

Reserved

Case :- WRIT - A No. - 1000031 of 2009

Petitioner :- Mohd. Furqan

Respondent :- A.D.J. Ayodhya Prakarn Lucknow

Counsel for Petitioner :- Ausaf Ahmad Khan

Counsel for Respondent :- C.S.C., Mohammad Masood Hasan, Mohd. Nasserullah, Shakeel Ahmad

Hon'ble Manish Mathur, J.

1. Heard Mr. Ausaf Ahmad Khan learned counsel for petitioners and learned counsel for opposite party No.3. Opposite parties 1 and 2 being merely proforma in nature, notices are dispensed with.
2. Petition has been filed challenging order dated 31st January, 2009 passed in SCC Revision No. 29 of 2006 whereby revision preferred by opposite party No.3/land lord has been allowed setting aside judgment and order dated 16th February, 2006 passed in SCC Suit No. 160 of 1997.
3. It has been submitted that aforesaid SCC Suit had been filed by opposite party No.3/land lord for arrears of rent and ejectment against predecessor-in-interest of petitioner. The aforesaid suit was dismissed vide judgment and order dated 16th February, 2006 against which the aforesaid revision had been filed by land-lord and has been allowed.
4. It has been submitted that the original tenant who was predecessor-in-interest of petitioner filed his written statement denying the title of plaintiff on the ground that premises in question, being residential were in fact purchased by him from the mother of plaintiff and on that score his title was denied along with any land lord-tenant relationship. It is submitted that validity of service of notice under Section 106 of the Transfer of Property Act was also denied along with denial of arrears of rent.
5. Learned counsel submits that on the basis of pleadings trial court framed five issues:-

(a) Whether land-lord-tenant relationship existed?

(b) Whether the notice given by land-lord was valid?

(c) Whether plaintiff has been able to prove his title over the premises?

(d) Whether there is any default in payment of rent?

(e) Whether the S.C.C. court had jurisdiction to hear the suit?

6. Learned counsel submits that trial court decided issues No.1 and 3 conjointly and held that there was no landlord tenant relationship between the two nor were either of the parties able to prove their title over the property in question. Validity of notice was also held against the plaintiff and on that ground, the suit was dismissed.

7. It has been submitted that revisional court has clearly erred in interfering with the judgment and order passed by the trial court while exercising powers under Section 25 of the Provincial Small Causes Court Act since evidence has been reappreciated, which could not have been done. It is submitted that clearly as per pleadings and findings of the trial court, land-lord tenant relationship was not made out and reversal of such finding by the revisional court is against material on record. It has also been submitted that the trial court correctly recorded the fact that service of notice as required under Section 106 of Transfer of Property Act was defective and that the finding pertaining to Section 29(A) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act 1972 has also been incorrectly decided by the revisional court.

8. Learned counsel has placed reliance on certain judgments in the cases of M/s. Madan and Company versus Wazir Jaivir Chand, (1989) 1 SCC 264; Dharmpal Singh versus Jitendra Prasad Gupta and others, 2015 SCC Online 5279; Trilok Singh Chauhan versus Ram Lal(dead) through L.Rs., (2018) 2 SCC 566; Laxmi Kishore and another versus Har Prasad Shukla, 1981 ARC 545 and Smt. Renu Gupta versus Smt. Kanti Devi (deceased) and others, 2012 (11) ADJ 497 to buttress his submissions.

9. Learned counsel appearing for opposite party No.3 has refuted submissions advanced by learned counsel for petitioner with submission that revisional court has correctly recorded the finding regarding land-lord tenant relationship in terms of material already on record and admission on the part of original tenant/defendant. It has been submitted that notice was also correctly held to have been served in terms of Section 27 of the General Clauses Act and that the revisional court has acted very well within jurisdiction of Section 25 of the Small causes Court Act. Learned counsel further submits that the revisional court has correctly recorded the finding that the defendant/tenant was unable to prove applicability of Section 29(A) of the Act of 1972. Learned counsel has placed reliance on certain judgments in the cases of Fitter Peera Saheb versus K. Balachandra Rao and others, 1971 SCC OnLine Kar 122; Ghulam Waris Khan and another versus Lt. Col. Ajeet Singh and another, 2008 SCC OnLine All 51; Govind Prasad versus IIIrd Additional District Judge, Meerut and others, 1998 SCC OnLine All 623; M/s. Bharat Petroleum Corporation Ltd. versus Smt. Parvati Devi and others, ARC 1998(1) 36; Nihal Chand Khanduja versus Munsif Koli, Aligarh, 1988 SCCOnLine All 375 and Shyam Lal versus Rasool Ahmed (Dead) by L.Rs, 2002 (9) SCC 499.

10. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the following four points of determination are being framed:-

- (1) Whether land-lord tenant relationship has been correctly decided?
- (2) Whether service of notice has been correctly adjudicated upon in terms of Section 106 of the Transfer of Property Act read with Section 27 of the General Clauses Act?
- (3) Whether the benefit of Section 29(A) of the Act of 1972 was rightly denied to the defendant/tenant?

(4) Whether the revisional court has exceeded its jurisdiction under Section 25 of the Small Causes Court Act?

Point No.1

11. So far as the question regarding land-lord tenant relation is concerned, the trial court has recorded a finding that the plaintiff was unable to adduce any evidence in support of his claim that he was owner over the premises in question although it has recorded a finding that the mother of plaintiff Smt. Zaibul Nisha was the admitted owner of the property. The trial court has also disbelieved the submission of defendant/tenant regarding purchase of premises from Smt. Zaibul Nisha on the same ground that no documentary evidence was filed to substantiate the same. On that score, the trial court has decided the aforesaid issue against both the plaintiff as well as defendant.

12. The revisional court however on the basis of admission on the part of defendant has recorded a finding that since title over property in question of Smt. Zaibul Nisha was admitted, the plaintiffs as their successors would succeed to the said title and therefore would come within the definition of land-lord.

13. With regard to aforesaid finding, it is evident from the material on record that plaintiff in paragraph 1 of the plaint has clearly made an averment that he is the owner and land-lord of the premises in question. The original defendant/tenant has denied the aforesaid assertion and has in fact set up his own title over the premises in question on the ground that he had been admitted as a tenant over the premises in question by the erstwhile owner Smt. Zaibul Nisha and had thereafter purchased the demised premises from her for which adequate consideration was also paid and on the basis of which Smt. Zaibul Nisha agreed to execute a sale deed, which however could not be executed.

14. A perusal of judgments of both the courts would indicate a concurrent finding of fact being recorded regarding admission of the

original defendant/tenant regarding title of Smt. Zaibul Nisha over the premises in question as well as his admission that he was admitted as tenant in the aforesaid premises by her.

15. For the purposes of adjudication with regard to aspect of land-lord tenant relationship, it would be relevant to advert to provisions of Section 3(g) and (j) of the Act of 1972. Section 3(g) defines family in relation to a land lord or tenant of a building to mean the spouse, male lineal descendants and such parents, grand parents and any unmarried or widowed or divorced or judicially separated daughter etc. having a legal right of residence in the building. It therefore transpires that male lineal descendants of a land-lord would come within definition 'family' of the land-lord.

16. Section 3(j) defines the term 'land-lord' in relation to a building to mean a person to whom its rent is or if the building were let, would be, payable and includes except in clause (g), the agent or attorney of such person.

17. A conjoint reading of the aforesaid provisions would make it apparent that male lineal descendants of a land-lord are included not only in terms of family but also as land-lord of the building. In view of aforesaid statutory provisions, in the considered opinion of this Court, the trial court clearly was in error in deciding issue No.1 against the plaintiff particularly having overlooked the aspect that the concept of a land-lord as per Act of 1972 is materially different from that of owner of the property. The trial court has not even adverted to the provisions of Section 3(g) and (j) of the Act.

18. The revisional court has clearly considered the aforesaid aspects and has recorded a clear finding that since the revisionists are successors of the original admitted land-lord, the land-lord/tenant relationship is made out in view of admission of original defendant/tenant regarding ownership of the building in question by Smt. Zaibul Nishal who is also

admittedly the mother of plaintiffs as per admission made in paragraph 9 of the written statement.

19. In view thereof, no exception can be taken to the reasoning of the revisional court which is in conformity with statutory provisions of Act of 1972.

