

## **L. Kedar Nath vs L. Kishan Lal on 6 February, 1952**

**Equivalent citations: AIR1952ALL500, AIR 1952 ALLAHABAD 500**

### **JUDGMENT**

Gurtu, J.

1. I agree that we must take into consideration any change in law which has supervened since the judgments in this case were entered.
2. The U.P. Act III [3] of 1947 (U.P. Temporary Control of Rent and Eviction Act, 1947) was made applicable to the Hasanpur Notified Area on 26-9-1947, that is to say, on a date after the present second appeal was filed in this Court.
3. The effect of the Notification in the Official Gazette declaring that the Act was applied to Hasanpur is that every part of the Act becomes applicable. Once the Act is applied, it must, by virtue of Section 1, Sub-section (3), be deemed to have come into operation on 1-10-1946. That is a date which is prior to 29-11-1946 on which date the suit out of which this appeal arises, was instituted. Therefore, the position is that no decree for ejectment can now be passed on grounds other than those specified in Section 3 of the said Act.
4. When the plaint was filed, the pleader could not have known that the plaint would be hit by an Act which would have retrospective effect and, therefore, the plaint was not based on the restricted grounds which are available to a plaintiff under Section 3 of the aforesaid Act.
5. It would, therefore, be unfair to throw out the suit without giving the plaintiff a chance of amending his plaint and incorporating any of the grounds set out in Section 3 which may be available to him.
6. I can see no reason for distinguishing between a case where the Act becomes immediately applicable, by its own terms, to an area already specified and a case where it becomes applicable to an area by virtue of a subsequent Notification making it applicable. In either case, the Act does not come into operation only on the date on which it becomes applicable to the areas, but comes into operation, by virtue of Section 1, Sub-section (3), from a date anterior, namely, the 1st day of October, 1946.
7. I do not appreciate the distinction sought to be made in this regard between a case where the area, in which it will come into force, is specified in the statute and the case where an area in which it will come into force is specified by means of a subsequent Notification made by an authority empowered to so notify by the Act itself. I do not agree that when the Act is applied to a particular area by means

of a Notification published, it has any other effect than that it brings about the commencement of the Act, and makes it come into operation on the 1st day of October, 1946. I respectfully disagree with the view expressed in *Rup Lal v. Ram Swarup*, 1950 ALL L.J. 345. The date of the commencement of the Act in such a case also is the date on which the Act is applied to a particular area. The Act commences to be applicable on that date and by virtue of the retrospective clause, its operation becomes effective as from the 1st of October, 1946.

8. Bind Basni Prasad J.--This second appeal has been referred to a Division Bench by a learned Single Judge as he could not reconcile the decision of a learned Single Judge in *Rup Lal v. Ram Swarup*, 1950 ALL L. J. 345 and the Division Bench decisions in *Niranjan Lal v. Mt. Ram Kali Devi*, 1950 ALL L.j. 642 and *Lala Raj Narain v. Sita Ram Sri Kishendas*, S.A. No. 979 of 1945, D/- 3-11-1950.

9. The facts are simple. On 29-11-1946, the plaintiff brought a suit in the Court of the Munsif of Amroha for the ejectment of the defendant from a shop situated in the Notified Area of Hansapur and for the recovery of Rs. 13/- as arrears of four months' rent. The defendant admitted the tenancy, but contested the claim on the ground that the notice of ejectment was invalid and that the suit was barred by the U.P. Ordinance No. 3 of 1946 and by the U.P. Temporary Control of Rent and Eviction Act, 1947 (Act in [3] of 1947). The learned Munsif repelled these contentions. In an appeal by the defendant, learned Civil Judge upheld those findings. The suit was decreed by both the Courts below. The defendant comes in appeal.

10. The only point which has been argued before us is that the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (hereinafter mentioned as "the Act") was extended to the Notified Area of Hasanpur on 26-9-1947 and so the provisions of that Act now apply to the present suit and as no ground mentioned in Section 3 of that Act was made out so according to Section 15 no decree for ejectment could be passed. Before considering this question the following material dates should be kept in mind :

29-11-1946 This suit was instituted.

28-2-1947 The U. P Temporary Control of Bent and Eviction Act, 1947. received the assent of the Governor- General  
1-3-1947 The Act was published in the official Gazette.

12-5-1947 The trial Court decreed the suit.

7-6-1947 The lower appellate Court dismissed the defendant's appeal.

19 9 1947 Second Appeal filed in this Court.

9 1947 The provisions of the Act were applied to the Notified Area of Hasanpur.

