

Allahabad High Court

Kanpur Gas And Allied Agencies And ... vs Radha Kishan Temple Trust And Anr. on 9 October, 2002

Equivalent citations: 2003 (1) AWC 299

Author: B K Rath

Bench: B Rath

JUDGMENT B. K. Rath, J.

1. The suit for eviction was filed by the respondent No. 1 against the appellants and respondent No. 2 from the premises No. 120/2, Kamla Nagar, Kanpur, alleging that the defendants were licensee of the same. The suit was decreed by the trial court. In appeal by the appellants, the decree has been maintained. Therefore, the present second appeal has been filed.

2. I have heard Sri Murlidhar, learned senior advocate, assisted by Sri Anurag Khanna, learned counsel for the appellants and Sri R. P. Tiwari, learned counsel for the respondent No. 1.

3. It has been argued that the courts below have erred in recording a finding that the appellants are licensees. That in fact they are tenants. It has been argued that exclusive possession was given to the appellants by letter dated 1.3.1970. That since then the respondent No. 1 even had no right to enter in the plot. That the plot was taken for storing of L.P.G. cylinders for which the godown is approved by Controller of Explosive, which show that they were tenants. That in terms of the letter, it is mentioned that the appellants shall not sublet the premises. That P.W. 1. Shiv Kumar Pandey has also stated that the premises was let out to the gas agency.

4. Admittedly, the premises in dispute were given by the letter dated 1.3.1970. which have been filed by the respondent No. 1. It is clearly mentioned in this letter that the land is given on licence and the licence can be terminated at any time and licence fee was also agreed. This letter of the respondent No. 1 was accepted by the appellants. Therefore, it appears that the licence was given.

5. It has been argued by Sri Murlidhar, learned senior advocate that use of the word 'lease' or 'licence' is not material and the substance and intention of the parties had to be looked into.

6. Learned counsel for the appellants in support of the arguments has referred to the decision of the Apex Court in Smt. Rajbir Kaur and Anr. v. S. Chokesiri and Company, 1989 (1) SCC 19. The Apex Court considered the various decisions and laid down the distinction between the lease and licensee. It was observed that exclusive possession and agreement to pay rent for consideration of the grant show that it was a lease.

7. The other case referred to is Capt B. V. D'souza v. Antonio Fausto Fernandes, AIR 1989 SC 1816. It was observed that for ascertaining whether a document created a licence or lease, the substance of the document must be preferred to the form. It was further observed that exclusive possession of a party is relevant but at the same time is not conclusive. The other tests, namely, intention of the parties and whether the document creates any interest in the property or not, are important considerations.

8. As against this, the learned counsel for the respondents has referred to the decision of Delat International Limited v. Shyam Sunder Ganeriwalla and Anr., JT 1999 (3) SC 1, which is latest decision on the point. It was observed that exclusive possession is one of the most relevant factor for deciding whether it is lease or licence, but at the same time when the terms of the document are clear leaving no room for doubt that parties never intended to execute the lease deed. In that set of circumstances, exclusive possession will lose its importance.

9. In this case, the terms of agreement are clear. It cannot be said that the document was so written to avoid the mischief the rent control legislation as the property in dispute is open land to which the rent control legislation does not apply. The courts below have considered it in detail and held that it was a licence.

10. As regards the question that the premises was taken for storing L.P.G. cylinders for which the godown is to be approved by the Controller of Explosive. No such plea was taken in the courts below and cannot be permitted to be raised for the first time in the second appeal. It has been argued that the appellants were required some time to shift the godown as the site has to be got approved from the Controller of Explosive. For this reason, time can be allowed to vacate the premises.

11. No substantial question of law is involved in this case. The appeal falls and is hereby dismissed. However, the appellants are allowed six months time to vacate the premises in dispute. The stay order dated 8.4.2002 is hereby vacated.