20. This point of determination is therefore decided against the petitioner.

Point No.2

21. So far as the question of validity of service of notice dated 19th April, 1996 as per Section 106 of Transfer of Property Act is concerned, learned counsel for petitioner has submitted that admittedly no acknowledgment of any receiving of the notice was ever returned by the postman which as per the plaintiff was affixed in a conspicuous place on the premises. It is submitted that Section 106 of the Transfer of Property Act clearly envisages service of such notice being affixed to a conspicuous part of property only if service by post or personal delivery is not practicable and such a finding is recorded by the court concerned. It is submitted that since there is no finding by the revisional court regarding the aforesaid aspect, revisional court has erred in holding service of notice upon the defendant/tenant valid only on the basis that it was affixed to a conspicuous part of the property. It is further submitted that in such a situation, it was incumbent upon the revisional court to have first recorded a finding that tender or delivery of the notice by post or personal service was not practicable, which was a mandatory condition.

22. Learned counsel has adverted to the finding recorded by the trial court on that aspect and submits that the trial court has rightly recorded that service of notice was could not be deemed to be effected upon the tenant.

23. Learned counsel for opposite party No.3 has however submitted that the aforesaid condition indicated in section 106 is not mandatory and

once a notice even under Section 106 of the Transfer of Property Act has been issued to the addressee at the correct address, it would be deemed to have been served upon him in view of Section 27 of the General Clauses Act.

24. With regard to aforesaid, it is evident that trial court has held the issue against the plaintiff primarily on the ground that a copy of the notice which was allegedly affixed on a conspicuous part of the property was illegible. The trial court has not recorded any finding regarding the aspect of practicability of service through post or personally and on the contrary has decided the issue against the plaintiff only on the ground that notice is illegible. The revisional court on the other hand has adverted to the aforesaid issue and held it in favour of the plaintiff with a finding that the notice was perfectly legible and was in consonance with Section 106 of the Transfer of Property Act. It also recorded a finding that the aforesaid notice was sent through post and once the postman made an endorsement that the defendant/tenant was not met despite numerous efforts by him, the notice was deemed sufficient not only on the basis of its affixation on a conspicuous part of the property but also in view of newspaper publication.

25. Learned counsel for both the parties have placed reliance on various judgments. However judgment rendered by Hon'ble Supreme Court in the case of M/s Madan and Company (supra) is clearly applicable in the facts and circumstances of the case since validity of notice in terms of both the provisions under Section 106 of Transfer of Property Act viz-a-viz Section 27 of the General Clauses Act has been adjudicated upon in the following manner:-

"4. Shri Soli J. Sorabjee, learned counsel appearing for the tenant submitted that the safeguards in Sections 11 and 12 of the Act are intended for the benefit and protection of the tenant and that, therefore, where the Act provides for the service of the notice, by post, this requirement has to be strictly complied with. He referred to the decisions in Hare Krishna Das v. Hahnemann Publishing Co. Ltd. [(1965-66) 70 Cal WN 262] and Surajmull Ghanshyamdas v. Samadarshan Sur [AIR 1969 Cal 109 : ILR (1969) 1 Cal 379] to contend that such postal service can neither be presumed nor

considered to be good service where the letter is returned to the sender due to the non-availability of the addressee. He urges that, in the absence of any enabling provision such as the one provided for in Section 106 of the Transfer of Property Act, service by some other mode, such as affixture, cannot be treated as sufficient compliance with the statute. In this context, he referred to the frequently applied rule in Taylor v. Taylor [(1875) 1 Ch D 426] that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. He urged that even if service by affixture can be considered to be permissible, there are stringent prerequisites for service by affixture, such as those outlined in Order V Rules 17 to 19, of the Code of Civil Procedure (CPC) and that these prerequisites were not fulfilled in the present case. He pointed out that even under the CPC, service by such affixture can be recognised as valid only if sincere and vigilant attempts to serve the notice on the addressee personally are unsuccessful. In the present case, it is submitted, the evidence shows that the postman made no serious efforts to ascertain the whereabouts of the addressee even though the evidence showed that a servant of the petitioner firm was known to the postman and was present in the neighbourhood. He, therefore, submitted that the High Court should have dismissed the suit for eviction filed by the landlord on the ground that the requirements of Sections 11 and 12 of the Act were not satisfied.

5. We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to clause (i) of Section 11(1) and the proviso to Section 12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insist that before any amount of rent can be said to be in arrears, a notice has to be served through post. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under Section 27 of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the addressee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a court under Order V of the CPC. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret provision as requiring that the letter must have been actually delivered to the addressee, we would be

virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the word "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant.

