is, however, a distinction between a notice to quit and a notice determining tenancy under Clause (g) of Section 111 of the Transfer of Property Act. In determination of tenancy by forfeiture, a right is exercised while tenancy is still subsisting but in a notice to quit, the tenancy is not subsisting and in such a case, there arises no question of relief against forfeiture.

8. Section 114 of the Transfer of Property Act confers a power on the Court to grant an equitable relief to the defaulting lessee. In order to claim benefit under this section, it has to be shown by the tenant that one of the terms of the lease was that the landlord will have a right of reentry if the rent for any specified period remained unpaid and he has to show further that forfeiture has been incurred as provided under Section 111(g). Section 114 of Transfer of Property Act postulates existence of determination of lease by forfeiture as a condition precedent and provisions contained in this section will have no application where the lease has been determined by service a notice to quit under Section 106 of

the Transfer of Property Act. The relief under Section 114 of Transfer of Property Act is confined to those cases only which are strictly covered under Section 111 (g) and not to those cases which fall under Section 106 of the said Act. A monthly tenancy is determinable by one month's notice by either party and if the tenancy is terminated by serving one month's notice under Section 106, there is no forfeiture of tenancy and in that event Section 114 cannot be applied. Thus a notice under Section 106 of the Transfer of Property Act by no means could be treated as one under Section 111 (g).

9. Section 114 applies to those cases where the landlord invokes his rights under what is known as forfeiture clause and determines the lease by forfeiture and sues for ejectment of the tenant. In such a case, the subsisting tenancy cannot be determined by serving a notice simpliciter under Section 106 of the Transfer of Property Act and it can only be determined where the landlord forfeits the tenancy by serving notice under Section 111(g). In such an event, Section 114 can be pressed into service but where the tenancy runs from month to month and the same has been determined by a valid notice under Section 106 of the Transfer of Property Act, Section 114 of the Transfer of Property Act shall have no application. Similarly in cases, where lease period has already come to an end, the possession of tenant lessee would be that of holding over month by month under the provisions of Section 116 of the Transfer of Property Act, in such a situation also tenancy can be determined by simpliciter notice under Section 106 of Transfer of Property Act.

10. Hon'ble Apex Court in the case of Rakesh Wadhwa v. Jagdamba Industrial Corporation, 2002 ACJ 145 : 2002 SCFBRC 407, has taken the view that Section 114 of the Transfer of Property Act is based on equitable consideration and therein it has been mentioned that rule of equity enshrined under Section 114 is that where a lease of immovable property has been determined by forfeiture for nonpayment of rent and the lessor files a suit for ejectment of the lessee, the Court exercises a discretionary jurisdiction of passing an order relieving the lessee against the consequences of forfeiture if at the hearing of the suit the lessee pays or tenders to the lessor the rent in arrears with interest and costs or furnishes such security as the Court thinks sufficient. Relevant extract of the said judgment contained in Paragraph 20 is being quoted below :

"20. Even if Section 13(2)(i) and the proviso would not have been enacted there was Section 114 of the Transfer of Property Act to take care of such situation. The provision in the Rent Control Legislation which obliges the tenant to pay or tender the arrears of rent during the course of hearing and relieve the tenant from the consequences of default in payment of rent is founded on the doctrine of forfeiture of lease for nonpayment of rent and equitable principle of granting relief against forfeiture within the exercise of discretion vesting in the Court. The Transfer of Property Act, 1882 did not in terms apply to the State of Punjab however principles underlying or contained in such of the provision of the Transfer of Property Act as are essentially the principles of equity, justice and

good conscience have been held applicable to the State of Punjab and Haryana. Section 114 of T.P. Act embodies one such principle. (See *Namdeo, Lokman Lodhi v. Narmadabai and others*, AIR 1953 SC 228; *Guru Nanak Ex. Servicemen Cooperative T.F. Society Group No. 2 and others v. The State of Haryana and others*, AIR 1972 Punjab and Haryana 83 D.B.; *AzizUdDin and others v. Guru Bhagwan Das and another*, (1912) 171C 991. The rule of equity enshrined in Section 114 of Transfer of Property Act is : Where a lease of immovable property has been determined by forfeiture for nonpayment of rent and the lessor files a suit for ejectment of the lessee, the Court exercises a discretionary jurisdiction of passing an order relieving the lessee against the consequences of forfeiture if at the hearing of the suit the lessee pays or tenders to the lessor the rent in arrears with interest and costs or furnishes such security as the Court thinks sufficient. Having appointed a time for payment, the Court still retains jurisdiction to extend the time. (*Chandless Chandless v. Nicholson*, 1942 (2) All ER 315). Even the time appointed by a consent decree can be extended (*Smt. Amiya De v. Dharendra Nath Mandal*, AIR 1971 Calcutta 263). The discretion conferred by Section 114 of T.P. Act of wide amplitude guided by the principles of justice, equity and good conscience and the Court would examine the conduct of the parties, the comparative hardship and lean in favour of one whose hands are clean (*Namdeo Lokman Lodhi v. Narmadabai and others*, AIR 1953 SC 228. The discretion to grant relief against forfeiture is available not only to the trial Court but also to Appellate Court (*R.S. La/a Praduman Kumar v. Virendra Goyal (dead) by his Lrs. and others*, 1969(1) SCC 714)."

