Allahabad High Court
Sita Ram vs Moti Lal And Ors. on 11 July, 1975
Equivalent citations: AIR 1976 All 70
Author: C Prakash
Bench: C Prakash
JUDGMENT Chandra Prakash, J.

1. This is an appeal against the order dated 8-9-1965 of Sri S. K. Rai, Civil Judge, Allahabad, allowing the defendant's appeal in part and decreeing the plaintiff's suit for the recovery of Rs. 31/- as arrears of rent and possession.

2. The suit giving rise to this appeal was filed by the plaintiff-respondent against the defendant-appellant for the recovery of Rs. 59/- as arrears of rent and Rs. 9/- as damages for use and occupation and ejectment in respect of a house detailed in the plaint on the allegations that the defendant was a tenant of the plaintiff in the house in dispute on a monthly rent of Rs. 15/- and Rs. 930/-were due from the defendant to the plaintiff for arrears of rent for the period between 1-1-1959 and 31-3-1964 after crediting the amount of Rs. 111/- sent by the defendant by money order and Rs. 54/-paid by the defendant towards House Tax and Water Tax. The plaintiff terminated the tenancy of the defendant by a notice dated 7-5-1964. Hence the suit.

3. The defendant resisted the claim on the ground that the correct rate of rent as Rs. 5/- per mensem. It was alleged that the plaintiff had filed a previous suit No. 272 of 1961 for arrears of rent for the period between 1-1-1958 and 29-3-1961 and it was dismissed, and that the judgment in that suit operated as res judicata. It was further alleged that the defendant sent Rs 111/- to the plaintiff in full satisfaction of his claim and the plaintiff accepted that amount unconditionally and cannot go behind that position. The validity of the notice to quit was challenged.

4. The learned Munsif, before whom the suit was originally filed, after taking evidence of the parties, came to the conclusion that the correct rate of rent between the parties was Rs. 5/- per mensem. He also held that the decision in suit No. 272 of 1961 was res judicata between the parties. He further held that Rs. 185/- were due to the plaintiff from 1-3-1961 to 31-3-1964, out of which the defendant paid only Rs. 111/- to the plaintiff and the defendant paid Rs. 54/- as taxes to the Municipal Board. The balance of Rs. 28/- was due to the plaintiff, out of which the defendant sent only Rs. 10/- by money order which was rightly refused by the plaintiff as that amount fell short of the rent due. He further held that the notice of ejectment was perfectly valid and there was a wilful default on the part of the defendant. On these findings, the learned Munsif decreed the suit for possession and recovery of Rs. 59/- as arrears of rent besides Rs. 9/-as damages for use and occupation.

5. On appeal by the defendant against the aforesaid decree, the First Appellate Court confirmed the findings of the trial court that the rate of rent was Rs. 5/- per mensem only. The findings of the trial court that the judgment in suit No. 272 of 1961 operated as res judicata was set aside. The Lower Appellate Court also agreed with the finding of the trial court that there was a wilful default in payment of rent: but it came to the conclusion that only Rs. 20/- were due to the plaintiff for the arrears of rent plus Rs. 11/- on account of damages for use and occupation. The validity of the notice

to quit was not challenged in the court below. The Lower Appellate Court, therefore, maintained the decree for possession and reduced the decretal amount from Rs. 59/- to Rs. 31/-.

6. Against the above decree, the defendant has come up in appeal in second appeal before me. Only two contentions have been raised before me. The first contention raised before me was that the defendant by a notice dated 17-3-1964 offered Rs. 111/- by money-order to the plaintiff in full satisfaction of his claim, and since the plaintiff accepted this amount without any protest, he is estopped or debarred from claiming any further amount on account of arrears of rent. The second contention raised before me was that the notice of ejectment was not valid.

7. The learned counsel for the respondent raised a preliminary objection that none of these points was taken by the appellant in the court below, and, therefore, it is not open to him to take these fresh points in second appeal. A perusal of the judgment shows that both the above points were not argued in the court below. The first contention involves matter of evidence and it is difficult to see that it can be raised in second appeal without its having been argued in the First Appellate Court. The second contention is purely a question of law. It could certainly be looked into in second appeal.

8. Coming to the first contention on merits, I, find that it has no substance. The paper Ext. 10 is the copy of the notice dated 17-3-1964 sent by the defendant to plaintiff, in which he alleged that the rate of rent between the parties was Rs. 5/- per mensem and that he had paid Rs. 54/- on account of Water Tax end House Tax and although the defendant had spent more than Rs. 15/- on repairs, he wanted a deduction of Rs. 15/- only. Thus, according to the defendant, out of the amount of Rs. 180/- due to the plaintiff in all, the defendant was remitting Rs. 111/- by money order, after deducting Rs. 54/- paid on account of taxes and Rs. 15/- spent on repairs.

