Raj Narain vs Sita Ram Sri Kishen Das on 3 November, 1950

Equivalent citations: AIR1952ALL584, AIR 1952 ALLAHABAD 584

JUDGMENT

1. This case was referred to a Bench as a point of law which arose in this case had arisen in another S. A. No. 15 of 1945 & that case had been referred to a Bench for decision. We understand from Mr. Jagdish Swarup that the parties to the S. A. No. 15 of 1945 entered into a compromise, & so the point was not decided in that case. The point, however, came up for decision in Letters Patent App. No. 1 of 1945, which was decided by this Bench on 20-1-1949. During the period that the Defence of India Rules were in force orders were issued by various Dist. Magistrates regulating ejectment of tenants, fixation of rents payable by tenants & various other matters. A question arose whether, when a suit was filed in the civil Court for ejectment of a tenant in contravention of an order passed by a Dist. Magistrate under the Defence of India Rules, what action the civil Court should take in view of such an order. A learned single Judge of this Court was of the opinion that the order should be ignored. Another learned Judge had held that the suit should be decreed for ejectment, but the decree should not be executed if there was a valid order passed under the Defence of India Rules prohibiting ejectment of tenants. We held in the Letters Patent Appeal, mentioned above, that, if the order passed by the Dist. Mag. was a valid order having under the Defence of India Rules the force of law, then it would note be right for the civil Courts to ignore the order & pass a decree for ejectment. We pointed out in our judgment that, if a decree for ejectment was passed in spite of such an order of the Dist. Mag. under the Defence of India Rules, it was not open to the executing Court to ignore the decree & to refuse to eject the tenant.

2. In the S. A. No. 979 of 1945 the facts are as follows. There was a suit filed for ejectment, the deft, being a tenant from month to month, the tenancy beginning from the 9th day of the Hindi month, on payment of a rent of Rs. 25 per month. On 29-3-1943, the plff.-landlord gave a. notice of ejectment on the ground that the tenant had defaulted in payment of rent was in arrears to the extent of Rs. 175. The plff. applied to the Dist. Mag. for permission to file a suit for ejectment. The permission was given by the Dist. Mag. by his order dated 19-10-1948-Ex. 1. & the suit, out of which this appeal has arisen, was filed on 14-12-1943, for ejectment & for a decree for arrears of rent.

3. If rents were in arrears it was not necessary for the plff. to obtain permission of the-District Magistrate in view of para. 4 of his order issued in June, 1942. That para is as follows:

> "It is further ordered that where no sum on account of rent or allied dues are out-standing against a tenant & where his use of a building or part of a building is in accordance with the original terms of the letting, his eviction without his consent is forbidden, unless previous sanction of the District Magistrate, or the officer appointed by him, is obtained."

It means that. If any portion of rent is outstanding, or if the building is being used for a purpose other than the purpose for which it was rented, then the landlord has a right to file a suit for

ejectment without the permission of the District Magistrate. In all other oases he must obtain the permission of the District Magistrate before he can obtain a decree for ejectment. The plff. on his allegation that rents had not been paid & were outstanding, was not bound to apply for permission, but he did make an application & got the permission on 19-10-1943, as we have already stated above.

4. The defence was that rent was not in arrears, as it had been paid in accordance with the mutual arrangement between the parties, that the suit was not maintainable & that the notice was illegal. The suit was dismissed by the trial Court, except that it passed a decree for arrears to the extent of Rs. 150. On appeal the lower appellate Court passed a decree for arrears of rent, that is, Rs. 175/-, for seven months up to the month ending prior to the filing of the suit ; and the rest was for the period subsequent to the filing of the suit. The plaintiff's prayer for ejectment was, however, disallowed on three grounds: (1) The learned Judge was of the opinion that the deft. was entitled to the benefit of Section 114, T. P. Act. (2) The learned Judge followed the decision of this Court in Makhan Lal v. Shankar Lal, (1944 A. L W. 591), in which case Allsop J. had held that a suit for ejectment should be decreed but the execution department should not eject the tenant in execution of the decree; and thirdly, on the ground that no rent was outstanding. So far as Section 114, T. P. Act is concerned we do not see how that had any relevancy to this case. That section provides for a relief against forfeiture. The tenancy here was not for a period, nor was there any question of any forfeiture or any relief against it. The case of Makhan Lal v. Shankar Lal has already been overruled. We do not see what relevancy to the decision of this case the last question that the rent was not outstanding had on the facts stated above. We have already quoted the order of the District Magistrate issued under the Defence of India Rules, which provided that, except where rent was outstanding, or the building was put to any use other than the use for which it had been rented, a suit for ejectment could not be filed without the sanction of the District Magistrate. Here, the suit having been filed with the sanction of the District Magistrate no restriction remained on the suit being decreed under order issued by the District Magistrate under the Defence of India Rules.