11. This Court in the case of *Vinod Kumar Rastogi v. Ill Additional District Judge*, 2003 (2) ARC 377, has taken the view that even if the provisions of U. P. Act No. XIII of 1972 does not apply, the provisions of Section 114 of the Transfer of Property Act will not become applicable automatically unless lease is determined for nonpayment of rent. Thus, inevitable conclusion is that where the provisions of U. P. Act No. XIII of 1972 are not applicable, after giving notice of 30 days, under Section 106 of Transfer of Property Act landlord has got unfettered right to terminate the tenancy without assigning any reason, whatsoever and at the time of terminating tenancy other additional grounds can be taken for filing suit. For getting the benefit of Section 114 of the Transfer of Property Act, tenant will have to show that landlord has exercised his right of forfeiture under Section 111(g). The provisions of Section 114 are not at all applicable when lease is determined by serving notice to quit under Section 106 of Transfer of Property Act.

12. On the parameters as set out in the present case, this fact is undisputed that the rate of rent being above Rs. 2,000/ the provisions of U.P. Act No. 13 of 1972 were not at all applicable to the premises in question. This fact has also not been disputed that the lease in question was entered into on 22.10.1980 for a period of three years and thereafter no further fresh lease deed was entered into inter se parties. Once lease period had expired and fresh lease had not been entered into, then net effect of the same was that after expiry of the lease

period, revisionistdefendants continued their possession on the basis of holding over the premises in question as tenants on month to month basis tenancy. In the present case once period of lease had already expired, then there was no occasion of any notice of forfeiture of the lease to be given, in this background the provisions of Section 111 (g) of the Transfer of Property Act were not at all applicable or attracted, as such there was no occasion to extend the benefit of Section 114 of the Transfer of Property Act. In the facts of the case, the provisions of Section 111(g) read with Section 114 of the Transfer of Property Act are not at all applicable or attracted, for the simple reason that there is no forfeiture of lease on account of nonpayment of rent, rather tenancy has been terminated in plain and simple manner as envisaged under Section 106 of the Transfer of Property Act and in addition to it, as the amount in question was also due, qua the same also relief had been claimed for. Thus, there is complete misconception in the mind of the defendantrevisionists that the provisions of Section 114 of the Transfer of Property Act were applicable in the facts of the present case. Decision in case of Surjeet Singh v. Additional District Judge, Hardwar, 1993 (2) ARC 470 : 1994 AWC page 17, as well as decision in the case of RS. La/a Praduman Kumar v. Virendra Goel (dead), AIR 1969 SC 1349, are not at all applicable or attracted to the facts of the present case, in the backdrop of the facts noted above, that the term of lease had already expired and on the basis of holding over tenancy was continuing on month to month basis and there has been no forfeiture of lease at any point of time on account of nonpayment of rent and tenancy has been terminated simpliciter under Section 106 of the Transfer of Property Act.

13. The next question which has been raised by the defendantrevisionists is that in the present case money decree in question has been passed without assigning any reason. Copy of the plaint has been perused, wherein break up of each and every amount, which was due, has been clearly and categorically mentioned. In the written statement, this fact is true that denial has been given of the said amount due. It has been sought to be contended that the said amount has been paid. This is also equally true that the Judge Small Cause Court has not cared to consider the said question raised and has straightaway proceeded to mention that the suit is being decreed for Rs. 50,265/-. Mesne profit has also been awarded with effect from 1.8.2002 at the rate of Rs. 111/ per day. As far as awarding of Rs. 111/ per day is concerned, the validity of the same has not been questioned. The only issue sought to be raised is in respect of passing decree to the tune of Rs. 50.265/-. The decree in question clearly mentions that the amount which has been paid or deposited in Court is liable to be adjusted from the amount awarded. Consequently, decree in question is clear that in case any amount has been paid or deposited in Court, the same is liable to be adjusted. In this background, if defendantrevisionists are contending that the said amount of Rs. 50,265/ has been paid by them, then as per decree, same is liable to be adjusted, as such on the said score, the defendantrevisionists could legitimately have no grievance.

14. Consequently, revision is dismissed. The defendant revisionists are accorded six month's time to vacate the premises in question and hand over its peaceful vacant possession to the plaintiff respondent, subject to the condition that within one month from today affidavit shall be filed by the defendant revisionists before the Judge Small Cause Court that the premises in question will be vacated on or before expiry of the period as aforesaid. In the event of affidavit not being filed within one month from today, the interim protection shall cease to operate and landlord would be at liberty to proceed accordingly and interim protection of this Court would not come to rescue of the defendant revisionists.

15. No order as to costs.

Revision dismissed.