6. Much emphasis has been placed by the courts below and counsel for landlord on the attempt made by the landlord to serve the notice on the premises in the presence of the witnesses. While the counsel for the landlord would have it that the steps show the landlord's bona fides, counsel for the tenant submits that the haste with which the "substituted service" was effected and the lack of any real attempt to find out the whereabouts of the tenant (who had, according to him, been compelled to be away at Amritsar for medical treatment) throw considerable doubts on the claim of bona fides. We do not think that any statutory significance can at all be attached to the service by affixture claimed to have been effected by the landlord. The statute prescribes only one method of service for the notice and none other. If, as we have held, the despatch of the notice by registered post was sufficient compliance with this requirement, the landlord has fulfilled it. But, if that is not so, it is no compliance with the statute for the landlord to say that he has served the notice by some other method. To require any such service to be effected over and above the postal service would be to travel outside the statute. Where the statute does not specify any such additional or alternative mode of service, there can be no warrant for importing into the statute a method of service on the lines of the provisions of the CPC. We would therefore not like to hold that a "substituted" service as the one effected by the landlord in the present case, is a necessary or permissible requirement of the statute. It may be even an impracticable, if not impossible, requirement to expect some such service to be effected in cases where the landlord lives outside the town, or the State in which the premises are situated. If, in the present case, the landlord attempted such service because he was in the same town, that can only show his bona fides and it is only in this view that we proceed to express our findings in this regard."

26. Upon applicability of the aforesaid judgment in the present facts and circumstances of the case, it is evident that Hon'ble Supreme Court

has clearly held that a statutory provision has to be interpreted in the context of difficulty for a postal authority to effect service due to its limited role and has thereafter held that in case of interpretation of provision as requiring that the letter/notice must have been actually delivered to the addressee, it would render the statutory provisions virtually a dead letter. On that score, Hon'ble Supreme Court placed reliance on provisions of Section 27 of General Clauses Act to hold that in such a situation, a more reasonable, effective, equitable and practical interpretation is required to be given and to read the words 'served' as 'sent by post'.

27. The aforesaid judgment therefore is clearly a proposition that in view of any contradiction between Section 106 of the Transfer of Property act and Section 27 of General Clauses Act, it would be provisions of Section 27 of General clauses Act which would prevail and that the mere fact that there is no recording in the judgment impugned that affixation of notice upon a conspicuous part of property without adverting to whether such tender or delivery was impracticable, has not been held to be mandatory in nature.

28. In view of aforesaid judgment as well as the finding of revisional court, it is evident that the notice was sent by plaintiffs/land lord under certificate of posting as well as registered post and the postman thereafter made an endorsement that the defendant/tenant could not be contacted despite numerous attempts, it has been rightly held by the revisional court that the notice would be deemed served upon the tenant.

29. From a perusal of the written statement as well as deposition of witnesses, it is evident that the original defendant/tenant has not denied the fact that the notice was sent in the correct name and to the correct address and therefore in such circumstances, the provisions of Section 27 of the General Clauses Act read with Section 114 of Evidence Act would definitely come into play.

30. In the cases of Samittri Devi and another versus Sampuran Singh and another, (2011) 3 SCC 556; C.C. Alavi Haji versus Palapetty Muhammed and another, (2007) 6 SCC 555 and New India Assurance Company Ltd. versus Nusli Neville Wadia and another, 2009 (27) LCD 333 it has been held that once a notice under Section 106 of Transfer of Property Act has been admittedly sent in the correct name of addressee to the correct address, its service would be deemed and such presumption can be rebutted by the tenant upon production and examination of the postman for which burden shall lie upon the tenant.

31. In the present case, there has been no effort by the original defendant/tenant to produce evidence or deposition of the postman to deny the endorsement of postman. In such circumstances in terms of Section 27 of the General Clauses Act, no exception can be taken to the finding recorded by the trial court. This point of determination is therefore decided against the petitioner.

Point No.3

32. So far as applicability of Section 29(A) of the Act of 1972 is concerned, it appears that no such issue was framed or adjudicated upon by the trial court but the revisional court has thereafter recorded its finding thereupon and has held it to be against the defendant/tenant.

33. Learned counsel for petitioner has submitted that it was clearly indicated in the written statement that although the property belonged to Smt. Zaibul Nisha, the defendant/tenant had made payment of Rs. 20,000/- to her for execution of a sale deed whereafter with her consent, demolished earlier structure and raised a new structure thereupon and in terms thereof, the tenant was entitled for the benefit of Section 29(A) of the Act of 1972.