According to the learned counsel for the defendant-appellant, the plaintiff accepted this amount unconditionally and without any protest. But, this does not appear to be a fact. The plaintiff had claimed arrears of rent by an earlier notice dated 19-2-1964 at the rate of Rs. 15/- per mensem. The defendant by a notice (Ext. 10) challenged the above rate and further alleged that he had spent some amount on repairs. The plaintiff sent a reply to the defendant's notice (Ext. 10), and that reply is dated 27-4-1964 contained in paper No. Ext. 1. In this reply, the plaintiff repudiated the defendant's assertion that he had spent anything on repairs. It is, therefore, not correct to say that the plaintiff accepted Rs. 111/- unconditionally and without any protest. The contention raised on behalf of the appellant on this point has, therefore, no substance and it must be rejected.

9. Coming to the second contention, the notice sent by the plaintiff terminating the tenancy of the defendant is contained in paper No. Ext. 1. In this notice, the plaintiff claimed Rs. 920/-, after adjusting Rs. 111/- sent by the defendant by money order and Rs. 54/- paid by the defendant towards taxes, at the rate of Rs. 15/- per mensem, and in the end. the plaintiff asked the defendant to vacate the premises in dispute on the expiry of 30 days from the receipt of the notice and give its possession to the plaintiff. The plaintiff added that on the expiry of that period, the plaintiff would take legal action for the recovery of the balance and possession of the house in a proper court and the defendant would be held responsible for the expenses. In this notice, the plaintiff has expressed in unambiguous and unequivocal terms that the defendant should vacate the house and give its

possession to the plaintiff on the expiry of thirty days after the receipt of the notice. The learned counsel drew my attention to the ruling in Chidda Ram v. Naru Mal. 1964 All LJ 1105 = (AIR 1965 All 323). In that case, the terms of the notice were as follows:--"Under instructions and on behalf of my clients M/s. Naru Mal son of Guloo Mal and Bahru Mal son of Chhugo Mal residents of Shahaani. Agra. please take notice:--

1. That whereas you are in occupation of one big Kamra on the ground floor at the rate of Rs. 4/- per month.

2. That whereas you are a bad paymaster in respect of the rent and have not paid the rent since 1-8-1958 despite repeated demands made in this behalf.

3. And that whereas you insult and intimidate my clients whenever they demand the rent from you and have constituted a nuisance in the premises.

This is, therefore, to call upon you please to vacate the premises in your occupation on the expiry of the 30th day of the receipt of this notice and also please remit to my client the amount of rent due till then along with Rs. 3.50 nP, as the cost of this notice failing which I have instructions to proceed legally in the matter at your risk as to costs and consequences which please note.

And also please note that the rent that you are paying is absolutely insufficient and inadequate and taking in consideration the accommodation, the rent prevailing in the locality for similar accommodation and all other facts, the most fair rent of the premises cannot be less than Rs 8/- per month and you are required to pay rent at the said rate with effect from 1st January, 1960, failing which I have instructions to take legal action in this respect as well."

The above case is distinguishable on facts because, in that case, the plaintiff gave an option to the defendant to continue to live in the disputed premises on an enhanced rate of rent. That is not the case in the present case.

10. My attention was also drawn to a Single Judge case Ram Bhushan v. K. R. Chakravarty, (1971 All LJ 752). The notice in that case was in the following terms:--

"You are required to deposit Rupees 195/- arrears of rent within one month of receipt of the notice, failing which you should vacate the portions of the premises which are in your tenancy on expiry of 30 days of the receipt of the notice otherwise on expiry of the said period necessary legal proceedings will be taken against you."

This case is also distinguishable on facts for in that case, there was no indication in the notice that the plaintiff was going to file a suit for ejectment or possession. The learned Single Judge referred to the Supreme Court case Mangi Lal v. Sugan Chand Rathi, (AIR 1965 SC 101) and distinguished it on the ground that in the Supreme Court case, there was an indication in the notice of ejectment that a suit for ejectment would be filed, while in Ram Bhushan's case, 1971 All LJ 752 there was no indication of the filing of any suit for ejectment. In the present case, as I have noted above, there is a

clear indication in the notice of ejectment that in default by the defendant, the plaintiff would take legal proceedings regarding the ejectment of the defendant in a proper law court. The Supreme Court case is, therefore, fully applicable on the facts of the present case, and the ground of distinction found by my brother in the case reported in 1971 All. L. J. 752 does not exist at all. The notice of ejectment served by the plaintiff on the defendant was perfectly valid and the contention advanced by the appellant to the contrary must be rejected.

11. An application was moved on behalf of the defendant appellant for filing additional evidence in the case. This is hardly a stage for admitting fresh evidence. The application for filing additional evidence is, therefore, rejected.

12. The result, therefore, is that the appeal fails and is dismissed with costs. The appellant is allowed one month's time to vacate.