Hazari Lal vs Kanhaiya Lal on 13 March, 1953

Equivalent citations: AIR1953ALL686, AIR 1953 ALLAHABAD 686

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is an appeal against the judgment of a learned single Judge of this Court and the point raised relates to the interpretation of the provisions of the U. P. Control cf Rent and Eviction Act, 1947. This Act received the assent of the Governor General on 28-2-1947, under Section 76 of the Government of India Act, 1935, and was published in the United Provinces Government Gazette, Extraordinary, on the 1st of March, 1947. Section 1(3) of this Act provides that the Act shall be deemed to have come into force on 1-10-1946.

2. On 10-5-1947, a suit was filed for ejectment cf the defendant from a shop situate in the town of Raya. It is the common case of the parties that at the time when the suit was filed the U. P. Control of Rent and Eviction Act had not been extended, by notification of the State Government, to apply to the town of Raya. In view of that admission, it is not necessary to deal with the various amendments made to the original Sub-section (2) of Section 1 of the Act at length but we might quote the subsection as it originally stood and indicate how it was later amended. The original Sub-section (2) to Section 1 of the Act was as follows:

> " 1(2) : It extends to the whole of the United Provinces and applies to the municipal areas, cantonment areas and to every notified area contiguous to such municipal area situated in these provinces and to accommodation situated within one mile of the boundaries of any such municipal area, cantonment area, and notified area, and to such other areas as the Provincial Government may, from time to time, notify in the official Gazette in this behalf;....."

This sub-section was amended by the Amending Act 44 of 1948 and it was divided into two sub-sections, Sub-section (2) and Sub-section (2-A). This was later again amended by a number of ordinances and notifications and the latest amendment is by Act No. 17 of 1951. The two sub-sections now read as follows:

> "(2) It shall extend to the whole of the United Provinces.

(2-A) It shall apply to every Municipality, Notified Area contiguous to a Municipal or Cantonment Area and to areas situate within two miles of such Municipality or notified area:

> Provided that the State Government may by notification in the official Gazette declare that it shall cease to apply to any area or shall apply in whole or in part to any other area, as may be specified."

3. The suit was contested on various grounds and one of the grounds, we are informed by learned counsel, was that the notice for ejectment was defective.

4. On 21-7-1948, the suit was dismissed as the notice for ejectment served on the defendant was found to be not in accordance with law.

5. An appeal was filed before the learned Civil Judge and, while that appeal was still pending, the State Government by a notification in the official Gazette extended the operation of the Act to the town of Raya on 24-9-1949. On 27-9-1949, the lower appellate court held that the notice was valid, allowed the appeal and directed ejectment of the defendant.

6. The defendant came up in second appeal before this Court and it was urged before the learned single Judge that, after the Act had been made applicable to. the town of Raya, the defendant could not be rejected, except in accordance with the provisions of Section 3 of the Act. This argument did not find favour with the learned single Judge and he dismissed the appeal but allowed leave to file an appeal under the Letters Patent. The learned single Judge was of opinion that Section 15 of the U. P. Control of Rent and Eviction Act did not apply to this case as the suit was not filed before "the commencement of the Act."

7. On the question as to the applicability of Section 15, U. P. Control of Rent and Eviction Act there has been considerable difference of opinion in this Court. Section 15 is as follows:

> "In all suits for eviction of a tenant from any accommodation pending on the date of the commencement of this Act, no decree for eviction shall be passed except on one or more of the grounds mentioned in Section 3."

8. The argument for the plaintiff is that Section 15 must be confined to suits pending on 1-10-1946, and, it will not apply to a suit which may have been filed after 1-10-1946, with respect to an area to which the Act was extended by a notification of the State Government after the institution of the suit.

