

Kewal Krishan and others

Vs

Dina Nath

Civil Appeal No. 109 of 1992

J.S. Verma, B.P. Jeevan Reddy JJ)

13.01.1992

JUDGMENT

1. Leave granted.

2. The appellant landlord brought an application to evict the respondent tenant from the premises on the ground of default in payment of rent for a long period commencing from 16-11-1965 in spite of the two decrees for recovery of rent having been passed earlier. The respondent tenant's only plea in defence was a denial of the contract of tenancy or in other words, the relationship of landlord and tenant between the parties. The tenant did not, at any time, deny the non-payment of rent from 16-11-1965 nor did the tenant assert the deposit of rent before any authority as an alternative plea to the denial of appellant's title.

3. The trial Court accepted the appellant's landlord's claim and passed an order of eviction which was affirmed in first appeal. The High Court in second appeal reversed that decision and set aside the order of eviction on the only ground that no specific issue was framed requiring proof of default in payment of rent which was a ground for eviction. This gives rise to the present appeal.

4. We are unable to sustain the order of the High Court. Admittedly, there was a clear averment in the plaint by the appellant of non-payment of any rent by the respondent tenant since 16-11-1965 despite two decrees for recovery of rent having been passed earlier against him. There was no specific denial of this fact. Even otherwise, the respondent tenant did not plead payment of any rent to the appellant or its deposit before any authority. The question of framing an issue for inquiring into this fact which would be deemed to be admitted on the ground of nontraverse by the respondent did not, therefore arise. Learned counsel for the respondent strenuously urged before us that the respondent tenant is entitled to the protection of Section 12(i) of the Jammu and Kashmir Houses and Shops, Rent Control Act, 1966 and that the respondent had in fact deposited arrears of rent within the meaning of Section 12(i) of the Act.

5. We cannot permit this plea to be raised for the first time at this stage when the fact of the alleged deposit, if any by the respondent, was not even mentioned at any stage up to the High Court. The only plea taken by the respondent tenant being the denial of relationship of landlord and tenant between the parties and the same having failed on the uncontroverted fact of non-payment of any rent from 16-11-1965 the respondent had to be evicted from the premises. The only ground on the basis of which the High Court allowed the second appeal and set aside the order of eviction cannot, therefore, be sustained. Consequently, the appeal is allowed. The impugned judgment of the High Court is set aside and the order of eviction passed by the trial Court is restored. The respondent shall also pay the costs of the appellant which are assessed as Rs. 2000/-. Appeal allowed.

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