Chanda Lal vs Ram Kishan on 23 February, 1951

Equivalent citations: AIR1952ALL607, AIR 1952 ALLAHABAD 607

JUDGMENT

Chandiramani, J.

1. This is a deft's second appeal against the appellate decree of Sri Grish Chandra, 1st Civil Judge, Kheri, dated 27-5-1950.

2. It appears that the plff. let out on rent to the deft. appellant a certain ahata within the municipal limits of the town of Lakhimpur-Kheri. After some time the plff. served on the deft. a valid notice to quit the premises & when he failed to do so, a suit for ejectment & damages was filed. An objection was taken that because the premises were situate within municipal limits, the U.P. (Temporary) Control of Rent & Eviction Act, 1947, applied & that as the plff. wanted the house for his own residential purposes, the previous permission of the District Magistrate was necessary before the suit could be filed. The plff. denied that the premises let out were accommodation within the meaning of the Act.

3. The trial Court held that the premises constituted accommodation within the meaning of the Act & as no previous permission of the District Magistrate had been taken, the suit was not maintainable. It was accordingly dismissed. On appeal the learned lower appellate Court has held that what was let out to the deft. was merely an ahata. His finding was:

> "The evidence placed on the record would show that the ahata in question has pucca boundary walls with one main gate which has doors & shutters for it. The tin shed & the thatch shed inside the ahata are temporary constructions put in the ahata by the deft. resp. without the leave & consent of the plff. appellant. The existence of the tin shed & the thatch shed inside the enclosure walls of the ahata could not make the ahata in question a building as contemplated by Section 2 (a) of Act III [3] of 1947."

The learned Civil Judge held that ahata itself cannot be considered to be a building within the meaning of the Act. The result was that as the notice for ejectment had been held to be valid, the plff's. suit was decreed.

4. The only point urged in the second appeal before me is that the ahata itself constitutes a building within the meaning of the D.P. (Temporary) Control of Rent & Eviction Act. In Section 2 (a) of the Act, 'accommodation' means "residential & non-residential accommodation in any building or part of a building & includes-

> (i) gardens, grounds & out-houses, if any appurtenant to such building or part of a building;
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> (ii) any furniture supplied by the landlord for use in such building or part of a building;
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> (iii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof."

It will be noticed that the key word in the definition is the word 'building'. In the Act, the word 'building' has not been defined. Therefore, we must give it the ordinary meaning which is consistent with the objects & purposes of the Act. In Webster's New International Dictionary, 1926 edition, the meaning given to the word is:

> 'That which is built; specif.: (a) as now generally used a fabric or edifice, framed or constructed, designed to stand more or less permanently, & covering a space of land for use as a dwelling, store house, factory, shelter for beasts or some other useful purpose. Building in this sense does not include a mere wall, fence, monument, boarding or similar structure though designed for permanent use where it stands; nor a steamboat, ship or other vessel of navigation."
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> This shows that in the general sense a space of land should be covered by building & that mere wall or fence is not to be termed a building. That t he word 'building' connotes a roofed structure within the meaning of the Act appears to be clear from the use of the word 'includes' in Clause (a) of Section 2. Sub-clause (i) of Clause (a) includes within the definition of accommodation, gardens, grounds & outhouses, if any, appurtenant to such building or part of a building. If compounds had been intended to be considered as accommodation without reference to any building situate in them, the word 'includes' would not have been used to bring them within the definition of accommodation. The use of the word 'includes' suggests that they are not in the ordinary sense, accommodation contemplated by the Act. The learned counsel for the appellant has pointed out that in criminal cases under Sections 442 & 380, Penal Code, various High Courts have held that compounds enclosed by walls & used for custody of property have been treated as buildings for the purposes of Sections 380 & 442, Penal Code. This is correct--see Queen v. Dulles, 6 N.W.P. 307 & Wali Mahomed v. Emperor, A.I.R. (16) 1929 Sind 17 (2). But here we are not dealing with offences mentioned in the Penal Code.

5. Similarly on behalf of the respondents certain other authorities have been cited--see Baladin v. Lakhan Singh, A.I.r. (14) 1927 ALL. 214; Corporation of Calcutta v. Binoy Krishna, 7 I.C. 890 (Cal.) and Thakurlal v. Secretary, Municipal Committee, Khandwa, 64 I.C. 274 (Nag.), wherein it has been held for the purposes of the local Municipalities Acts that a compound or boundary wall is not a building. These authorities also do not help us as they deal with a different subject-matter. Considering the definition itself given in the Act, I am of the opinion that any compound or

enclosure which is not appurtenant to any roofed structure cannot be considered to be accommodation within the meaning of the Act. In this view of the matter, the decision of the lower appellate Court is correct.

6. The appeal fails & hereby dismissed with costs.

7. The learned counsel for the appellant says that this appeal raises an important question of law which will affect a considerable section of the public & prays for leave to appeal to a Bench. I do not agree that this question is of such importance & the leave to appeal is refused.

8. The stay order dated 10-1-1951, is discharged.