9. The scheme of the Act has been carefully considered in several division bench rulings of this Court and it is not necessary for us to cover the same ground. It was pointed out in those cases that Sections 14 and 15 of the Act should be read together and between the two sections it was intended that all cases of ejectment of tenants should be covered. Section 14 deals with cases where a decree was passed before the date of commencement of the Act but the decree was being executed after the date of commencement. In such cases, even though the decree had become final, Section 14 directs

that the decree shall not be executed and a tenant shall not be ejected except on any of the grounds mentioned in Section 3 of the Act. For suits instituted after the Act came into force no express provision was necessary as the Act would apply to such suits and the cases will have to be decided in accordance with the provisions of the Act, and, as regards suits pending on the date when the Act came into force, Section 15 expressly provided that to them the Act will apply and they will have to be decided in accordance with provisions of Section 3. So far, therefore as areas to which the Act applied when it was passed there is no difficulty and this Court has held in at least 3 division bench rulings that the word 'suit' in Section 15, U.P. Control of Rent and Eviction Act, includes not only the suit but also appeals arising therefrom. The first case on the point decided by a bench of this Court is --'Raj Narain v. Sita Ram', AIR 1952 All 584 (A). This case was decided on 3-11-1949. It was observed in that case that -

> "Confining ourselves to the language of S, 15 alone it would appear that the Act was intended to have a retrospective effect and to apply to all suits for eviction of a tenant pending on the date of the commencement of the Act. It further appears to make it clear that no decree for eviction shall be passed against a tenant except on one or more of the grounds mentioned in Section 3."

It was then held that the word 'suit' in Section 15 was intended to apply not only to suits pending in the trial court but also to a suit in its later stages right up to the court of final appeal. It is not necessary to repeat the reasons given for these findings as they are already mentioned in the decision which has now been reported. Independently of this decision, as the case had not been till then reported, another bench of this Court took the same view in --'Niranjan Lal v. Mt. Rani Kali Devi', AIR 1950 All 396 (B). After having carefully examined the provisions of the Act the bench held that :

> "the Act does not anywhere provide specifically for appeals and we consider that the 'suit' mentioned in Section 15 includes a suit while it is before the Court of first instance and also while it is before the appellate Court. An appeal is but a continuation of a suit. The learned counsel for the appellant is, therefore, right in his contention, that the decree for the eviction of the appellant should not be passed unless it is shown that the case is covered by any one or more of the grounds mentioned in Section 3 of the Act."

The same point arose before another bench In -- 'Har Sarup v. Lokeshwar Prasad', 1951 All LJ 256 (C). The arguments were again considered in this case and it was observed that the Federal Court in -- 'Shyamakant Lal v. Rambhajan Singh', AIR 1939 FC 74 (D) and-- 'Lachmeshwar Prasad v. Keshwar Lal', AIR 1941 FC 5 (E) had held that "an appeal was merely a continuation of a suit and Courts of Appeal in India were not merely courts of error and the hearing of an appeal was in the nature of a re-hearing of the suit so that the Courts of appeal must pass decrees in accordance with law that exists on the day when the case comes up for hearing."

It was, therefore, held that Section 15 not only applied to a case where a suit was pending in the first court but also to case where a suit was pending in an appeal. So far, therefore, as this point is

concerned, the decisions of this Court appear to be all one way and, even in cases, where learned Judges have taken the view that the Act does not apply to a case which had been instituted after the 1-10-1946, relating to an area to. which the notification was made after the institution of the suit, the proposition of law that the word 'suit' in Section 15 includes an appeal has not been doubted.

9A. The whole difficulty has arisen by reason of the words "suits ..... pending on the date of the commencement of this Act" in Section 15 of the Act. It is urged that the date of the commencement of the Act must be deemed to be the date fixed in accordance with the provisions of Section 1(3) of the Act and even to areas to which the Act was later made applicable the date of commencement of the Act is the date fixed in the Act itself i.e., 1-10-1946. Reliance is placed on the United Provinces General Clauses Act, 1904, where the word "commencement" has been defined in Section 4(10) as follows :

> "Commencement" used with reference to an Act, shall mean the day on which the Act comes into force."

