

ALLAHABAD HIGH COURT

Shri Nath

Vs.

Saraswati Devi Jaiswal

Second Appeal No. 4283 of 1962, against order of Addl. Civil J. Allahabad
(S.D. Singh, J.)

15.11.1962. 02.01.1963

JUDGMENT

S.D. Singh, J

1. This second appeal arises out of a suit for ejection of two defendants who were tenants in the accommodation to which the suit relates. The only question which was pressed in this second appeal relates to the validity of the notice. The notice under Section 106 of the Transfer of Property Act was sent to both the tenants under one registered cover, the names of both the tenants being mentioned as addressees over the same. The registered cover was tendered by the postman to only one of them, but he refused to accept service, the first contention on behalf of the appellants was that the notice was never tendered to the other tenant and there was, therefore, no service of the notice under section 106 of the Transfer of Property Act on him. So far as this aspect of the case is concerned, the point is fully covered by the decision of this Court in *Liladhar Pandey v. Ramji Dass*.¹ It was held by Upadhyaya, J. in that case that where in case of a joint lease a notice is addressed to all the joint lessees, but is served only on one of them, there is sufficient compliance with the provisions of the Transfer of Property Act, and I agree with respect, with that view.

2. The second point urged on behalf of the appellants was that the notice was sent by the landlord not on a post card, but in a closed cover, and either of the two tenants could not have notice of the contents of the same; and reliance for this purpose was placed on *Vaman Vithal Kulkarni v. Khanderao Ram Rao*,² In that case a registered cover was tendered to the addressee, but was refused by him and was brought each unopened and delivered to the sender. It was held that the letter was not served so as to

bring the contents to the notice of the person to whom the letter was addressed, even though the addressee may have declined to accept it. It was further pointed out that it could not be assumed that because the addressee declined to accept the particular sealed envelope, he could correctly guess its contents. With all respects, I find it difficult to accept this view.

3. Where a closed envelope is tendered to a person and he refuses to accept delivery of the same, he, of course, has no knowledge of the contents of that envelope; but when he does not care to accept delivery of the envelope, the law should impute knowledge of the contents thereof to him, and it is on that basis that refusal to accept delivery of a registered or unregistered notice is regarded as sufficient notice of the contents of the envelope to the addressee. If that is not done, it will always be possible for the addressee to say that he did not know what the letter contained and it would become impossible for the sender to serve proper notice on him in any case. It was contended on behalf of the appellant that the landlord could have sent a notice on a postcard, in which case the addressee would be deemed to have had notice of the contents of the same. That should not, however, make a material difference. Even if a notice is sent to a particular person on a postcard, the postman is not obliged to let the addressee read the contents thereof before he refuses to accept service of the same; and if the addressee can be imputed with constructive knowledge of the contents of that notice if he refuses service of the postcard without reading its contents, there is no reason why similar knowledge may not be imputed to him even when the notice is contained in a closed envelope. And if, in the case of a joint lease, service of the notice is to be deemed sufficient on the tenant other than the one to whom it was actually tendered (provided he was also one of the addressees), even he may be presumed to have constructive knowledge of the contents of the sealed or closed envelope. The notice under Section 106 of the Transfer of Property Act will, therefore, be deemed to have been duly served on both the tenants.

4. This appeal has no force and is consequently dismissed under Order 41, Rule 11 C.P.C.

Appeal dismissed.

Cases Referred.

1. 1956 All LJ 650
2. AIR 1935 Bom 247