

Krishnadeo Narayan Aggarwal

Vs

Ram Krishan Rai

Civil Appeal No. 845 of 1981

(R.S. Pathak, R.B. Misra JJ)

25.02.1981

JUDGMENT

PATHAK, J. -

1. Special leave granted.

2. The only point agitated before the learned District Judge related to the service of notice issued under Section 106 of the Transfer of Property Act. The learned District Judge held that the notice had not been served on the respondent. The High Court dismissed the plaintiff's second appeal in limine, on the ground that the case was concluded by findings of fact. In this appeal before us, the only question which can conceivably be considered is whether the failure to serve notice precludes the appellant from claiming a decree for eviction. In view of the opinion of this Court in *Dhanapal Chettiar v. Yesodai Ammal* (AIR 1979 SC 1745 : (1979) 4 SCC 214 : (1980) 1 SCR 334), no notice is necessary under Section 106 of the Transfer of Property Act in cases where the possession of the tenant is protected by the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. In the circumstances, the finding rendered by the learned District Judge can be of no avail to the respondent.

3. In the result, the appeal is allowed, the decree of the High Court is set aside and the suit is decreed for ejection. However, a period of nine months from today is allowed to the respondent to vacate the premises on furnishing an undertaking in the usual terms within three weeks from today. There is no order as to costs.

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