
(2013) 05 AHC CK 0452

In the Allahabad High Court

Case No : Civil Revision Defective No. 153 of 2010

Uttam Chand Gupta (since deceased) and Others	APPELLANT
Vs	
New India Assurance Co. Ltd.	RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Transfer of Property Act, 1882 — Section 113

Citation : (2013) 7 ADJ 335 : (2014) 1 ALJ 74 : (2013) 99 ALR 386 : (2014) 2 AWC 1630

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Manish Goyal and Sudharshan Singh, for the Appellant;

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard Sri Manish Goyal, learned counsel for landlords applicants. Inspite of sufficient service, no one appeared on behalf of tenant respondent, the New India Assurance Company Ltd. The only defect in this revision was that certified copy of decree was not filed. The same was filed subsequently through application dated 5.1.2011. The application is allowed and delay in filing the decree is condoned. The revision is therefore quite in order.

2. This is landlords" revision directed against judgment and decree dated 4.11.2010 passed by J.S.C.C./A.D.J., Court No. 1, Varanasi in S.C.C. Suit No. 12 of 2002, Uttam Chand Gupta since deceased and survived by legal representatives and another v. New India Assurance Company Ltd. The suit was filed by the plaintiffs landlords against the tenant for its eviction from the tenanted property in dispute and for recovery of arrears of rent. Rate of rent is Rs. 9485/- per month. The defendant pleaded that under the agreement of tenancy after every three years 20% increase in the rent was to take place, hence before 15.8.2000 rate of rent was Rs. 7904/- per month and since the said date it stood enhanced to Rs. 9485/- per month.

3. The rent agreement was executed on 15.8.1997, property in dispute is House No. 21/88-A-1, Shanti Market Lahuraveer, Varanasi, First Floor, area 1588 square feet (as mentioned in the judgment of the Court below). Notice of termination of tenancy was sent by the plaintiffs through advocate on 24.6.2002. In the written statement, it was stated that entire rent had been paid and at the time of notice or filing of the suit no rent was due.

4. It was also pleaded by the defendant that rent till November, 2002 at the rate of Rs. 9485/- was accepted by the plaintiffs landlords without any protest even after notice dated 24.6.2002, hence the notice stood waived.

5. The Court below dismissed the suit on 4.11.2010 on the ground that after giving notice in June, 2002 landlords accepted the rent upto November, 2002 hence notice stood waived.

6. The view of the Court below is utterly erroneous in law. Mere acceptance of rent does not waive the notice. In this regard, reference may be made to *Sarup Singh Gupta Vs. S. Jagdish Singh and Others*, para-8 of which is quoted below:
8. In the instant case, as we have noticed earlier, two notices to quit were given on 10th February, 1979 and 17th March, 1979. The suit was filed on June 2, 1979. The tenant offered and the landlord accepted the rent for the months of April, May and thereafter. The question is whether this by itself constitute an act on the part of the landlord showing an Intention to treat the lease as subsisting. In our view, mere acceptance of rent did not by itself constituted an act of the nature envisaged by Section 113, Transfer of Property Act showing an Intention to treat the lease as subsisting. The fact remains that even after accepting the rent tendered, the landlord did file a suit for eviction, and even while prosecuting the suit accepted rent which was being paid to him by the tenant. It cannot, therefore, be said that by accepting rent, he intended to waive the notice to quit and to treat the lease as subsisting. We cannot ignore the fact that in any event, even if rent was neither tendered nor accepted, the landlord in the event of success would be entitled to the payment of the arrears of rent. To avoid any controversy, in the event of termination of lease the practice followed by Courts is to permit the landlord to receive each month by way of compensation for the use and occupation of the premises, an amount equal to the monthly rent payable by the tenant. It cannot, therefore, be said that mere acceptance of rent amounts to waiver of notice to quit unless there be any other evidence to prove or establish that the landlord so Intended. In the instant case, we find no other fact or circumstance to support the plea of waiver. On the contrary the filing of and prosecution of the eviction proceeding by the landlord suggests otherwise.

(underlining supplied)

Accordingly, revision is allowed. Impugned decree is set aside. Suit of the plaintiff for eviction of the defendant respondent is decreed. Suit for recovery of pendent lite and future rent upto the date of vacation is also decreed in accordance with the rent agreement dated 15.8.1997 after adjusting the rent

already paid. The exact amount shall be determined in execution.