Puwada Venkateswara Rao vs Chidamana Venkata Ramana on 8 March, 1976

Equivalent citations: 1976 AIR 869, 1976 SCR (3) 551

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, Jaswant Singh

PETITIONER:
PUWADA VENKATESWARA RAO

Vs.

RESPONDENT:
CHIDAMANA VENKATA RAMANA

DATE OF JUDGMENT08/03/1976

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
RAY, A.N. (CJ)
SINGH, JASWANT

CITATION:
1976 AIR 869 1976 SCR (3) 551
1976 SCC (2) 409
CITATOR INFO :
RF 1978 SC1518 (14)
RF 1979 SC1745 (17)

ACT:
Andhra Pradesh Building (Lease. Rent and Eviction) Control Act, 1960-Eviction of tenant -Notice under s. 10 issued- Whether notice under s. 106 Transfer of Property Act necessary.
Evidence-Party receipt of notice-Production of postman-If necessary.

HEADNOTE:
The respondent-landlord filed a petition under s. 10 of the Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960, for the eviction of the appellant-tenant. There was a compromise. Since the tenant defaulted in payment of the rent thereafter, a registered notice

terminating the tenancy issued by the landlord, came back with an endorsement that the appellant had refused to accept it. Later. the tenant was ordered to be evicted. 'The tenant's appeal to the appellate court and then his revision application to the High Court were rejected. Relying upon an earlier Division Bench decision of that Court, the High Court held that the Act provided a self-contained procedure for eviction of tenants, and therefore, compliance with the provisions of s. 106, Transfer of Property Act was unnecessary.

Dismissing the tenant's appeal,

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HELD: The High Court has correctly applied the principle laid down by a Division Bench of that court in Mohan & ors. v. S. Mohan Rao & Ors. [1969] An. P.R. Law Journal 351. [553-E]

Raval & Co. v. K. C. Ramacharndran & ors. [19741 2 SCR 629 @ 634 and Shri Hern Chand v. Shrimali Sham Devi. ILR 1955 Puni. 36, referred to.

In Mangilal v. Sugan Chand Rathi [AIR 1955 SC 101] this Court was considering an entirely different kind of provision of another Act in another State, and this case is distinguishable. In the context of the remedy of ejectment by an ordinary civil suit it was held in that case that the usual notice of termination _ of tenancy under- s. 106. Transfer of Property Act was necesary. [553F & D]

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[In cases where a party denies receipt of registered notice it is not always necessary to produce the postman who tried to effect service. Denial of service by a party may be found to be incorrect from its own admissions or conduct. The decision of the Bombay High Court in M. K. Patel v. Kundan Mal Chamanlal and that of the Calcutta High Court in Nirmal Bala Devi. v. Provar Kumar Basu are reconcilable. The Calcutta High Court applied a rebuttable presumption under s. 114, Evidence Act, that the letter was received by the addressee in the ordinary course of blazons was refused by him because the presumption from the endorsement made upon it had not been repelled by any , evidence. In the Bombay case, the presumption had been held to have been `J rebutted by the evidence of the defendant on oath so that it meant that the plaintiff could not succeed without further evidence.] [554C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2534 of 1969.

(Appeal by special leave from the judgment and order dated the 19-8-1969 of the Andhra Pradesh High Court at Hyderabad in C.R.P. No. 2190 of 1968.) P. P. Juneja, for the appellant.

G. N. Rao, for the respondent.

The Judgment of the Court was delivered by BEG J.-The defendant-appellant had taken a house on rent under a registered lease dated 10th February, 1958, on a monthly rent of rent Rs. 250/- for a period of five years for running a lodging house. It J is admitted by both sides that in February, 1963, the lease had expired. According to the landlord respondent, the defendant-appellant had continued to hold over as a tenant "on the same terms" by which he, presumably, meant that it was a month to month tenancy.

The Andhra Pradesh Building (Lease, Rent and Eviction) Control Act, 1960, (hereinafter referred to as 'the Act') came into opera ton before the lease expired.

The appellant seemed to be constantly making defaults in payments of rent. The landlord responden had, therefore, to file a suit for arrears of rent in the Court of District Munsif, Visakhapatnam, which was decreed on 4th April, 1962. The landlord respondent had to file a petition on 21st April, 1962, under Section 10 of the Act before the Rent Controller, Visakhapatnam for the eviction of the appellant as no rent was paid from 1st December, 1961 to 31st March, 1962. There was a compromise on 12th October, 1962. The appellant agreed to clear arrears and to pay rents regularly. The appellant, however, wailfully defaulted again in payments of rent from September, 1963 to April, 1964. A notice dated 8th April, 1964, was sent by registered post by the landlord respondent to the appellant terminating his tenancy and calling upon him to pay up the arrears of rent and vacate the house by the end of April, 1964. This came back with the endorsement that the appellant was refusing to accept it. On 9th `` April, 1964, the respondent filed another petition under Section 10 of the Act before the Rent Controller of Visakhapatnam who ordered the eviction of the appellant after holding all the flimsy defenses of the t appellant to be unsubstantiated. The Subordinate Judge of Visakhapatnam dismissed the tenant's appeal on 23rd October, 1968. The appellant's revision application to the High Court was also rejected on 19th August, 1969.

