

Rajendra Pratap Singh

Vs

Rameshwar Prasad

Slp (C) No. 15042 of 1998

(S. Saghir Ahmed, K.T. Thomas JJ)

28.10.1998

ORDER

1. The subject-matter of this litigation is a shop room. It was rented to the petitioner on a monthly rent of Rs. 90. Ownership of the building had passed from the then landlord to Smt Indrajit Kaur who, in 1982, started the litigation for eviction of the petitioner from the building. The landlord set up a few grounds for eviction as are envisaged in the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (for short "the Bihar Act"). During pendency of the suit for eviction, ownership of the building has again been transferred and the present respondent has come into the field. After he got himself impleaded as a plaintiff, he jettisoned most of the grounds put forth in the suit for eviction and confined to the surviving ground that the period of tenancy has expired. From the trial court up to the High Court, the landlord succeeded on the said ground. This special leave petition has been filed in challenge of the aforesaid decree of eviction as confirmed by the High Court.

2. Under Section 11(1)(e) of the Bihar Act, a landlord has the right to evict his tenant from a building in execution of a decree passed on the ground that the period of tenancy has expired. The petitioner-tenant has adopted different strategies to non-suit the respondent and the main among them is this : to attract the ground under Section 11(1)(e) of the Bihar Act, there should be conjunction of two conditions. First, there should necessarily have been a valid lease for a specified period. Second, the aforesaid period should have expired. The petitioner contended that there was no valid lease by which any specified period of tenancy has been fixed.

3. The trial court before which the aforesaid contention was raised during the time of argument, spurned it down on the premise that the tenant-defendant had admitted in the written statement that the tenancy was admittedly for a fixed period of 5 years and hence he cannot be heard to argue differently. The first appellate court before which the same contention was repeated has repelled it for the following reasons :

"It is to be noted that the plaintiff-respondent in para 2 of the plaint has clearly stated that Defendant 1 is a tenant in the suit premises for a fixed period of five years and he executed a registered deed of kabuliyat dated 4-10-1975, in favour of the ex-landlord, Zafir Ahmed and other on a monthly rental of Rs. 90. Defendant 1 in his written statement in para 9 admitted that the statement made in para 2 of his plaint is correct, to this extent that there was a lease for a fixed period of five years dated 4-10-1975 and the rent was payable at the rate of Rs. 90 per month. He further admitted that the said lease was due to expire on 4-10-1980, but before the expiry of the lease, Defendant 1 gave notice to the landlord who extended the lease for a further period of five years and extension was granted on 21-6-1980 with the mutual

consent of the parties on the same rate of rent.

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So creation of fixed-term tenancy is admitted by Defendant 1 and his plea for extension of the lease is palpably false. I do not find that any cogent evidence has been adduced on this point by Defendant 1. It is clear that the objection as to validity of the lease had been raised for the first time during the argument in the lower court."

4. Learned Single Judge of the High Court of Patna who declined to interfere with the said finding has observed as follows :

"It is contended by the learned counsel for the appellant that in the absence of valid execution of lease, the plaintiff-respondent was not entitled to eviction of the appellant. I am unable to accept the submission of the learned counsel for the appellant. In view of the admitted fact that the lease under which the defendant-appellant entered the suit premises was for a fixed term and the period had already expired, suit has rightly been decreed against the defendant-appellant, on the basis of the evidence on record. This aspect stands concluded by concurrent findings of fact. As such, no case for interference in second appeal has been made out."

5. As the aforesaid contention was seriously pursued before us, we may examine it. The material portion of Section 11(1)(e) of the Bihar Act is extracted below :

"11. Eviction of tenants. - (1) ... where a tenant is in possession of any building, he shall not be liable to eviction therefrom except in execution of a decree passed by the court on one or more of the following grounds -

#(a)-(d) * * *###

(e) in case of a tenant holding on a lease for a specified period, on the expiry of the period of the tenancy;"

It is apparent that in order to make out the said ground, two conditions must be satisfied :

(1) The tenant should hold on a lease for a specified period.

(2) The said period should have expired.

If there is no valid lease for a specified period, the landlord cannot rely on the said ground for seeking a decree of eviction.

6. The petitioner-tenant cannot now depart from the factual position which he has admitted in the trial court as well as before the first appellate court that he had executed a registered deed of kabuliyat on 4-10-1975 (Ext. 2) in favour of Zafir Ahmed (the predecessor-in-title of the present landlord) agreeing to vacate the premises on the expiry of a period of 5 years. But the contention is that as the said instrument was not signed by both the landlord and the tenant, there was no valid lease created for a specified period. The contention, in other words, is that joint execution of a lease by both the lessor and lessee is the sine qua non for creation of a valid lease.

