Sri Babu Lal vs B. Ganga Saran on 3 August, 1951

Equivalent citations: AIR1952ALL48, AIR 1952 ALLAHABAD 48

JUDGMENT

Agarwala, J.

1. This is defendant's second appeal arising out of a suit for ejectment and recovery of arrears of rent. The plaintiff alleged that the defendant was a monthly tenant of a shop at Lucknow belonging to him, that the monthly rent was Rs. 18 12 0 that he had obtained the permission of the Rent Control Officer to eject the defendant, that he had served the defendant with a notice to quit by 31-1-1950, that this notice was served on the defendant on 23-12-1949 and that the defendant had cot vacated the shop in spite of notice and that therefore he had to bring the suit for his ejectment. He claimed a sum of Rs. 22 12-0 as arrears of rent. In defence the defendant admitted that he was a tenant of the shop in dispute for a long time and that he was paying rent at the rate of Rs. 18-12-0 per month. He did not however admit the rest of the allegations with regard to tenancy on the ground that he had no knowledge thereof. He admitted the receipt of the notice to quit but he did not admit the con^ tents of the notice as alleged by the plaintiff. He further pleaded that the permission obtained by the plaintiff to have him ejected was not valid because on two previous occasions similar applications to the Rent Control Officer had been dismissed, one on 20.4-1948 and the other on 8-9-1943. He did not suggest as to what were the terms of the tenancy upon which he was occupying the shop in dispute nor did he allege anything to show that the date mentioned by the plaintiff as the date by which he had been asked to vacate was wrong or that the facts were other than what the plaintiff had stated. No plea about invalidity of the notice to quit was raised in the written statement. This plea was, however, raised later on and the Munsif allowed evidence to be recorded in respect of it.

2. The Munsif rejected the defendant's pleas and decreed the suit. The lower appellate Court has confirmed that decree.

3. In this second appeal three points have been urged before me. It has been urged that the permission obtained by the plaintiff-respondent for the ejectment of the appellant was invalid for two reasons, firstly that two other similar applications having been dismissed by the Rent Control Officer, he had no jurisdiction to grant a third application on similar grounds and secondly that a third application was barred by the principle of res judicata and could not have been allowed.

4. The first application for permission to eject the appellant was made some time in 1948 and was rejected on 20-4 1948, by the Rent Control Officer. It was based on the ground that the plaintiff wanted to rebuild the shop and was prepared to let it out to the appellant after it had been rebuilt provided it was allotted to him by the proper authority. The defendant did not agree to these suggestions and on his objections the Rent Control Officer rejected the application. The second

application was made by the plaintiff on a different ground. He alleged that the Improve, ment Trust had directed him to rebuild the shop in accordance with a rebuilding scheme. The District Magistrate rejected this application on the ground that the Improvement Trust had not by that time required the plaintiff to rebuild the shop. This was passed on 8-9-1949. The third application was made by the plaintiff on grounds fimilar to those which were alleged by him in the first application which was rejected on 20-4-1948. This time the Rent Control Officer was a different officer and he thought that the grounds were sufficient and that security offered to the defendant for letting out the rebuilt shop to him after its reconstruction was good enough. He allowed the plaintiff to sue for the ejectment of the defendant. The orders passed by the District Magistrate or by his nominee who is usually the Rent Control Officer under Section 3 of the Control of Eent and Eviction. Act are more in the nature of executive orders than judicial orders. They may be quasi-judicial orders but I express no opinion on the point in the present case. They are not judicial orders in the proper sense of the term because the District Magistrate does not act as a Court in passing an order under Section 3 of the Act. Assuming, however, that these orders are quasi-judicial orders there is nothing to prevent the District Magistrate or the Rent Control Officer to grant an application when a similar application had been refused on a previous occasion. It is clear that in granting a subsequent application it cannot be said that the Rent Control Officer had no jurisdiction. His jurisdiction is there and it cannot be taken away merely because the previous application had been dismissed by him nor can it be said that he is debarred from the principle of res judicata in allowing a subsequent application. The principle of res judicata as embodied in Section 11, Civil P. C. is a principle which primarily applies to suits but it has also been applied to proceedings other than suits. At the same time no authority has been shown . to me that the principle has ever been applied to executive or quasi-judicial orders. Indeed in cases arising under Section 3 of the Act the circumstances under which one application is made may materially be different from the circumstances as they existed on a prior occasion. The Magistrate may, in certain circumstances, consider that he should not allow the application but subsequently he may come to a different conclusion. It is a matter in which the exercise of his judgment, provided it is not made arbitrarily or unreasonably and provided further that it is not a fraud upon the Act, cannot be challenged in a Court of law. He is the sole Judge of the matter and the exercise of his discretion cannot be corrected by the Courts. In the circumstances, therefore, the principle of res judicata cannot in the nature of things be applied to an order such as this.

5. The next point urged was that the notice to quit served by the plaintiff was invalid. As already stated the plaintiff had specifically mentioned the date on which the notice was served on the appellant, namely, 23-12-1949. He had also specifically mentioned that in the notice the defendant had been required to vacate the premises by 31-1.1950. The defendant in answer to these allegations had simply stated that the receipt of the notice was admitted. He made no allegation that the two dates mentioned by the plaintiff in his plaint were wrong. The original notice served on the defendant was with him and he did not choose to produce it. The plaintiff produced a paper which he swore was a true copy of the original. He however, did not produce the scribe of the copy and it is on this omission that the argument of the defendant-appellant is based. According to him, the copy has not been duly proved. The lower Court held that in the circumstances of the case the statement of the plaintiff amply proved that the copy was a true one. I entirely agree with this view. It is not necessary that the scribe of the copy should be produced. What is required to be proved is that the

document produced is a true copy of the original. Any one who has heard the original and the copy read out to him may swear that the contents of the two were identical. This would be a statement which would be admissible in evidence and would prove that the document produced was a true copy of the original.

6. Lastly, it was urged that the plaintiff had failed to prove the terms of the tenancy, or in other words he had failed to establish that the defendant was a tenant from month to month. As already stated the plaintiff had definitely alleged that the tenancy was from month to month. The defendant in his written statement had admitted that he paid rent month by month. He did not allege any other nature of the tenancy. In the circumstances there was a strong presumption in favour of the plaintiff that the tenancy was from month to month. No further evidence was required to be given in proof of this fact.

7. No other point was raised. There is no force in this appeal. It is dismissed with costs.

8. As the defendant has been in occupation of the shop for a very long period, it is just that some time should be granted to him to vacate it. I, therefore, order that the decree shall not be executed for three months.