

Ghasi Ram vs Chaubey Mitra Sen on 14 October, 1952

Equivalent citations: AIR1953ALL218, AIR 1953 ALLAHABAD 218

JUDGMENT

Mushtaq Ahmad, J.

1. These are defendant's appeals an a suit for ejectment from a house and two shops and for recovery of Rs. 701/- as arrears of rent.

2. The plaintiff's case was that the defendant had under a 'Kiraya Nama' dated 1st April 1944, obtained the house and the shops from, the plaintiff at an annual rent of Rs. 530/-, this sum being payable as follows:

Rs. 100/- on 1st April 1944, Rs. 94/- on 20th May 1944, and Rs. 336/- in equal instalments of Rs. 28/-

on the first day of every month.

Total Rs. 530/-.

3. The plaintiff further alleged that the tenancy had terminated on 31st March 1945 but that, rent having been accepted by him from the defendant after that date, the latter was still a tenant, now liable to be ejected in view of the permission obtained by the plaintiff from the District Magistrate under Section 3 (a), U. P. (Temporary) Control of Rent and Eviction Act, 3 of 1947. In fact no such permission was necessary to eject the defendant, and indeed the District Magistrate said in his order that none was necessary but that if permission was needed, it was granted. On 31st March 1947 the plaintiff gave notice to the defendant to vacate the buildings by 1st May 1947. A suit was then filed by him on 2nd June 1947 claiming ejectment as well as arrears of rent in the amount of Rs. 701/-, out of which Rs. 21/- were stated to be payable up to 1st April 1946 and Rs. 680/- up to 1st June 1947.

4. The defence taken was that there had been no wilful default on the part of the defendant, that he had tendered Rs. 310/- to the plaintiff, the same having been refused, that then a money order for that amount was sent to the plaintiff but was returned, and that the notice dated 31st March 1947 was invalid as it did not expire with the end of the month of the tenancy.

5. The trial Court, while dismissing the relief for ejectment on the finding that the notice given by the plaintiff was invalid, decreed it for Rs. 701/- as arrears of rent. It further found that it was necessary for the plaintiff to give a notice under Section 106, T. P. Act in spite of the permission obtained by him from the District Magistrate under Section 3 of the aforesaid Act.

6. Two appeals against this decree were filed in the lower appellate Court, one, No, 86 of 1949, by the plaintiff and the other, No. 89 of 1949, by the defendant.

7. The point raised in the former appeal was that a decree for ejectment should have been passed by the trial Court and the point raised in the latter appeal was that no arrears of rent should have been decreed by that Court.

8. The lower appellate Court modified the decree of the trial Court by decreeing the relief for ejectment but vacating the decree in respect of arrears of rent on the ground that the amount claimed by the plaintiff had already since been deposited for him in Court as being the rent due up to 31st August 1948. This being the position, the learned Judge also passed a decree for costs in favour of the plaintiff. His findings were that the notice dated 31st March 1947 was invalid as it expired on 1st May 1947 and not on 30th June (April?) 1947 when the month of the tenancy had expired, but that, in this case, it was not necessary for the plaintiff to have served a notice under Section 106, T. P. Act on the defendant at all. The first finding was thus in favour of the defendant-appellant and the second against him.

9. The appeal first mentioned on the top of this judgment was filed by the defendant to challenge the decree for ejectment passed by the lower appellate Court, and the other appeal was filed by him to challenge the order of costs passed by that Court in favour of the plaintiff.

10. The main point argued before me by the learned counsel for the defendant-appellant was that the learned Civil Judge having held that the notice referred to above was invalid and it being necessary for the plaintiff to have served the defendant with a valid notice of ejectment prior to the suit, the same should have been (dismissed. Learned counsel for the respondent contended that notice was in fact not necessary, as held by the lower appellate Court, after the plaintiff had obtained permission from the District Magistrate under Section 3, U. P. (Temporary) Control of Rent and Eviction Act.

11. So far as the latter point is concerned, I am committed to the view that notice under the said section was necessary. I so held in the case of -- 'Ram Sarup v. Gayatri Devi', 1952 All L J 373, on the basis of an earlier Bench decision of this Court and I am, not prepared to modify my view on that point.

12. As regards the question whether the notice dated 31st March 1947 was or was not valid, I am definitely of the view that it was. The whole argument of the learned counsel for the defendant-appellant was that the notice in this case having asked the defendant to vacate the house 'by 1st May 1947' and not on or by 30th June (April?) 1947, it was not a notice which could be deemed as expiring with the end of the month of the tenancy. He relied in support of this point on the Bench decision in -- 'Shankar Lal v. Babu Ram', AIR 1921 All 194, in which the notice served on the tenant had required him to vacate the premises "by 30th June 1919" and the argument was that it was an invalid notice as it had not required the defendant to do so by 1st July 1919.

The argument was not accepted and it was held that the notice was valid. This case does not, in my opinion, help the appellant as it is only an authority for the proposition that, where the notice asks the defendant to vacate the premises on the last day of the month of the tenancy, it is valid notice. It does not mean that the Bench also meant to hold that, if the notice had asked the tenant to leave the premises by the 1st of the next month, it would have been invalid. On the contrary, learned counsel for the plaintiff-respondent has cited two decisions of this Court, one, a Bench decision in -- 'Durga Prasad v. Rama Kant', 1951 All L J 285, and the other a decision by myself in the same volume at page 702. (Mohan Lal v. Kunwar Sen, 1951 All L J 702). In the former it was held:

"Where a landlord in his notice requires the tenant to vacate the premises on the date immediately following the date of the expiry of the monthly tenancy, the notice complies with the provisions of Section 106, T. P. Act".

In the latter the tenancy was one that had commenced on the first day of each Hindi month, so that it expired on the last day of that month. The notice given to the tenant was to vacate the premises on the 1st of the following month. It was nonetheless held by me to be a valid notice.

13. The principle underlying the rule seems to be that the tenant must have a clear 15 days time prior to the end of the month of his tenancy, so that he may in the meanwhile remove his effects after arranging for 'another accommodation. If in 'addition to these 15 days he is allowed a few hours more, so that he leaves the premises by the first day of the ensuing month, I cannot see how he is prejudiced. Indeed he has a little more time to do the needful to comply with the notice served by the landlord. It would, in my opinion, be too technical and hair-splitting to hold that, because of the tenant having been given a little more time even after the expiry of the month of the tenancy, he has been prejudiced and the landlord must wait for another month to give somewhat less generous notice and thereby procure his tenant's ejectment. In my view, therefore, the lower appellate Court was not right in holding that the notice given in this case was invalid, although such a finding did not affect the suit as it held at the same time that no notice was in fact necessary.

14. As regards the appeal raising the question of costs the lower appellate Court having never held that the plaintiff was not entitled to a decree for arrears of rent, and the decree for arrears passed by the trial Court having been vacated on the particular ground that the arrears for the period up to 31st August 1948 had already been deposited in Court, there is no reason why the plaintiff was not entitled to, his costs.

15. For these reasons there is no force in either of these two appeals. They are accordingly dismissed with costs.