11. It will be seen from the above chronology that when the two Courts below passed their decrees, the Act did not apply to Hasanpur and so they were quite correct in not allowing the defendant the benefit of the provisions of the said Act. The question is how does the fact that the Act was applied to the Notified Area of Hasanpur during the pendency of the second appeal in this Court affect this case ? Section 15 of the Act runs as follows :

"In all suits for eviction of a tenant from any accommodation pending on the date of the commencement of this Act, no decree for eviction shall be passed except on one or more of the grounds mentioned in Section 3."

The question is whether the defendant-appellant is entitled to the benefits of this section when the Act was applied to Hasanpur during the pendency of the second appeal.

Six cases bearing upon this point have been placed before us. The first case is Lala Raj Narain v. Sita Ram Sri Kishan Das, S.A. No. 979 of 1945 decided by Malik C.J. and Mushtaq Ahmad, J. on 3-11-1950. It was held in that case:

"that the word 'suit' in Section 15 was intended to apply not only to suits pending in the trial Court but also to a suit in its later stages right upto the Court of final appeal."

That was a case which was instituted in December 1943 and decided by the trial Court in August, 1944 and by the first Court of appeal in December, 1946. The second appeal was filed in this Court on 4-5-1945 and during the pendency of the appeal in this Court the U.P. Temporary Control of Rent and Eviction Act, 1947, was passed. The question in that case was whether the benefits of the Act were available to the defendant.

12. The second case is that of Niranjana Lal v. Ram Kali Devi, 1950 ALL. L. J. 642 decided on 19-12-1949 by Wanchoo and Seth JJ. In this case also, it was held that the word 'suit' in Section 15 of the Act includes an appeal. The earlier case decided by Malik C.J. and Mushtaq Ahmad J. was not brought to the notice of the Hon'ble Judges. An identical question was involved in that case. When the suit was instituted the Act had not come into force. It was during the appellate stage that the Act came into force. Their Lordships allowing the appeal remanded the case to the trial Court with the direction that the plaintiff should be permitted to amend her plaint and that the suit should be re-heard and decided after the plaint had been amended and the defendant had been given an opportunity to file a supplementary written statement and the parties had adduced such evidence as they desired to produce. This was followed by Malik C.J. and Mushtaq Ahmad J. in Harswarup v. Lokeshwar Prasad, 1951 ALL. L. J. 256.

13. The fourth case is that of Rup Lal v. Ram Swarup, 1950 ALL. L. J. 345, decided on 2(sic)-3-1950 by Seth J. It was held in that case that the expression "the date of the commencement of the ACT" in Section 15 of the Act means the date mentioned in Section 1(3) of the Act and does not mean the date when the Act was applied to a particular area. In that case during the pendency of the appeal before the lower appellate Court the provisions of the Act were extended to the Town Area of Chhibraman. The defendant contended that under Section 15 of the Act he could not be ejected. The

learned Judge disposed of this contention by the following remarks :

"Learned counsel refers me to Section 15 of the Act in that connection, but Section 15 applies only to suits pending on the date of the commencement of the Act. The date of the commencement of the Act is mentioned in Section 1, Sub-section (3) of the Act, which provides that the Act shall be deemed to have come into force on 1-10-1946. The date of the commencement of the Act is, therefore, 1-10-1946. I do not find it possible to interpret the expression 'the date of the commencement of the Act' to mean the date when the Act is applied to a particular area. Section 15 also, therefore, has no application to the present case."

The appeal was dismissed by the learned Judge under Order 41, Rule 11, Civil P.C. The learned Judge has not given any reasons as to why he drew a distinction, with reference to a particular area, between the date of the commencement of the Act and the date on which the Act is applied to that area. The two earlier cases were not placed before him probably because they had not been reported till then.

14. The fifth case is *Abhilakh Ram v. Uma Shankar*, 1950 ALL. L.J. 817, decided by me on 12-4-1950. That was a case in which Section 14 and not Section 15 of the Act came in for interpretation. Nevertheless, it is relevant because the expression "the date of commencement of this Act" occurs in both these sections I pointed out that the word 'commencement' was defined in Sub-section (10) of Section 4 U.P. General Clauses Act, 1904 as follows : "Commencement used with reference to an Act shall mean the day on which the Act comes into force." I drew a distinction between the expressions "the date on which an Act comes into force" and "the date on which it is deemed to have come into force." Under Sub-section (1) of Section 5, U.P. General Clauses Act, 1904 the U.P. Temporary Control of Rent and Eviction Act, 1947 came into operation on the day on which it was first published in the official gazette, viz., 1-5-1947; but by virtue of Sub-section (3) of Section 1 of the Act it should be deemed to have come into force on 1-10-1946. First the Act made by the Legislature which gives it a retrospective effect must be brought into operation and when this has been effected then by virtue of its provisions it can be given a retrospective effect. Sub-section (1) of Section 5, U.P. General Clauses Act, 1904, provides that if any United Provinces Act is not expressed to come into operation on a particular day, then it shall come into operation if it is an Act of the Legislature, on the day on which the assent thereto of the Governor or the Governor-General, as the case may require, is first published in the official gazette.

