

Anil Kumar

Vs

Nanak Chandra Verma

Civil Appeal No. 1968 of 1988

(K. Jagannatha Shetty, Dr. T.K. Thommen JJ)

25.01.1990

ORDER

1. The suit for eviction of the appellant in respect of certain premises has been decreed by the trial court and that decree has been confirmed by the High Court. The principal question that arises for consideration relates to the validity of the notice issued under Section 106 of the Transfer of Property Act. The notice was not personally served but there is an endorsement of the postman stating that it has been refused. The case of the tenant was that he was not all present during the period when the postman visited the premises for service and the endorsement of the postman was therefore not correct. He has discharged the initial burden by examining himself and it would be for the other side to prove the valid service. The submission was sought to be justified by reference to the decisions in Shiv Dutt Singh v. Ram Das (AIR 1980 All 280) and Jagat Ram Khullar v. Battu Mal (AIR 1976 Del 111).
2. The question considered in both the decisions was as to the statement on oath by the tenant denying the tender and refusal to accept delivery. It was held that the bare statement of the tenant was sufficient to rebut the presumption of service. In our opinion there could be no hard and fast rule on that aspect. Unchallenged testimony of a tenant in certain cases may be sufficient to rebut the presumption but if the testimony of the tenant itself is inherently unreliable, the position may be different. It is always a question of fact in each case whether there was sufficient evidence from the tenant to discharge the initial burden.
3. In the instant case the trial court has considered the evidence of the tenant and was not impressed with it. It is indeed impossible to believe that the tenant having the business premises at Ghaziabad would have left it in the hands of the servant and remained at Delhi for a long period from December 19, 1984 to January 1, 1985 where people shuttle between the two places quite often.
4. The finding recorded by the trial court as to the insufficiency of the evidence from the tenant has been accepted by the High Court. Thus there is a concurrent finding of fact that the notice has been refused.
5. In this view, the appeal fails and is dismissed. In the facts and circumstances of the case we make no order as to costs.

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