Manzoor Ali Usmani vs Mt. Lal Devi And Anr. on 11 September, 1950

Equivalent citations: AIR1951ALL396, AIR 1951 ALLAHABAD 396

JUDGMENT

Bind Basni Prasad, J.

1. The plaintiffs-respondents are the owners of premises No. 16/35 along with the outhouses and the sheds situated at the Mall Road, Kanpur. The defendant-appellant is the tenant thereof on a monthly rent of Rs. 175. It is the common ground of the parties that these premises were let out by a written deed of lease, dated 21-11-1922. That lease was for one year with an option of renewal for another two years. On 4-12-1945, the plaintiffs instituted a suit for the ejectment of the defendant from the premises and for the recovery of Rs. 350 as arrears of rent. The defence was that the lease was for manufacturing purposes, the notice to quit was invalid and the amount claimed as arrears of rent was incorrect.

2. The trial Court repelled all the contentions of the defendant and decreed the claim in its entirety. The defendant went up in appeal. Learned District Judge affirmed the decision of the trial Court. The defendant now comes up in second appeal to this Court.

3. The first contention raised by Shri Gopi Nath Kanzru on behalf of the appellant is that, having regard to the provisions of Section 15, U. P. (Temporary) Control of Rent and Eviction Act, 1947, no decree for ejectment can be passed except on one or more of the grounds mentioned in Section 3 of the Act. In this section the word "suits" has been used. The question, therefore, first arises whether it applies also to appeals. On this point there are two Bench decisions of this Court, viz., Niranjan Lal v. Mt. Ram Kali Devi, A. I. R. (37) 1950 ALL. 396 and Lala Raj Narain v. Sita Ram Sri Kishan Das, S. A. No. 979 of 1945, D/- 3-11-1949. In both these cases it has been held that the word "suit" in Section 15 includes an appeal. Section 15, therefore, is applicable to the present appeal.

4. The question then arises whether this Court in the present appeal is confined only to one or more of the grounds mentioned in Section 3 of the Act. On this point the Division Bench in S. A. No. 979 of 1945, D/- 3-11-1949, after referring to Section 10, U. P. (Temporary) Control of Rent and Eviction (Amendment) Act (XLIV [44] of 1948) observed as follows :

> "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, and it Js not necessary 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 Rent 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 ground 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 and 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 that particular case the permission of the District Magistrate bad been obtained on 19-10-1943. In the case before us the permission was obtained on 31-10-1945. The present case is, therefore, almost identical with the one which was before the Division Bench in S. A. No. 979 of 1945. Having regard to the principles enunciated by the Division Bench the plea that the defendant-appellant can be ejected only on one or more of the grounds mentioned in Clauses (a) to (f) of Section 3 falls to the ground.

5. The next ground taken is that the notice to quit was invalid for the following three reasons: (a) because the notice did not expire with the month of the tenancy, (b) because the lease was for manufacturing purpose and six months' notice was necessary according to law, and (c) because the notice was not served upon the defendant. Taking the first ground it may be noted at first that both the Courts below have held that the tenancy was according to the calendar month and ended with the last date of the month. This finding is challenged by the learned counsel for the appellant on the ground that as the original lease is dated 21-11-1922 and as the defendant is holding over, it must be presumed that the tenancy commenced from the 21st of every month and expired on the 20th of the succeeding month. It does not appear from the judgments of the two Courts below that any such point was taken there. There are a number of letters on the record from which it appears that the defendant paid rent to the plaintiffs for calendar months. If the tenancy had been from the 21st of a month to the 20th of the succeeding month the defendant when making payment of rent would have mentioned it so. This is hardly a case of holding over. It would appear that after the expiry of the original period of one year there have been changes in the terms of the lease between the parties. A part of the leased premises was taken over by the lessor and it is said that a cinema house has been constructed there. The amount of rent has also been varying from time to time. The position is that at the present moment the precise terms of the lease of 21-11-1922, do not obtain between the parties. We agree with the view of the Courts below that the tenancy was from month to month and at present the tenancy expires with the end of every month. Now the notice under Section 106, T. P. Act was sent by the plaintiffs on 12-11-1945 and he asked the defendant to vacate the premises on the 30th of that month. In view of the above finding it was a notice which expired with the month of the tenancy and was, therefore, valid.

6. Coming to the second ground a perusal of the deed of lease will show that it was not a lease for manufacturing purposes. At least it was not so stated in any express terms. Learned counsel for the

appellant has drawn our attention to Clauses 6 and 7 of the deed of lease under which it would appear that the lessee had the right to set up certain electric fittings on the premises and to construct some new buildings upon the open land or the site of the outhouses at his own cost. From this, it is argued that the parties understood between themselves that the lease which was to the Empire Furnishing House was for manufacturing purposes. We are unable to draw any such inference. Manufacturing concerns have also their show rooms and if the intention was to grant the lease for manufacturing purpose there was no reason why this fact should not have been mentioned in the deed of lease. The very fact that the lease was only for a period of one year indicates that the original intention was not to let out the premises for manufacturing purposes. No one would set up a manufacturing concern at a site on a lease of only one year. In considering whether a lease is for manufacturing purpose we must look to the original intention of the parties which can be gathered from the deed itself and not to the subsequent conduct of the lessee. If after taking a lease for a show-room the lessee began to carry on any manufacturing operation upon the premises the lease is not converted into one for manufacturing purposes. The second ground also fails.

7. Coming to the third ground it appear that the notice to quit was sent by the plaintiff under a registered cover addressed to the defendant at the leased premises. It was taken by one of his servants who put the seal of the defendant upon the acknowledgment receipt and affixed his signature thereon. Learned counsel for the appellant contends that this is no service upon the defendant. We are unable to agree with this. The defendant's servant was his agent and al service upon him is as effective as a service upon the defendant himself.

8. No other ground was advanced on behalf of the appellant. The appeal fails and it is hereby dismissed with costs. The stay order is discharged.