34. Learned counsel for opposite parties has however refuted the aforesaid submissions and has in turn submitted that no such issue having been framed by the trial court, no pleading or evidence thereupon can be

looked into. However in view of the fact that revisional court has adverted to the aforesaid aspect, the same is being considered in this petition.

35. For the purposes of applicability of section 29-A of the Act of 1972, the same provides protection against eviction to certain classes of tenants of land on which building exists. The section applies only to a land let out, either before or the commencement of the section where the tenant, with land lords consent has erected any permanent structure and incurred expense in execution thereof. Thus for applicability of aforesaid section, it is incumbent upon the tenant to prove erection of any permanent structure and incurring of expense in execution thereof by the tenant with the consent of land-lord.

36. The revisional court for the purposes of adjudication of the said issue has relied upon deposition of D.W.1, the original defendant and has rejected the same on the ground that earlier as well suit No. 214 of 1993 was instituted between Smt. Zaibul Nisha and the original tenant but no such plea was ever taken in the said suit proceedings and therefore clearly is an afterthought. It has also adverted to the fact that the original defendant/tenant has also not been able to prove incurring of any expense for the purposes of construction with the consent of land-lord.

37. For the purposes of applicability of Section 29(A), it was incumbent upon the tenant to have proved not only the construction at his instance and incurring of expense in execution for erection of any permanent structure but also the factum of such construction with the land lord's consent.

38. There is no material on record to indicate that the original defendant/tenant was ever able to prove the consent of original land-lord, Smt. Zaibul Nisha with regard to erection of such permanent structure. On the contrary, the D.W.I, the original tenant has stated that he purchased the property in question from the original land-lord 35 years ago and about 22 years ago, he made permanent construction. It is thus evident from his

deposition that the construction is alleged to have been made by him after alleged purchase of the said property 35 years ago. In such circumstances once he has pleaded title over the property, there was no occasion for him to have sought consent from the original land-lord for such construction. There is no evidence produced by the original defendants/land lord regarding any consent having been given by Smt. Zaibul Nisha to him for such permanent construction.

39. In view of aforesaid, no exception can be taken to the finding recorded by the revisional court.

40. The point of determination therefore is decided against the petitioner.

Point No.4

41. Learned counsel for petitioner has urged that the judgment rendered by revisional court exceeds its jurisdiction under Section 25 of the Provincial Small Causes Courts Act inasmuch as the revisional court did not have any authority or jurisdiction to reappreciate evidence.

42. Learned counsel for opposite parties has denied the aforesaid submission and has submitted that on the contrary, the revisional court has based its judgment only on the material which was on record to indicate that judgment of trial court was against such material which was on record.

43. With regard to aforesaid proposition, Hon'ble Supreme Court in the case of Trilok Singh Chauhan (supra) has clearly held as follows:-

" 14. Another judgment which needs to be noted is judgment of this Court in Mundri Lal v. Sushila Rani [Mundri Lal v. Sushila Rani, (2007) 8 SCC 609] . This Court held that jurisdiction under Section 25 of the 1887 Act, is wider than the revisional jurisdiction under Section 115 CPC. But pure finding of fact based on appreciation of evidence may not be interfered with, in exercise of jurisdiction under Section 25 of the 1887 Act. The Court also explained the circumstances under which, findings can be interfered with in exercise of jurisdiction under Section 25. There are very limited grounds on which there can be interference in exercise of jurisdiction under Section 25; they are, when (i) findings are perverse or (ii) based on no material or (iii) findings have been

arrived at upon taking into consideration the inadmissible evidence or (iv) findings have been arrived at without consideration of relevant evidence."

44. Upon applicability of aforesaid judgment in the facts and circumstances of the case, it is evident that the trial court has ignored statutory provisions as well as material on record to dismiss the suit. Statutory provisions pertaining to the concept of family and land-lord as well as Section 27 of General Clauses Act have clearly not been taken into account by the trial court. Such findings have been interfered with by the revisional court taking into consideration not only the statutory provisions but also on the basis of material on record.

45. In the considered opinion of this Court, since the findings of trial court were not based on any material and was arrived at without consideration of relevant evidences, the same were clearly perverse and have been rightly interfered with by the revisional court and no exception thereto can be taken.

46. The point of determination therefore is decided against the petitioner.

47. In view of discussion made herein above, the petition being devoid of merits is dismissed. Parties to bear their own cost.

Order Date:- 31.05.2024
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(Manish Mathur,J.)