5. We are, however, no longer concerned with that order as, during the pendency of this appeal, the U. P. (Temporary) Control of Rent and Eviction Act (III [3] of 1947), as amended by Act XLIV [44] of 1948, came into force Sections 14 & 15 of this Act are as follows :

> "14. No decree for the eviction of a tenant from any accommodation passed before the date of, commencement of this Act shall, in so far as it relates to the eviction of such tenant, be executed against him as long as this Act remains in force, except on any of the grounds mentioned in Section 3 :
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> Provided that the tenant agrees to pay to the landlord 'reasonable annual rent' or the rent payable by him before the passing of the decree, whichever is the higher."
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> "15. 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."

Confining ourselves to the language of Section 15 alone it would appear that the Act was intended to have a retrospective effect & to apply to all suits for eviction of a tenant pending on the date of the commencement of the Act. It further appears to make it clear that no decree for eviction shall be passed against a tenant except on one or more of the grounds mentioned in Section 8. That would obviously mean on grounds (a) to (f) of Section 3 The facts that the Act was intended to be retrospective is, therefore, clear. In England in a case, Quilter v. Mapleson, (1882) 9 Q. B. D. 672: (52 L. J. Q. B. 44) under an Act of 1881 where the Legislature had intended to provide against forfeiture the question arose whether the benefit of that Act could be given to a lessee in an action which was pending. on the date when the Act came into force. It does not appear that there was any provision similar to Section 15 in the Conveyancing & Law of Property Act, 1881 (82 & 33 vict. C. 35). The case was heard by the Court of Appeal, consisting of a particularly strong Bench, & Jessel, M. R., delivering the main judgment of the Court of Appeal held (1) that the intention was to give a lessee a right to relief against forfeiture which he did not previously possess; & (2) that the intention was to give relief not only against future breaches of the contract, but also as regards the past breaches. Having come to these conclusions his Lordship considered the question whether the enactment applied to pending proceedings & held as follows: "We must, therefore, in furtherance of the objects of: the Act, hold the enactment to apply to pending proceedings, unless there is something in the words to prevent our doing so. Mr. Greene argued that this Sub-section cannot apply to pending proceedings, because it refers to the conduct of the parties in the foregoing provisions which can only relate to matters after the Act comes into operation ; but I think we must treat these words as referring to the conduct of the parties under the preceding provisions, when and so far as the previous provisions are applicable. I think, therefore, that the sub-section is applicable to pending proceedings, and that we have jurisdiction under it, unless the fact of this being an appeal prevents our having it.' It is clear, the question as to whether the Act is to be deemed to be retrospective in its operation must be determined by the provisions of the Act itself. In the case before the Court of Appeal in England the decision that the Act was retrospective was given as it was held that the clear intention was to give relief to the lessees for past & future breaches of contract. The case before us is a much stronger case where two sections were enacted--Section. 14, restricting the right of execution where the decree had already become final ; and Section 15, relating to cases which were still pending on the date when the Act came into force. A learned single Judge of the Avadh Chief Court had held in Chandra Shekhar v. Radha Krishna, 1947 A. W. R. C. C. 3 at p. 5, that the word 'suit' could not include an appeal. On a consideration of the provisions of the Act, however, & specially in view of the fact that the Act was intended to benefit all tenants even in cases where decrees for ejectment had already been passed against them, we are of the opinion 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. The Act, to our minds, therefore, clearly applies to this case.

