

(2009) 10 AHC CK 0001
In the Allahabad High Court
Case No : Second Appeal No. 781 of 1977

Syed Zaved Ali Sabzposh and Others	APPELLANT
Vs	
Awadh Kishore Lal And Another	RESPONDENT

Date of Decision : 13-10-2009

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2009) 10 AHC CK 0001

Hon'ble Judges : Arun Tandon, J

Final Decision : Allowed

Judgement

Arun Tandon, J.—The plaintiff appellant filed Original Suit No. 318 of 1962 for ejectment and recovery of damages for use and occupation of the property more appropriately described in the plaint.

2. On behalf of the plaintiff it was contended that the defendant was his tenant and that his tenancy was terminated after notice under Section 106 of the Transfer of Property Act. According to the plaintiff open piece of land was let out to the defendant and, therefore, provisions of U.P. Rent Control and Eviction Act, 1947 could not be attracted. The suit was decreed by the trial Court and it was held that the termination of tenancy was valid. The defendant was directed to remove the construction/structure raised on the land and to handover possession of the land to the plaintiff.

3. Not being satisfied the defendant filed Civil Appeal No. 351 of 1967. The appeal has been allowed by the first appellate Court only on the ground that notice as served upon the tenant under Section 106 of the Transfer of Property Act was invalid. It has been held that the notice discloses address of one Mohalla only whereas the leased property was situate in two Mohallas i. e. Diwan Bazar and Nazirabad. It was, therefore, held that notice was bad for terminating only part of the tenancy. Hence the present second appeal.

4. The appeal was admitted under an order of the Court dated 27.4.1977.

However, no substantial question of law was framed.

5. Counsel for the appellant submitted that substantial question of law were framed along with the memo of appeal and that in fact following substantial, questions of law arise for consideration in the present second appeal:

(a) Whether all relevant facts as required under Section 106 of the Transfer of Property Act were disclosed by the plaintiff in his notice under Section 106 of the Transfer of Property Act or not?

(b) Whether in absence of name of both the Mohallas, where the tenanted property is situate, the notice under Section 106 of the Transfer of Property Act can be said to be bad ?

(c) Whether it is necessary to disclose the Mphalla, where the tenanted property is situate, in the notice under Section 106 of the Transfer of Property Act?

6. On behalf of the appellant it is contended that Section 106 of the Transfer of Property Act does not contemplate any disclosure of the Mohalla where the property is situate. If there is only one immovable property which is let out to the tenant, then notice under Section 106 of the Transfer of Property Act detailing the particulars of the property, which has been let out, would suffice. He, therefore, submits that first appellate Court was not justified in allowing the appeal only on the ground that in the notice under Section 106 the plaintiff had disclosed the name of one Mohalla whereas the property is situate in two Mohallas.

7. Nobody is present on behalf of the defendant/respondents.

8. For the purposes of examining the substantial questions of law raised on behalf of the appellant, the Court has gone through the notice dated 2.2.1962, which is on record of the suit proceedings. The notice refers to the property which was let out to the defendant and terminate his tenancy in respect thereto. The boundaries of the tenanted land were specifically disclosed at the bottom of the notice and reads as follows:

cjRs&H ?fTGTR W7 JII"MdU ^ft qf^iH 75 fiftZ % \\\

MI 9. It is not in dispute between the parties that there was only one contract of tenancy between the parties and the property was also one. The first appellate Court has specifically recorded that the defendant was tenant of the premises in question and he has not denied the right and title of the plaintiff over the property in dispute. The only ground on which the notice has been found to be defective is that the tenanted property was situate in two Mohallas, namely Diwan Bazar and Nazirabad. Section 106 of the Transfer of Property Act, which contemplates service of a notice before termination of tenancy, reads as follows:

"106. Duration of certain leases in absence of written contract or local usage. (1) In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed

to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months" notice; 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.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in subsection (1) shall commence from the date of receipt of notice.

(3) A notice under subsection (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that subsection, where a suit or proceeding is filed after the expiry of the period mentioned in that subsection.

(4) Every notice under subsection (1) 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 delivery is not practicable) affixed to a conspicuous part of the property."

10. The nature and purpose of serving a notice must be gathered by reading the documents as a whole and not from any words read out of the context or from any omission to use the formal language of a lawyer.

11. In the facts of the case the plaintiff specifically intimated the tenant that for the reasons recorded in the notice he was no more interested in keeping him as tenant and his tenancy was being terminated by giving him 30 days" notice. This specifically signify that the tenancy was terminated under the notice. It is worthwhile to reproduce relevant part of paragraph 18 of the judgment of this Court in the case of Mohammad Nasir v. District Judge, Nainital and others, 1999 (1) Allahabad Rent Cases 202, which reads as follows:

"18. It is well settled that the notices to suit must be construed not with a desire to find faults in them which would render them defective but they are to be construed ut res magia valeat, quam, preat (that act may avail rather than perish)....."

12. Similarly, in the case of Rajendra Nath Sharma v. Prescribed Authority/Ist Additional Judge, Small Cause Court, Kanpur and others, 1997(1) Allahabad Rent Cases 42 it has been held that if the tenancy in respect of entire tenanted accommodation was determined by the landlord, no further elucidation is required.

13. In the facts of the case the defect in the notice qua reference to one Mohalla, specifically when the boundaries of the property under tenancy had been correctly disclosed at the foot of the notice, appears to be hyper technical in nature. Such defect in the opinion of the Court does not in any way vitiate the notice. The first appellate Court has misdirected itself in holding that the notice under Section 106 of the Transfer of Property Act was vitiated because of

mention of only one Mohalla.

14. In view of the aforesaid, the Court finds that all the three substantial questions of law, as framed above, namely (a), (b) and (c) have to be answered in favour of the appellant.

15. The second appeal is allowed. The judgment and order of the first appellate Court is hereby set aside.