The words used in this section are "come into operation" whereas the words used in Sub-section (3) of Section 1, U.P. Temporary Control of Rent and Eviction Act, 1947 are "deemed to have come into force." I drew a distinction between these two expressions as it seemed to me that in the context in which the expression "come into operation" was used in Section 5 (1), U.P. General Clauses Act, a future date for operation was meant. This is clear from the fact that the day of coming into operation of an Act has reference in this section to the day on which the assent of the prescribed authority to the Act is published in the official gazette. Such a date necessarily has to be a day subsequent to the passing of the Act by the Legislature. Relying upon this reasoning it must be held that the words "the date of the commencement of this Act" occurring in Section 15 of the Act mean 1st March 1947 when

the assent of the Governor-General was published in the official gazette.

15. The sixth case to which we were referred in *Lala Ganga Prasad v. Sm. Saroop Dei*, Second Appeal No. 198 of 1948, decided by Bhargava J. That was a case in respect of a shop situated in village Dhanora, Pargana Hasanpur, in the district of Moradabad and Act 3 of 1947 was applied to that area during the pendency of the appeal. Learned Judge relying upon *Rup Lal v. Ram Swarup*, 1950 ALL. L.J. 345 held that Section 15 of the Act did not apply. No further reasoning is given in the judgment.

16. I see no valid ground to make any distinction between 'the date of the commencement of the Act' and 'the date when the Act is applied to a particular area' as Seth J. did in *Rup Lal v. Ram Swarup*, 1950 ALL. L.J. 345. With great respect, I dissent from that view. Qua a particular area to which the Act is applied under Sub-section (2-A) of Section 1 of the Act "the date of commencement of the Act" is the date on which it is so applied. Before the Act was applied to this area it was non-existent so far as that area was concerned. On the day it was applied the Act took its birth in that area and commenced in it.

This is the meaning at which we arrive also by reference to Sub-section (10) of Section 4, U. P. General Clauses Act, which provides :

" 'commencement' with reference to an Act shall mean the day on which the Act comes into force."

The Act came into force in the Notified Area of Hasanpur on 26th September 1947 when it was applied to that area. Hence that was the date of the commencement of the Act in relation to that area. I have discussed at some length the meaning of the expression "commencement of the Act" in *Abhilakh Ram v. Uma Shankar*, 1950 ALL. L.J. 817.

17. In view of the Division Bench decisions in *Niranjan Lal v. Ram Kali Devi*, 1950 ALL. L.J. 642 and *Lal Raj Narain v. Sita Ram Sri Kishen*, second Appeal No. 979 of 1945 D/- 3-11-1950, we must hold that the word 'suits' occurring in Section 15 of the Act includes also appeals. As a result of these two findings, viz., that the word "suits" includes appeals and the expression "commencement of the Act," with reference to the Notified Area of Hasanpur, means 26th September 1947, when the Act was applied to it, it follows that the defendant-appellant is entitled to the benefit of Section 15 of the Act. The decrees passed by the two Courts below were correct, but the situation has been altered on account of the application of the Act to this area during the pendency of the second appeal.

In *Lachmeshwar Prasad Shukul v. Girdhari Lal*, A.I.R. (27) 1940 F.C. 26, which has been referred to in *Niranjan Lal v. Mt. Ram Kali Devi*, 1950 ALL. L. J. 642, it was held :

"In the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

18. At the time when the plaintiff brought the suit it was not necessary for him to set out that any of the grounds mentioned in Section 3 of the Act existed. It has become necessary now in view of the application of the Act to this area. It is, therefore, only fair that he should be given an opportunity to amend the plaint so as to show that one or more of the grounds mentioned in Section 3 of the Act existed. The defendant appellant should be given an opportunity to file a supplementary written statement and the parties given a chance to adduce such evidence as may be necessary in view of the amendment in the pleadings.

19. For the reasons given above, I would allow the appeal, set aside the decree of the lower appellate Court and remand the case to the trial Court through the lower appellate Court to readmit it at its original number and to proceed with it in the light of the observations made above. As regards the costs I would let them abide by the event.

By the Court

20. The appeal is allowed. The decree of the lower appellate Court is set aside. The case is remanded to the trial Court through the lower appellate Court to re-admit it to its original number, to give the parties an opportunity to amend their pleadings in the light of the observations made in our judgments and to adduce such evidence as is necessary in view of the amendments in the pleadings. Costs shall abide by the event.