This definition, however, must be read subject to the opening words of the section that "In all United Provinces Acts, unless there is anything repugnant in the subject or context" the definition in the General Clauses Act were to apply. Reliance is also placed on Section 5(2) of this Act which is as follows :

> "Unless the contrary is expressed, a United Provinces Act shall be construed as corning into operation immediately on the expiration of the day preceding its commencement."

Sub-section (2) of Section 5 is not helpful as in the case before us a contrary intention was expressed in the Act itself. The Act was passed by the legislature in 1947, it received the assent of the Governor General on 23-2-1947, and was published in the official Gazette on 1-3-1947, but it was made retrospective and was to operate from 1-10-1946, at any rate with respect to the area to which the Act. was ap-Dlicable without any notification of the United Provinces Government.

The whole point for decision, therefore, is whether the words "the date of the commencement of this Act" in Section 15 mean the original date when the Act came into force or the date when the Act was made applicable to a particular area. The learned Judges, as we have already said, are divided in opinion. In -- 'Rup Lal v. Ram Swarup', AIR 1950 All 504 (F), Seth J. held that the date of the commencement of the Act was 1-10-1946, and even to areas to which it might have been extended by a later notification the original date fixed in Section 1(3) must be deemed to be the date of the commencement of the Act. The same view was expressed by him in another case in --'Ram Chand v. Ram Swarup', AIR 1952 All 654 (G). The same view was also taken by Mushtaq Ahmad J in -- 'Shyam Sundar Lal v. Shagun', AIR 1953 All 322 (H). P. L. Bhargava J. also took the same view in -- 'Ganga Prasad v. Mt. Saroop Dei', AIR 1951 All 568 (I) and held that Section 15 did not apply to a case where a suit was instituted after the 1-10-1946, but the Act was made applicable to that area during the pendency of the suit. The only other single Judge decision to which reference has been made is not directly in point and that is the case of -- 'Abhilakh Ram v Uma Shankar', AIR 1950 All

686 (J). The point was, however, carefully considered by a division bench of this Court in--'Kedar Nath v. Kishan Lal', AIR 1952 All 500 (K). Mr. Bind Basni Prasad J. after haying carefully considered the previous authorities on the point came to the conclusion that to areas to which the Act was subsequently made applicable the date of commencement of the Act within the meaning of Section 15 must be the date when the Act was so extended by notification. Learned counsel has urged that the decision cf the bench in -- 'Kedar Nath's case (K)', should be reconsidered by a larger bench. We have, therefore, heard him at some length and we are not satisfied that there is any reason to differ from the conclusion arrived at in -- 'Kedar Nath's case (K)'.

10. As we have already said, the Act was intended for the benefit of tenants in view of the shortage of housing accommodation in the State. The Act was made applicable to municipal and other areas where there was the greatest pressure and it was later extended to every area where the Sta te Go vernrnent thought it necessary to give protection to the tenants by reason of lack of accommodation and competition for housing accommodation. The Act must be interpreted so as to carry out the intention of the legislature and to give protection to tenants for whose ejectment decrees had either already been passed or proceedings for whose ejectment were pending either in the trial court or a court of appeal. It was pointed out in -- 'Raj Narain v. Sita Ram (A)', emoted above, that in -- 'Quilter v. Mapleson', (1882) 9 QBD 672 (L) though there was nothing in the Act to show that it was retrospective the Court of Appeal held that the Act was passed with the intention of giving relief against forfeiture to a lessee and the Act must be so interpreted as to give that relief even in proceedings which were pending before the court on the day when the Act was passed.