7. Section 107 of the Transfer of Property Act, 1882 reads thus :

"107. A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee :

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

8. Barring the proviso which enables the State Government to relax the conditions, the above section consists of 3 paragraphs. The middle paragraph contains an exception to the first paragraph. The wording of the first paragraph shows that it is mandatory that if a lease is to be created for any term exceeding one year, it can be made "only by a registered instrument". If the instrument is not registered, the corollary is that no lease exceeding one year is created at all. Such an instrument if not registered cannot be admitted as evidence in view of Section 17 of the Registration Act, 1908 either for proving the terms of the lease or otherwise. (vide *Satish Chand Makhan v. Govardhan Das Byas* ((1984) 1 SCC 369 : AIR 1984 SC 143) and *Budh Ram v. Ralla Ram* ((1987) 4 SCC 75 : AIR 1987 SC 2078))

9. But as for the third paragraph of Section 107 of the Transfer of Property Act, the only requirement is that execution of the lease through a registered instrument shall be a joint endeavour of both the lessor and lessee. The said paragraph in the section was introduced by the Transfer of Property (Amendment) Act, 1929 (Act 20 of 1929). The reason for introducing the aforesaid paragraph in the said section was to settle the conflict of opinion expressed by different High Courts regarding the validity of a lease made through a rent note signed by the lessee alone. The Allahabad High Court has held the view that a lease can be created only by a instrument signed by both the lessor and lessee while the Madras High Court took a contrary view. Both views received approval by different High Courts. In the light of the said conflict, the legislature thought it fit to resolve it by introducing the third paragraph in this section.

10. A close reading of the third paragraph indicates that there is no stipulation that the instrument must be signed by both parties. The requirement is that when the lease is made by a registered instrument, "such instrument shall be executed by both the lessor and lessee". What is underlined in it is that the creation of a lease is not a unilateral exercise of one of the parties but a bilateral endeavour of both the lessor and the lessee.

11. The word "execute" is given the meaning in Black's Law Dictionary as : "To complete; to make; to sign; to perform; to do; to follow out; to carry out according to its terms; to fulfil the command or purpose of." In *Words and Phrases* (Permanent Edition), the word "execute" is given the meaning as : "To complete as a legal instrument; to perform what is required to give validity to." An instrument

is usually executed through multifarious steps of different sequences. At the first instance, the parties might deliberate upon the terms and reach an agreement. Next, the terms so agreed upon would be reduced to writing. Sometimes one party alone would affix the signature on it and deliver it to the other party. Sometimes both parties would affix their signature on the instrument. If the document is required by law to be registered, both parties can be involved in the process without perhaps obtaining the signatures of one of them. In all such instances, the instrument can be said to have been executed by both parties thereto. If the instrument is signed by both parties, it is presumptive of the fact that both of them have executed it, of course it is only rebuttable presumption. Similarly if an instrument is signed by only one party, it does not mean that both parties have not executed it together. Whether both parties have executed the instrument will be a question of fact to be determined on evidence if such a determination is warranted from the pleadings of the particular suit. Merely because the document shows only the signature of one of the parties, it is not enough to conclude that the non-signing party has not joined in the execution of the instrument.

12. In this connection, it is appropriate to refer to a three-Judge Bench decision of this Court in *Asa Ram v. Ram Kali* (AIR 1958 SC 183 : 1958 SCR 988). A kabuliat was executed by the lessees in favour of their lessors, but the latter did not execute any instrument in favour of the lessees. It was contended that the lessees could not claim the status of tenants solely on the strength of the kabuliat which was only a unilateral undertaking. But the evidence showed that the lessors had accepted the kabuliat and received rent as prescribed therein. On the aforesaid facts, this Court overruled the contention that the lessees could not claim the status of tenants. The Allahabad High Court which adopted the contrary view prior to the introduction of the amendment in 1929 of Section 107 of the Transfer of Property Act, had occasion to consider a similar contention regarding one kabuliat executed after such amendment. In *Gaon Sabha v. Jagannath Singh* (1984 All LJ 518 : 1984 RD 193) the High Court following the ratio of *Asa Ram v. Ram Kali* (AIR 1958 SC 183 : 1958 SCR 988) has held that there was no violation of Section 107 of the Transfer of Property Act.

13. When the defendant in this case did not dispute in the written statement the fact that the lease was validly made, it is not open to him to raise a contention later, viz., the instrument was not executed by both the lessor and lessee and consequently the lease is void. The High Court, has therefore, rightly confirmed the finding of the courts below that the decree for eviction on the ground under Section 11(1)(e) of the Bihar Act is not liable to be interfered with.

14. Accordingly we dismiss this special leave petition.