

Lohia Properties (P) Ltd., Tinsukia, ... vs Atmaram Kumar on 17 August, 1993

Equivalent citations: 1993(2)BLJR1273, JT1993(5)SC223, 1993(3)SCALE453, (1993)4SCC6, AIRONLINE 1993 SC 562

Author: S. Mohan

Bench: M.N. Venkatachaliah, S. Mohan

JUDGMENT

S. Mohan, J.

1. Leave granted.
2. The Special Leave Petition is directed against the judgment of the Gauhati High Court in Second Appeal No. 193 of 1981. The petitioner filed a title suit No. 97/65 in the court of learned Munsiff, Dihrugarh. The suit is for enactment of the respondent herein, on the following averments:-
3. The plaintiff purchased the suit land from the original owner M/s. Planters Stores Agency Ltd. on 28.10.48. The father of the defendant was originally the tenant of M/s. Planters Stores Agency paying an annual rent of Rs. 50/- by putting up temporary structures on the suit land for residential purpose. After the purchase by the plaintiff, he continued as tenant accepting the plaintiff as a landlord. He defaulted in payment of the rent for a period of 1.1.62 to 28.2.65. He also sublet a part of the structure standing thereon to proforma defendants Nos. 2-5. Besides, the plaintiff bona fide required the suit land for their use and occupation. A notice of ejectment was issued on 8.1.65 calling upon the defendant to vacate and deliver the vacant possession. He did not do so Hence the suit.
4. The original defendant Ramprit Kumar filed a written statement contesting the suit. However, he died, pending the suit. Therefore the respondent Atmaram Kumar came to be substituted. He filed written statement that the suit was not maintainable and the first defendant was a tenant under the provisions of Assam Urban Areas Rent Control Act.
5. The plaintiff had no right to sue as the father (original defendant) came to occupy the suit premises in the year 1922 as yearly tenant. In any event, there was no service of notice of ejectment and the structure standing thereon was of a permanent character.

6. One of the main issues for decision was whether there was a valid notice terminating the tenancy and the defendant had been properly served.

7. The learned Munsiff on trial decreed a suit. The defendant preferred title appeal No. 17/70 before the Assistant District Judge, Dibrugarh, the appeal was dismissed. Thereafter, he preferred second appeal 193/81 on the file of the Gauhati High Court. The learned judge went into detail on the question of notice. He came to the conclusion merely because the original defendant did not deny specifically the service of notice in paragraph 5 of the written statement it cannot be deemed to be an admission under Order 8 Rule 5 of the CPC. Therefore, according to him the courts below committed an error of law in not deciding this issue, on a consideration of the entire evidence on record. The evidence according to him, disclosed that the notice had not been served. On this sole ground, the second appeal can be allowed. Hence, the present Special Leave Petition.

8. This Court on 4.10.91 ordered thus:-

Issue notice. The question is a short one and that is whether in the second appeal stage the question of the service of the notice should have been permitted to be raised at all. The notice shall specify that the matter will be finally disposed of on the S.L.P. stage itself on the S.L.P. papers at the next date of hearing.

9. Therefore the only question which we are called upon to decide is as to the validity of the notice.

10. The learned Munsiff cast many issues, Issue No. 5 reads as follows:-

Whether the notice terminating the tenancy is a valid one and whether there is proper service.

11. The learned Munsiff rendered the following finding:-

P.W.3 Harinarayan Mitra was the mohurerol Sri C.C. Chakravarty who issued the ejectment notice on behalf of the plaintiff. Ex.2 is the postal receipt and Ext. 1 is the acknowledgment. From Ext.1 it appears that the ejectment notice was sent in the address Village Naruah P.O. Mirzapur, Dist. Chapra (Bihar). It appears from D.W. Ramsundar's evidence that Ramprit went home (Bihar) for his treatment. It is probably due to this reason the notice was sent to Ramprit's home address. Copy of the ejectment notice was also sent to the proforma defendants late Ramprit Kumar in his written statement did not deny the receipt of the ejectment notice, late Ramprit Kumar only stated in the W.S. that the notice of ejectment as referred to in para 7of the plaint is not according to law. Therefore the defendant know cannot take the stated that no ejectment notice was served upon the defendant pursuing the ejectment notice I filed that the notice fulfils the requirements as laid down in Section 106 of theT.P.Actand Section 11 of Act. Kil of 1955 (Assam Non-Agricultural Urban Areas Tenancy Act 1955) under the above circumstances the notice terminating is a valid one and there was proper service, this issue is answered in favour of the plaintiff.

12. While affirming the same the first appellate court stated thus:-

Original defendant No. 1 Ramprit in para 5 of his written statement took the plea that ejectment notice was not in accordance with law. He did not state that notice was not served. P. W.3, Harinarayan Mitra, a petition writer of the court, deposed that he was attached to Shri C.C.Chakrabarty, advocate of Dibrugarh. He further deposed that he posted the ejectment notice Ext. 2 by registered post. Ext2(1) was the signature of his lawyer Shri C.C.Chakrabarty. Ext.3 was the postal receipt while Ext.4 was the acknowledgment receipt. Service of ejectment notice was proved duly. I have gone through the contents of Ext.2 and found that it complied with the requirement of law. Notice was found to be valid and proper and this issue is decided in favour of the plaintiff and against the defendant.

Order 8 Rule 5(1) reads as follows:-

Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be provided otherwise than by such admission.

13. What is stated in the above is, what amount to admit a fact on pleading while Rule 3 of Order 8 requires that the defendant must deal specifically with each allegation of fact of which he does not admit the truth.

14. Rule 5 provides that every allegation of fact in the plaint, if not denied in the written statement shall be taken to be admitted by the defendant. What this rule says is, that any allegation of fact must either be denied specifically or by a necessary implication or there should be at least a statement that the fact is not admitted. If the plea is not taken in that manner, then the allegation shall be taken to be admitted.

15. From the above findings, it is clear that the plaint categorically stated in paragraph 7 are as under:-

That the said late Ramprit Kumar- the father of the defendant No. 1 having defaulted to pay rent of the said land and having become defaulter under the Assam Urban Area Rent Control Act and having sublet the land and the plaintiff having required the said land for their own use and occupation after construction of buildings thereon, the plaintiff throughout their Lawyer Sri CC Chakrabarty, B.L. Pleader, Dibrugarh, served the said late Ramprit Kumar the father of the defendant No. 1 with a notice of ejectment dated 8.1.65 through Regd. A/D post requiring the said late Ramprit Kumar the father of the defendant No. 1 to quit, vacate and deliver up vacant possession of the said land on the expiry of 28th day of February 1966 after removal

of the temporary structures therefrom. The said notice of ejectment was duly delivered and served upon the said late Ramprit Kumar the father of the defendant No. 1 and copy of the said notices were also sent to the Proforma defendants Nos. 2,3,4 and 5. The true copy of the said notices and the postal receipt and the A/D receipt are filed herewith and marked as plaintiffs documents Nos. 1,2&3.

16. The answer to this is in paragraph 5 of the written statement to the following effect:

That the notice of ejectment as referred to in para 7 of the plaint is not according to law.

17. Certainly it is a case to which Order 8 Rule 5 was attracted. It is unnecessary to examine the question as to where a judicial admission could be permitted to be withdrawn or retracted.

18. Non-traverse would constitute an implied admission. In the facts of this case the findings of the trial court and that of the first appellate court could be upheld on this admission. Thus, we find the High Court was wrong in interfering with this finding. Accordingly, the appeal will stand allowed. No costs.