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2024

Ct. No. 04

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SAT 181 2023
IA No. CAN 1 of 2023

Sri Nakul Chandra Dey
Vs.
Dhiraj Sanbui

Mr. Gautam Das,
Mr. Madhumita Patra.

... for the appellant.

Mr. Ayan Banerjee,
Ms. Debasree Dhamali,
Ms. Riya Ghosh.

... for the respondent.

A suit for recovery of possession on the ground of expiry of period of a notice under Section 106 of the Transfer of Property Act is decreed by the Trial Court and such decree is affirmed by the First Appellate Court. Though the said suit is primarily founded upon the aforesaid ground yet several grounds viz. default in payment of rent, waste and negligence and reasonable requirement were pleaded in the plaint, which do not come within the purview of the Transfer of Property Act.

The defendant/appellant took a defence that the notice is vague and is not properly served upon him. A further plea of defence was taken that the property described in the schedule is not a correct description of the property and for such reason, both the Courts below ought to have dismissed the suit.

As indicated above, it is not a suit under the rent control legislation as the operation of the said Act has not been extended to the area where the premises is situated. It is a suit under the General Law and founded upon the notice under Section 106 of the Transfer of Property Act. Mere pleading the grounds, which are surplusage and not the requirement under the Transfer of Property Act, do not invalidate the suit nor confer a jurisdiction upon the Court to take up such grounds on the basis of the provisions of the Act, the operation

whereof has not been extended to the area where the property is situated.

Section 111(h) of the Transfer of Property Act postulates that a lease determines on the expiration of the period provided in a notice to quit or determining the lease, which obviously indicates that the notice to determine the tenancy or the lease is *sine qua non* to the recovery of possession under the aforesaid provision.

Though the defendant/appellant has denied the service of the notice but it appears that such notice was sent through registered post with acknowledgement due and the acknowledgement due card was returned to the sender bearing a signature thereupon of the defendant/appellant. Apart from making a stray stand that the service has not been properly made, there is no evidence forthcoming from the side of the defendant/appellant to disbelieve the proof of service.

A presumption is drawn under Section 27 of the General Clauses Act in relation to a service thorough a registered post with acknowledgement due if the same contains correct address and the charges leviable thereupon is paid by the sender. Such presumption is not absolute but rebuttable in nature and the moment the initial onus cast upon the plaintiff/respondent is discharged, it shifts upon the defendant/appellant to rebut the same by adducing cogent evidence. Mere denying the service does not absolve the defendant/appellant from proving that the presumption, which is drawn in favour of the service, is incorrect and/or liable to be discarded.

A plea of mis-description of the property is also taken, which does not appear from the record to have been given credence by both the Courts below. Our attention is drawn to the cross-examination of the plaintiff's first witness wherein it is indicated that the schedule shown in the notice does not contain the name of the business establishment of the

defendant/appellant, which, in our opinion, cannot lead to a mis-description of the property. If the property can be conveniently and sufficiently identified and there is no difficulty in ascertaining the exact position where such property is situated, mere taking a plea that there is a mis-description in the schedule appended to the plaint cannot defeat the suit on such ground.

Furthermore, the notice under Section 106 of the Transfer of Property Act was served upon the defendant/appellant containing description of the property and if the defendant/appellant is of the view that the property has not been properly described, there should have been some reaction to it. It is too late in a day when the suit is filed to take a plea of mis-description when the defendant/appellant is not in a position to deny the right, title and interest of the predecessor in interest of the plaintiff/respondent.

We, thus, do not find any substantial question of law involved in the instant appeal. The appeal is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

In view of the dismissal of the appeal itself, the connected application for stay being CAN 1 of 2023 has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Madhuresh Prasad, J.)

