

Hira Lal vs Deputy Commissioner on 6 September, 1950

Equivalent citations: AIR1951ALL483

JUDGMENT

Misra, J.

1. These are defendant's appeals. They arise out of a suit instituted by the Deputy Commissioner, Rae Bareilly, for arrears of rent and ejectment in respect of a house No. 8 Jopling road owned by the Tiloi estate which is under the superintendence of the Court of Wards. The defendant, Hira Lal, was a monthly tenant. He was given a notice on 11-7-1947, (EX. A-2) calling upon him to pay RS. 823 arrears of rent from 1-4-1946 to 31-7-1947 at the rate of Rs. 55 per month and to vacate the premises by 1-8-1947.

2. The suit was decreed by the trial Court for Rs. 155 only in respect of arrears of rent but was dismissed so far as it related to ejectment. It was decreed in its entirety by the learned District Judge, Lucknow. There were two appeals before him. Second civ. App. No. 49 of 1950 is directed against the decree passed in plaintiff's appeal and Second civ. App. No. 86 of 1950 challenges the decree of the learned District Judge dismissing the defendant's appeal.

3. Two of the points which arose for determination in the case and which were decided by the Court of first instance in favour of Hira Lal and against him by the lower appellate Court have been reagitated on his behalf in these appeals. They are : (1) That in order to determine the arrears due to the plaintiff the learned District Judge should have calculated the rent at the rate of RS. 45 and not at the rate of Rs. 55 per month, and (2) that the notice Ex. A-2 was invalid because it did not bear the signatures of the landlord or of anyone on his behalf.

4. Some other grounds of invalidity were also urged at the time of argument but it is unnecessary to encumber this judgment by setting them out here.

5. The first point is concluded by the finding reached by the lower appellate Court to the effect that there was an implied agreement between the parties for the payment of rent at the rate of Rs. 55 per month. The inference was drawn from admissible evidence and it must be given finality. The decree passed against the defendant so far as it relates to arrears of rent must, therefore, stand.

6. The second contention is sound and the appeal must succeed in respect of the claim for ejectment. Section 106, T. P. Act, lays down the essentials of a valid notice. It provides that except in the case of leases for agricultural or manufacturing purposes, leases of immoveable properties must be determined by the lessor or the lessee by 15 days notice expiring with the end of the month of tenancy and it makes it imperative that (i) the notice must be in writing, (ii) it must be signed by or on behalf of the person giving it ; (iii) it must be either (a) sent to the party concerned by post, or (b)

be tendered or delivered to him or to a member of his family or to a servant or (c) affixed on a prominent part of the property.

7. The notice in the present case does not bear any signatures. The evidence indicates that a notice in manuscript (Ex. 3) was prepared in the office and was duly signed by the Deputy Commissioner what was however sent to Hira Lal was not that notice but a typed copy thereof with the name of the Deputy Commissioner, Rao Bareli, typed at the end of it. There were no signatures at all whether of the Deputy Commissioner or anyone else. The learned District Judge obviously fell into an error in thinking that the document bore the signature of the Manager of the Court of Wards in token of attestation, I may also say that his view that the presence of the signatures of that officer fulfilled the requirements of Section 106, T. P. Act, can scarcely bear examination but I need not go into that matter in this case. As held in *Bhagwat Kuri v. Baldeo Rai*, 29 ALL. 145 : (3 A L J 857), a signature is the writing of a person's name or a mark to represent his name by himself or by his authority, for the purpose of and with the intention of authenticating a document. When it is under a superscription, it is made in token of the fact that what goes above emanates from the person who signs it. The name of the Deputy Commissioner typed at the foot of Ex. A-2 was obviously not put down by the Deputy Commissioner himself. It only indicated that the original of which the type written document was a copy contained the signature of that officer. In other words the affixation of the name of the Deputy Commissioner on Ex.. A-2 was not intended by the lessor to be his signature. The document, therefore, cannot be deemed to comply with the mandatory provisions of Section 106, T. P. Act.- The well known Privy Council case of *Harihar Banerji v. Ramasashi Roy*, 45 I. A. 222 : (A. I. R. (5) 1918 P. C. 102), cited for the respondent is not an authority for the proposition that an unsigned notice is a good notice in law. The other case to which reference was made, namely, *Ganga Prasad v. Prem Kumar*, A. I. R. (36) 1949 ALL. 173 : (1948 O. W. N. 279), was based on *Harihar Banerji's* case and does not carry the matter any further. I hold that the notice Ex. A-2 was invalid.

8. I allow Section civ. App. No. 49 of 1950 and dismiss the plaintiff's suit for ejectment. The decree in other respects shall stand. Second civ. App. No. 86 of 1950 is dismissed. In view of the fact that the defendant has only partially succeeded and that too on a technical point, I pass no order as to costs in these appeals.