6. The next point, however, is not free from difficulty. Section 15, read by itself, can be interpreted to mean that no suit for ejectment of a tenant can be filed except on the grounds (a) to (f) mentioned in Section 3 of the Act. On the other hand, the proper interpretation of Section 8 appears to be that on grounds (a) to (f) mentioned in Section 3, a suit for ejectment can be filed without the permission of the District Magistrate. In all other cases, it is necessary to have the permission of the District Magistrate before the landlord can file a suit for ejectment. Section 3 is as follows :

> "No suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation, except on one or more of the following grounds:
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> (a) that the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord ;
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> (b) that the tenant has wilfully caused or permitted to be caused substantial damage to the accommodation ;
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> (c) that the tenant has, without the permission of the landlord, made or permitted to be made any such construction as, in the opinion of the Ct. has materially altered the accommodation or is likely substantially to diminish its value :
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> (d) that the tenant has created a nuisance or has done any act which is inconsistent with the purpose for which he was admitted to the tenancy of the accommodation, or which is likely to affect adversely & substantially the landlord's interest therein ;
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> (e) that the tenant has on or after 1-10-1946, sub-let the whole or any portion of the accommodation without the permission of the landlord ;
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> (f) that the tenant has renounced his character as such or denied the title of the landlord & the latter has not waived his right or condoned the conduct of the tenant.

Explanation:--For the purposes of Section (e) lodging a person in a hotel or a lodging house shall not be deemed to be sub-letting."

Reading Section 3 along with Section 15 a learned single Judge of the Avadh Chief Court had held that a tenant could be ejected only on grounds (a) to (f) mentioned in Section 3 & that also with the permission of the District Magistrate. After that decision the Legislature passed the U. P. (Temporary) Control of Rent and Eviction (Amendment) Act (XLIV [44] of 1948), Section 10 of which Act is as follows :

> "For the removal of doubts it is hereby declared that under Section 3 of the principal Act no permission of the District Magistrate is or be deemed ever to have been necessary for filing a suit for eviction against a tenant on any of the grounds mentioned in Clauses (a) to (f) of the said section,' This Amendment Act attempts to make it clear that if any of the grounds (a) to (f) exists, then a suit for ejectment of a tenant can be filed, & it is unnecessary to go to the District Magistrate for his permission. There being no other provision restricting the right to file suits for ejectment in the U. P. (Temporary) Control of Bent and Eviction Act (III [3] of 1947) a suit for ejectment need not be confined to grounds (a) to (f), provided the permission of the District Magistrate has been obtained. The result of interpreting

> Section 15 differently is that we get this anomaly that, while in all suits pending on the date when the Act came into force, the orders of ejectment could be passed only on the restricted grounds mentioned in Clauses (a) to (f) of Section 3, in suits filed after the Act came into force the tenant could be ejected on any grounds whatsoever, provided the permission of the District Magistrate had been obtained. Reading the two sections together, we are inclined to the view that Section 15 was intended to mean that the provisions of Section 3 would be applicable to all pending suits & that a tenant could be ejected on grounds (a) to (f) without the permission of the District Magistrate, but that, in a case where the permission of the District Magistrate was obtained, he could be ejected on any ground. In this case the permission of the District Magistrate had been obtained on 19-10-1943. The plff. was, therefore, not confined to grounds (a) to (f) mentioned in Section 3 and should have been granted a decree for ejectment as claimed by him.

7. The result, therefore, is that we allow this appeal, modify the decree of the lower appellate Court & grant the plff. a decree for ejectment.

8. Learned counsel for the respondents has urged that we should make it clear that the provisions of Section 14 of the Act apply & the decree cannot be executed if the tenant is willing to pay 'reasonable annual rent' or the rent payable by him before the passing of the decree, whichever amount is higher. We do not think that it is necessary for us at this stage to express any opinion. It would be open to learned counsel to raise this point in the execution department, if an application for execution by ejectment is filed by the D. H. In view of the fact that this Act came into force during the pendency of this appeal we make no order as to costs of this appeal.

