SUPREME COURT OF INDIA

Puwada Venkateswara Rao

Vs.

Chidamana Venkata Ramana

C.A.No.2534 of 1969

(A. N. Ray, C.J.I., M. H. Beg and Jaswant Singh, JJ.)

03.03.1976

JUDGEMENT

BEG J.:-

The defendant-appellant had taken a house on rent under a registered lease dated 10th February, 1958, on a monthly rent of Rs. 250/- for a period of five years for running a lodging house. It is admitted by both sides that in February, 1963, the lease had expired. According to the landlord respondent, the defendant-appellant had continued to hold over as a tenant "on the same terms" by which he, presumably, meant that it was a month to month tenancy.

2. The Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960 (hereinafter referred to as 'the Act') came into operation before the lease expired.

3. The appellant seemed to be constantly making defaults in payments of rent. The landlord

respondent had, therefore, , to file a suit for arrears of rent in the Court of District Munsif. Visakhapatnam, which was decreed on 4th April, 1962. The landlord respondent had to file a petition on 21st April, 1962, under Section 10 of the Act before the Rent Controller, Visakhapatnam for the eviction of the appellant as no rent was paid from 1st December, 1961 to 31st March, 1962. There was a compromise on 12th October, 1962. The appellant agreed to clear arrears and to pay rents regularly. The appellant, however, willfully defaulted again in payments of rent from September, 1963 to April, 1964. A notice dated 8th April, 1964, was sent by registered post by the landlord respondent to the appellant terminating his tenancy and calling upon him to pay up the arrears of rent and vacate the house by the end of April 1964. This came back with the endorsement that the appellant was refusing to accept it. On 9th April, 1964, the respondent filed another petition under Section 10 of the Act before the Rent Controller of Visakhapatnam who ordered the eviction of the appellant after holding all the flimsy defences of the appellant to be unsubstantiated. The Subordinate Judge of Visakhapatnam dismissed the tenant's appeal on 23rd October, 1968. The appellant's revision application to the High Court was also rejected on 19th August, 1969.

4. The only question raised by the appellant before us, in this appeal by special leave, is that no notice under Section 106 of the Transfer of Property Act had been served upon the appellant according to the finding of the Andhra Pradesh High Court itself. It was, therefore, urged that the petition under Section 10 of the Act could not succeed. The Andhra Pradesh High Court had, however, relied upon Ulligappa v. S. Mohan Rao, (1969-2 Andh LT 268), where a Division Bench of that High Court had held that the Act, with which we are now concerned, provided a procedure for eviction of tenants which was self-contained so that no recourse to the provisions of Section 106 of the Transfer of Property Act was necessary.

5. We may also refer here to the observations of this Court in Ravel and Co. v. K. C. Ramachandran, (1974) 2 SCR 629 at p. 634 = (AIR 1974 SC 818 at p. 821). There this Court noticed Shri. Hem Chand v. Smt. Sham Devi, ILR (1955) Punj 36 and pointed out "that it was held there that the Act under consideration in that case provided the whole procedure for obtaining the relief of ejectment, and, that being so, provisions of Section 106 of the Transfer of Property Act had no relevance". No doubt the decision mentioned with approval by this Court related to another enactment. But, the principle indicated by this Court was the same as that applied by the Andhra Pradesh High Court.

6. It is true that, in Mangilal v. Sugan Chand Rathi, AIR 1965 SC 101 (Deceased) etc., this Court has held that the provisions of Section 4 of the Madhra Pradesh Accommodation Control Act of 1955 do not dispense with the requirement to comply with the provisions of Section 106 of the Transfer of Property Act. In that case, however, Section 4 of the Madhya Pradesh Act merely operated as a bar to an ordinary civil suit so that service of a notice under Section 106 of the Transfer of Property Act became relevant in considering whether an ordinary civil suit filed on a ground which constituted an exception to the bar contained in Section 4 had to be preceded by a notice under Section 106 of the Transfer of Property Act. In the context of the remedy of ejectment by an ordinary civil suit, it was held that the usual notice of termination of tenancy under Section 106 of the Transfer of Property Act was necessary to terminate a tenancy as a condition precedent to the maintainability of such a suit.

7. In the case before us, the respondent landlord relied upon a provision for special summary proceedings for eviction of tenants under an Act which contains all the requirements for those proceedings. We, therefore, think that the learned Judge of the Andhra Pradesh High Court had correctly applied the principle land down by a Division Bench decision of that Court. He rightly distinguished such a case from Mangilal's case AIR 1965 SC 101 (supra) where an entirely different kind of provision of another Act in another State was being considered by this Court. The Division Bench decision of the High Court applied by the learned Judge had, we think, enunciated the correct principle.

8. A question raised before us by learned Counsel for the respondent is whether the notice sent by the respondent-landlord could be held not to have been served at all simply because the Postman, who had made the endorsement of refusal, had not been produced. The Andhra Pradesh Court had relied upon Meghji Kanji Patel v. Kundanmal Chamanlal, AIR 1968 Bom 387 to hold that the notice was not served. There, a writ of summons, sought to be served by registered post, had been returned with the endorsement "refused". The Bombay High Court held that the presumption of service had been repelled by the defendant's statement on oath that he had not refused it as it was never brought to him. In this state of evidence, it was held that, unless the postman was produced, the statement of the defendant on oath must prevail. An ex parte decree, passed on the basis of such an alleged service was, therefore, set aside. On facts found, the view expressed could not be held to be incorrect.

9. In Nirmalabala Debi v. Provat Kumar Basu, (1948) 52 Cal WN 659 it was held, by the Calcutta High Court, that a letter sent by registered post, with the endorsement "refused" on the cover, could be presumed to have been duly served upon the addressee without examining the postman who had tried to effect service. What was held there was that the mere fact that the letter had come back with the endorsement "refused" could not raise a presumption of failure to serve. On the other hand, the presumption under Section 114 of the Evidence Act would be that, in the ordinary course of business, it was received by the addressee and actually refused by him. This is also a correct statement of the law.

10. The two decisions are reconcilable. The Calcutta High Court applied a rebuttable presumption which had not been repelled by any evidence. In the Bombay case, the presumption had been held to have been rebutted by the evidence of the defendant on oath so that it meant that the plaintiff could not succeed without further evidence. The Andhra Pradesh High Court had applied the ratio decidendi of the Bombay case because the defendant-appellant before us had deposed that he had not received the notice. It may be that, on a closer examination of evidence on record, the Court could have reached the conclusion that the defendant had full knowledge of the notice and had actually refused it knowingly. It is not always necessary, in such cases to produce the postman who tried to effect service. The denial of service by a party may be found to be incorrect from its own admissions or conduct. We do not think it necessary to go into this question any further as we agree with the High Court on the first point argued before us.

11. Consequently this appeal is dismissed with costs.

Appeal dismissed.