

Abdul Sattar and others

Vs

Rameshwar and others

Civil Appeal No. 661 of 1981

(N. M. Kasliwal, K. Ramaswamy JJ)

15.05.1992

JUDGEMENT

KASLIWAL, J.

1. This appeal by grant of special leave is directed against the judgment of Bombay High Court dated 24-7-1980. The only question argued before the High Court as well as before us is regarding the validity of ejection notice given by the respondent/ landlords to the tenant,/ appellants. All the Courts below have held that the notice under S. 106 of the Transfer of Property Act terminating the tenancy was valid. The trial Court has recorded its findings under issue Nos. 5 and 6. The relevant facts regarding the serving of notice are that notice for terminating the tenancy was issued in the name of all the defendants Nos. 1 to 9 on 20th September, 1972. This notice was received by defendants Nos. 1, 2, 7 and 9 which is proved vide receipt exhibits 75, 76, 77 and 78. The envelopes containing the notice in respect of the other defendants returned back. The plaintiff then again issued notices to defendants Nos. 3, 4, 5, 6 and 8. These notices were again received back as unserved. The defendant (No. 6) Khatijabi, mother of defendants Nos. 1 and 4 refused to accept the notice. The plaintiff also learnt that the defendants Nos. 2 to 9 had executed a kulmukhtiyar Patra in favour of defendants Nos. 1, 2, 3 and two other persons. The plaintiff in these circumstances again issued notices as a kulmukhtiyar of defendants to these five persons on 20th October, 1972. A copy of such notice was placed on record as exhibit 94. This notice was received by defendant No. 1 on 23rd, October, 1972 vide postal acknowledgement exhibit 95. During the course of hearing before the trial Court a notice was issued to the defendants to produce the kulmukhtiyar patra but the defendants did not produce it. The plaintiff in these circumstances examined Sub-Registrar as witness and he stated that the defendants Nos. 2 to 9 had executed general power of attorney in favour of defendants Nos. 1 to 3 and Ibrahim Daud and Yunus Daud. The trial Court held that the plaintiff terminated the tenancy of the defendants from 15-11-1972 i.e. Kartik Sudi Navmi. The trial Court also observed that the plaintiff had to take much trouble to serve the notices but at last the same was served.

2. It was contended on behalf of the tenant/appellants that it was necessary to serve all the tenants as they were common tenants and not joint tenants. We find no force in this contention. It may be noted that though the defendants are denying the service of notice but none of the defendants came and entered in the witness box to state that no notices were issued or received by them. The defendants also did not examine any other witness in this regard. The trial Court has recorded a clear finding that on the perusal of evidence of postal acknowledgement it seemed that the notice of terminating the tenancy was served on all the defendants. As already mentioned above the aforesaid finding was affirmed by the First Appellate Court as well as the High Court. Though arguments were advanced before us that there was a conflict of opinion in various High Courts on question of

serving the notices on all the tenants individually when there was a case of tenants in common but we do not think it necessary to go into that question in as much as in the present case it is conclusively proved on record that the defendants were served as the, notice was also received by defendant No. 1 in the capacity of general power of attorney holder on behalf of all the defendants. It may be further noted that after eight years of litigation, the landlords were able to get an order in their favour for allowing them to serve a notice for eviction as contemplated under S. 13 of The Central Provinces and Berar Letting of Houses and Rent Control Order, 1949. Thereafter the landlords took all necessary steps of serving the notice on the defendants in 1972 and now these proceedings have further taken nearly two decades.

3. In view of these circumstances we find no force in this appeal and it is accordingly Dismissed with costs.

Appeal dismissed.

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