11. In order to achieve the object of protecting tenants from ejectments by landlords, except under special circumstances mentioned in Section 3 of the Act, provision was made for different contingencies that could arise. Section 3 obviously governs all suits which were or may be instituted after the Act became applicable. Where decrees had already been passed 'the right cf execution and claim ejectment of the tenant was limited by Section 14. Section 15 was enacted in order to apply the same principles to suits which were pending. Obviously, the three sections are complementary to one another and are designed to cover all cases of tenants who had not yet been physically ejected from the accommodation which they were occupying as tenants. This object of granting protection to all .the tenants would only be achieved if it be held that Sections 14 and 15 would govern all decrees already passed and all suits already instituted upto the date on which Section 3 came into effect so as to govern all suits instituted thereafter. Obviously, therefore, the date of commencement of the Act mentioned in Sections 14 and 15 must be the date on which Section 3 of the Act came into operation so as to govern suits instituted thereafter. The date of the commencement of the Act for purposes of Sections 14 and 15 must, therefore, be the date on which the Act became applicable.

In the case of every Municipality, Cantonment areas, every Notified area contiguous to a Municipal or Cantonment area, and every area situate within two miles of such Municipal or Notified areas, the Act became applicable as soon as the Act was published by virtue of Section 1(2A) of the Act. Under Sub-section (3) of Section 1 the Act was deemed to have come into force on 1-10-1946 but even in those areas the Act became applicable only on 1-3-1947 when the Act was published in the U. P. Gazette Extraordinary of that date. Suits instituted on or after 1-3-1947 would, in such areas, be governed by Section 3 of the Act and the purpose of the Act can only be served if Sections 14 and 15

are so interpreted that all decrees passed before 1-3-1947, are governed by Sections 14 and 15. In respect of the other areas to which the Act was made applicable by a notification issued by the State Government subsequently the same purpose would be achieved if a similar interpretation is put, so that suits instituted after the date on which the Act was applied to those areas would come within the purview of Section 3 of the Act whereas all decrees passed upto that date and all suits pending on that date within the purview of Sections 14 and 15.

12. On the interpretation sought to be put on the words "Commencement of the Act" in Sections 14 and 15 by learned counsel for the plaintiff, Section 3 would only govern suits instituted on or after the date on which the Act became applicable whereas Sections 14 and 15 would govern decrees passed before 1-10-1946 or suits pending on that clay. The result would be that decrees passed between 1-10-1946 and 1-3-1947, in the case of areas to which the Act was made applicable as soon as published under Sub-section (2A) of Section 1, and suits instituted after 1-10-1946, and before 1-3-1947, arising out of the said areas would not be governed by the provisions of Sections 14 and 15. Similarly, in other areas to which the Act might be applied later by a subsequent notification, decrees passed between 1-10-1946, and the date on which the Act was applied as well as suits instituted between these two dates would not be governed by these sections. Of course, Section 3 can, in no case, govern these decrees and suits. There might be cases where a suit might have been instituted after 1-10-1946, and decided on some day prior to the date on which the Act became applicable to the area from which that suit arose and such decrees would also not be governed by the provisions of the Act at all. It is clear that the legislature could never have intended to create discrimination between various tenants and to grant no protection at all to those tenants against whom suits were instituted after 1-10-1946, and which were either decreed before or were still pending on the date on which the Act was applied to the area from which the suit arose. The interpretation that would create such an anomalous position must, therefore, clearly be ruled out.

13. The words "commencement of the Act" in Sections 14 and 15 with reference to a particular area must be interpreted to mean the elate on which the Act becaire applic ble to that area. This is the only interpretation that would effectively serve the purpose of the Act. We, therefore, agree with the decision in -- 'Kedar Nath's case (K)', and hold that the words "the date of the commencement of the Act" in Section 15 of the Act must mean the date when the Act was made applicable to an area.

14. We, therefore, allow the appeal, set aside the decrees passed by the lower courts and send the case back to the trial court through the lower appellate court to re-admit it to its original number and to give the par ties an opportunity to amend their pleadings in the light of the provisions of Section 3 of the Act.

The parties will have the right to give fresh evidence.

15. Cost will abide the result.