

Orissa High Court

M.P. Swami vs Mangaram Agarwalla on 17 July, 1978

Equivalent citations: AIR 1979 Ori 11

Author: P Mohanti

Bench: P Mohanti

JUDGMENT P.K. Mohanti, J.

1. The second appeal is by the defendant against a decree of affirmance arising out of a suit for ejectment and for recovery of arrears of house rent.

2. The plaintiff's case was that the suit house was let out to the defendant in the month of July, 1968 on a monthly rent of Rs. 15, but the defendant failed to pay the rent from May, 1972 despite repeated requests and did not vacate the house despite service of notice under Section 106 of the Transfer of Property Act determining the tenancy with effect from 31st October, 1973.

3. The defendant disputed the plaintiff's title to the suit house and denied that he was a monthly tenant under the plaintiff in respect of the same.

4. The learned Munsif decreed the suit holding that the plaintiff was the owner of the suit house, that the defendant was a monthly tenant in respect of the same, that he was in arrears of house rent from May, 1972 and that the notice under Section 106 of the Transfer of Property Act terminating the tenancy with effect from 31st October, 1973 was duly served on the defendant.

5. Before the first appellate court the defendant did not challenge the finding of the trial court that he was a monthly tenant under the plaintiff in respect of the suit premises, but contended that the notice under Section 106 of the Transfer of Property Act was not served on him. The learned Addl. District Judge on a consideration of the evidence on the record came to the findings that the defendant had refused to accept the notice under Section 106 of the Transfer of Property Act and that he had not vacated the house despite termination of the tenancy. Accordingly he confirmed the decree passed by the trial court. The findings of the lower appellate court are assailed in this appeal.

6. According to the plaintiff, the notice (Ext. 1) was sent to the defendant by registered post and he had refused to accept the same as per the endorsement of refusal made by the postal peon on the registered cover. The defendant made statement on oath that the postal envelope containing the notice was not tendered to him and the allegation that he refused to accept the same is false. The lower appellate court came to the conclusion that the presumption arising out of Section 114 of the Indian Evidence Act had not been rebutted by the defendant.

It is urged in this appeal that the endorsement of refusal by the postal peon could not be taken into consideration unless the postman was examined.

7. According to Section 114 of the Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

The Court may thus presume that the common course of business or of any office has been followed in the particular case. Where a notice sent by post in a registered cover is returned by the postman with the endorsement that the addressee refused to receive it, and the posting of the notice has been proved, there arises a presumption under Section 114, Evidence Act that the addressee did refuse to receive it even though the postman has not been produced to prove tender and refusal. Undoubtedly the presumption is one of fact and rebuttable. It can never be regarded as conclusive. The presumption is not rebutted by denial on oath by the addressee unless it is believed by the Court. I am fortified in this view by two decisions of the Supreme Court reported in AIR 1963 SC 822 (Radha Kishan v. State of Uttar Pradesh) and AIR 1976 SC 869 (Puwada Venkateswara Rao v. Chidamana Venkata Ramana). In the latter case the Supreme Court held (at p. 871):--

"..... 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....."

8. In the present case, the statement of the defendant in court that the notice was not tendered to him has not been believed by the lower appellate court. Taking into consideration the conduct of the defendant and several circumstances appearing against him it came to hold as follows:--

"..... These are the circumstances, which are against the appellant, who cannot be taken to have rebutted the presumption available to the plaintiff, under Section 114 of the Evidence Act, to the effect that the notice, Ext. 1 was offered to the defendant, but was refused by him,"

I see no cogent ground to interfere with the above finding of the lower appellate Court.

9. There is no merit in this appeal and it is accordingly dismissed with costs.