The only question raised by the appellant before us, in this appeal by special leave, is that no notice under Section 106 of the Transfer of Property Act had been served upon the appellant according to the finding of the Andhra Pradesh High Court itself. It was, therefore, urged , that the petition under Section 10 of the Act could not succeed. The Andhra Pradesh High Court had, however, relied upon Ulligamma Ors. V. S. Mohan Rao & ors. (1), where a Division Bench of that High Court had held that the Act, with which we are now concerned, provided a procedure for eviction of tenants which was self-contained so that no recourse to the provisions of Section 106 of the Transfer of Property Act was necessary.

We may also refer here to the observations of this Court. in Raval & Co. v. K. C. Ramachandran & ors.(2). There, this Court noticed (1) (1969) 1 An. P.R. Law Jolurnal 351.

(2) [197412 S.C.R. 629 @ 634 Shri Hem Chand v. Shrmati Sham Devi(1), and pointed out "that it was held there that the Act under consideration in that case provided the whole procedure for obtaining the relief of ejectment, and, that being so, provisions of Section 106 of the Transfer of Property Act had no relevance". No doubt the decision mentioned with approval by this Court

related to another enactment. But, the principle indicated by this Court was the same as that applied by the Andhra Pradesh High Court.

It is true that, in Mangilal v. Sugan. Chand Rathi (Deceased) etc.(2), this Court has held that the provisions of Section 4 of the Madhya Pradesh Accommodation Control Act of 1955 do not dispense with the requirement to comply with the provisions of Section 16 of the Transfer of Property Act. In that case, however, Section 4 of the Madhya Pradesh Act merely operated as a bar to an ordinary civil suit so that service of a notice under Section 106 of the Transfer of Property Act became relevant in considering whether an ordinary civil suit filed on a ground which constituted an exception to the bar contained in Section 4 had to be preceded by a notice under Section 106 of the Transfer of Property Act. In the context of the remedy of ejectment by an ordinary civil suit, it was held that the usual notice of termination of tenancy under Section long of the Transfer of Pro- party Act was necessary to terminate a tenancy as a condition precedent to the maintainability of such a suit.

In the case before us, the respondent landlord relied upon a provision for special summary proceedings for eviction of tenants under an Act which contains all the requirements for those proceedings. We, therefore think that the learned Judge of the Andhra Pradesh High Court had correctly applied the principle laid down by a Division Bench decision of that Court. He rightly distinguished such a case from Mangilal's case (supra), where an entirely different kind of provision of another Act in another State was being considered by this Court. The Division Bench decision of the High Court, applied by the learned Judge, had, we think, enunciated the correct principle.

A question raised before us by learned Counsel for the respondent is whether the notice sent by the respondent- landlord could be held not to have been served at all simply because the postman, who had made the endorsement of refusal, had not been produced. The Andhra Pradesh High Court had relied upon Meghji Kanji Patel v. Kundanmal Chamanlal (a), to hold that the notice was not served. There, a writ of summons, sought to be served by registered post, had been returned with the endorsement "refused". The Bombay High Court held G that the presumption of service had been repelled by the defendant's statement on oath that he had not refused it as it was never brought to him. In this state of evidence, it was held that, unless the postman was produced, the statement of the defendant on oath must prevail. An (1) I.L.R. [1955] Punj. 36. (2) A.I.R. 1965 SC 101. (3) A.I.R. 1968 Bombay 387.

3-608SCI/76 ex-paste decree, passed on the basis of such an alleged service was, therefore, set aside. On facts found, the view expressed could not be held to be incorrect.

In Nirmalabala Debi v. Provat Kumar Basa(1), it was held by the Calcutta High Court, that a letter sent by registered post, with the endorsement "refused" on the cover, could be presumed to have been duly served upon the addressee without examining the postman who had tried to effect service. What was held there was that the mere fact that the latter had come back with the endorsement "refused" could not raise a presumption of failure to serve. On the other hand, the presumption under section 114 of the Evidence Act would be that, in the ordinary course of business, it was received by the addressee and actually refused by him. This is also a correct statement of the law.

The two decisions are reconcilable. The Calcutta High Court applied a rebuttable presumption which had not been repelled by any evidence. In the Bombay case, the presumption had been held to have been rebutted by the evidence of the defendant on oath so that it meant that the plaintiff could not succeed without further evidence. The Andhra Pradesh High Court had applied the ratio disdained of the Bombay case because the defendant-appellant before us had deposed that he had not received the notice. It may be that, on a closer examination of evidence on record, the Court could have reached the conclusion that the defendant had full knowledge of the notice and had actually refused it knowingly. It is not always necessary, in such cases, to produce the postman who tried to effect service. The denial of service by a party may be found to be incorrect from its own admissions or conduct. We do not think it necessary to go into this question any further as we agree with the High Court on the first point argued before us.

Consequently, this appeal is dismissed with costs.

P.B.R. Appear dismissed.

(1) 52 C.W.N. 659.