

Jodha Ram vs State Through Bishun Dutt on 3 August, 1953

Equivalent citations: AIR1954ALL67, AIR 1954 ALLAHABAD 67

ORDER

Agarwala, J.

1. This is an application in revision by Jodha Ram Gadaria, a resident of Ahata Agha Turab Khan, Husainganj, Lucknow.
2. The applicant was convicted by a Magistrate under Section 448, I. P. C. and sentenced to a fine of Rs. 60/- only. His appeal before the Sessions Judge was dismissed. The facts which led to his prosecution and conviction may be briefly stated as follows :

On 30-10-1950, the applicant purchased a house situate in Ahata Agha Turab Khan Husainganj, Lucknow, from one Jagdamba Prasad its previous owner. The house was then occupied by Bishun Dutt, complainant as a tenant. The applicant could not, therefore, enter into actual possession of the house. On 30-11-1950, Bishun Dutt who is employed as a driver in the Transport Section of the U. P. Co-operative Department and Marketing Federation left Lucknow for Benaras with his family after locking the house. The rent for the month of November is alleged to have been sent by him to Jodha Ram on 19-12-1950. It is alleged that Jodha Ram refused to accept this money order. He again sent the rent for December, 1950 on 18-1-1951 and the rent for January 1951 on 26-2-1951. These two money orders are also alleged to have been returned by the applicant. The applicant's case, however, is that these money orders were never received by him.

During this interval, however, Jodha Ram applied to the City Magistrate on 12-1-1951, for permission to break open the lock and enter into possession of the house. His allegation was that Bishun Dutt had unnecessarily locked the house and that he had really given up possession of the house. The City Magistrate ordered that the applicant could do what he desired at his own risk but that he must break open the lock and take over possession in the presence of respectable persons. Armed with this order. Jodha Ram broke open the lock on 27-2-1951. The goods of Bishun Dutt were found in the house. An inventory was made and Jodha Ram entered into possession of the house and intimated this fact to the City Magistrate on 3-3-1951.

On 4-4-1951, Bishun Dutt returned from Benaras. To his surprise he found that the house had been occupied in his absence by Jodha Ram. He also discovered that Jodha Ram had taken certain, legal proceedings before entering into possession of the house. Naturally he at first applied to the City Magistrate that the order passed by

him was passed in his absence and that he was entitled to possession of the house. He also filed a complaint in Court. The complaint was, however, dismissed in default and his application to the Magistrate was also dismissed. Then he made another application on 8-9-1951, and although it was at first dismissed by the Magistrate under Section 203, Cr. P. C. it was restored to the file by the order of the Sessions Judge for further inquiry. On further inquiry, the applicant was convicted by the Magistrate as stated above and his appeal was also dismissed by the learned Sessions Judge. Both the Magistrate and the learned Sessions Judge held that the occupation by the applicant was wholly illegal and unauthorized and that it was done mala fide with a view to annoy the complainant.

3. The question for determination in this revision mainly is whether the act of the applicant in entering into possession over the house was with the intent, in the words of Section 441, I. P. C., "to commit an offence or to intimidate, insult or annoy any person in possession of such property." It is not the case of the complainant that the applicant wanted to commit any offence or to intimidate or insult the complainant. Therefore the question merely is whether the applicant broke open the lock and entered into possession of the house in order to 'annoy' the applicant. The Court below has found that this was in fact the applicant's intention and after hearing learned Counsel for the applicant, I have no hesitation in endorsing the conclusion reached by the learned Sessions Judge.

The circumstances of the case speak for themselves. The complainant was in occupation of the house when the applicant purchased it. In these days of scarcity of house accommodation, it is unthinkable that a tenant would willingly give up possession of the house. Bishun Dutt could not have intended to give up possession as he left his goods in the house and locked it. If he had voluntarily intended to give up possession of the house he would have told the applicant that that was his intention and would have delivered possession to him. He did not do so. Moreover when he went to Benaras, he sent money orders to the applicant. The postal receipts and the money order coupons which have both been filed by the complainant have been sufficiently proved. One of the postmen who took one of the money orders to the applicant was also produced in the Court below. Chandra Shekhar, P. W. 4, the postman swore that he took the money order to the applicant, that the applicant refused to take it and thereupon he returned the money order. He further swore that on the very money order which he took to the applicant, the applicant himself wrote down the words "Refused and returned."

The Court below believed this witness and I have no reason to differ from the view of the learned Sessions Judge. The applicant's case was that he never received the money orders. This could not be believed. It is hard to think that the money orders were forged ones. On no less than three occasions were the money orders returned as having been refused. The testimony of Chandra Shekhar having been believed, the denial of the applicant must be considered to be false. He having himself refused to take the money orders there can be no other conclusion but that he employed the subterfuge of applying to the City Magistrate to enter into possession of the house under cover of his orders and that his real intention was to enter into possession of the house unlawfully against the wishes of the complainant and oust him from possession unlawfully. In the circumstances his intention was clearly to annoy the complainant.

4. It was urged that it could not be assumed that the intention of the applicant was to 'annoy' the complainant when the entry was made into the house in the absence of the complainant. I cannot accept this contention. If this contention were accepted, this would give a free licence to landlords to take possession of tenants' property in their absence even for a short while. When a landlord takes possession of a house in the absence of the tenant, the tenant is certainly annoyed when he comes to know that he was forcibly ousted from his house. The annoyance which is spoken of in Section 441, I. P. C. is not intended to be instantaneous. It may happen subsequently. There is no warrant for thinking that annoyance mentioned in the section must be caused to the person in possession at the moment when another person enters into or upon the property. What has to be seen is the present intention of the accused. If the accused enters into possession of the property in the possession of another with the intention to annoy that person, the offence is completed even though the annoyance is not actually caused to the person in possession at the moment of entry. When, the accused knows that another person is lawfully in possession of property and illegally enters into possession of it, his intention cannot be anything else but that of annoyance to the person in possession.

5. There is no force in this application. It is accordingly dismissed.

6. Before leaving this case I must observe that the sentence of fine of Rs. 60/- is very inadequate. The possession of the house has not yet been returned by the applicant to the complainant., The action of the applicant was, as held above, high handed in the extreme. I was inclined to issue notice for enhancement but I have refrained from doing so as there was no prayer for doing so from the side of the complainant or of the Government Advocate.