9. Coming for the other Section A. No. 1946 of 1946, the suit for ejectment & arrears of rent, oat of which this second appeal has arisen, was filed on 4-11-1944. The trial Court passed the following decree :

> "Plff.'s suit for Rs. 212-7-0 & possession by ejectment of deft. is decreed. We may withdraw this sum out of the amount deposited in Suit No. 304 of 1943, in the Court of Munsif, Agra, Madan Mohan Garg v. Pooran Chand, if deft, has not withdrawn the sum of Rs. 252 from the Ct. Parties to bear their own costs "
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> "(Note:--In view of the District Magistrate's order, the decree for possession cannot be executed till the D. I. R. is in force)"

The deft. submitted to that decree, but the plff. filed an appeal. The plff. wanted that this note appended at the end of the judgment should be deleted & that he should have an immediate right to eject the deft. The learned Judge was of the opinion that the order disallowing ejectment could not be legally sustained. He, therefore, modified the decree & removed the 'note', but gave the deft, six months' time to vacate, unless he decided to contest the matter in the execution department. It is against that decree that this appeal has been filed.

10. Before the suit, out of which this appeal has arisen, was filed there was a previous suit--No. 304 of 1943--which was a suit for ejectment & for arrears of rent. That suit was decreed on 3-12-1943. There was an appeal filed & the learned Dist. J., before whom the appeal was pending, granted an interim stay on condition that the whole of the rent due up to the date of that order & costs were paid into Court. The D. H. was, however, not be withdraw the money till the final decision of the case. In accordance with this order the deft, deposited a sum of Rs. 175 on 24-1-1944. He deposited further sums in Court as the rent fell due. The suit was, however, dismissed on 29-9-1-944, & the appeal filed by the plff. also failed on 9 3-1945. After the dismissal of the first suit & during the pendency of the appeal filed by him, the plff. gave a notice of ejectment claiming Rs. 252 as arrears of rent on 8-10-1944 The deft., in his reply dated 8 10-1944, mentioned the fact that he had deposited the whole of the money in Court in Suit No. 304 of 1943 & that the plff. could withdraw that amount. The plff., however, filed the suit on 4-11-1944, without any further correspondence. On behalf of the plff. reliance is placed on Clause (a) of Section 3 & it is claimed that the plff. had a right to eject the deft., as the deft. had 'wilfully failed' to make payment to the plff. of the arrears of rent due within one month of service upon him of the notice of demand.

11. The question for decision, therefore, is whether, on the facts stated above, it can be said that the deft. had 'wilfully' failed to make payment. It is true that depositing the money in Court was not payment to the plff., but the money had obviously been deposited, so that it might be made payable to the plff. & there might be no further dispute about it. The deft. might have been under a misapprehension when he gave the notice that the plff could go & withdraw the money from the Court, but the plff. not having given him any further notice, it cannot be said that the tenant had made a 'wilful' default. Wilful default after notice envisages a case where, inspite of the demand made, the tenant does not pay the rent. In the case before us, even before the notice, the tenant had made a deposit in Court to the credit of the plff. He might have been wrong in his view that the payment into Court was payment to the plff. & he might have had no right to ask the plff. to withdraw the money, but in our view in the circumstances of this case it cannot amount to a 'wilful' default. The plff. was, therefore, not entitled under Clause (a) of Section 3 to eject the deft.

12. Learned counsel for the respondent has raised one short point, that in view of the fact that the deft, had not filed an appeal against the decree passed by the learned Munsif, the decree of the Munsif must be restored, but on appeal by the plff. that decree was modified & a fresh decree was passed by the lower appellate Court. In view of the decision in the Letters Patent App. No. 1 of 1945 & in view of what we have said above, the appeal as against that part of the decree which has directed the ejectment of the deft. must be allowed & the decree for ejectment set aside. The decree for arrears of rent shall, however, stand. We make no order as to costs of this appeal.