

Asghar vs Uttar Pradesh Govt. Through D.C. Gonda on 26 February, 1954

Equivalent citations: AIR1954ALL649

JUDGMENT

Randhir Singh, J.

1. This is a defendant's appeal against a decree for possession passed by the lower appellate Court modifying a conditional decree passed by the Munsif of Gonda.

2. It appears that a lease in respect of three plots of land was granted by the Deputy Commissioner of Gonda to the appellant on the 28th. October, 1933, for making certain constructions on the land. One of the conditions in the lease was that the lessee was to complete the constructions within six months of the date of the lease. It was further provided that if no construction was made or if there was a breach of the terms of the lease, the lessor shall have a right of re-entry. No construction was made on the leased land and the U. P. Government instituted a suit on 17-10-1949, for possession of the land.

3. The suit was resisted by the defendant on the ground that he had applied for permission to the Municipal Board to build, but the permission was not granted in time and he could not therefore comply with the terms of the lease. The trial Court passed a conditional decree and it was provided that the defendant was at liberty to make the constructions within six months of the date of the decree and the suit would stand decreed if he failed so to do. The plaintiff then went up in appeal. The lower appellate Court, however, took a different view and found that there was no good ground for attaching a condition to the decree or giving the defendant further time to make the constructions. It, therefore, set aside the decree passed by the trial Court and decreed the suit for possession. The defendant has now come up in second appeal.

4. The first point which has been pressed in arguments on behalf of the appellant is that the plaintiff did not determine the lease as required by Section 111(g), T. P. Act and as such was not entitled to maintain the suit. It is not disputed that the determination of a lease by forfeiture could take place only after a notice in writing to determine the lease had been served upon the lessee. In the present case there is no mention in the plaint that any such notice was served, nor is there any evidence on the record to establish that any such notice was served upon the defendant lessee.

5. Section 114A which was added by the amendment to the Transfer of Property Act made in 1929 clearly lays down that "no suit for ejectment shall lie", where there has been a forfeiture of a lease of immoveable property, "unless and until the lessor has served on the lessee a notice in writing--

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach, and the lessee fails within a reasonable time from the date of the service of notice, to remedy the breach, if it is capable of remedy."

It would thus appear that the right to institute a suit for ejectment accrues only after the requirements of Section 114A have been complied with. The plaintiff has not only not mentioned in the plaint that a notice as required by Section 114A of the T. P. Act had also been given before the institution of the suit but there is also no evidence to show that a notice as required by Section 114A had been given. The plaintiff was therefore not entitled to maintain the suit.

6. It has been argued by the learned counsel for the respondent that it was not necessary in law that it should be mentioned in the plaint that a notice as required by Section 114A, Transfer of Property Act had been served upon the defendant before the suit was instituted. A perusal of Section 114A shows that the plaintiff should allege in the plaint that the requirements of Section 114A had been complied with. I am unable, therefore, to agree with the contention put forward on behalf of the respondent.

7. In view of the fact that there is no evidence to show that the lease had been validly determined by notice as required by Section 114A of the Transfer of Property Act, the suit cannot be decreed. The view taken by the lower appellate Court was, therefore, clearly incorrect. The appeal is, therefore, allowed and the decree passed by the lower appellate Court is set aside. The suit is dismissed, but in view of the peculiar circumstances of this case the defendant shall get only a half of his costs in all the three courts.