

Sunder Lal And Anr. vs Mohammad Ishaq on 28 August, 1953

Equivalent citations: AIR1954ALL111, AIR 1954 ALLAHABAD 111

JUDGMENT

Malik C.J.

1. These are four special appeals arising out of four suits. But they can be disposed of by one judgment as the point for decision is the same in all the four cases.

2. The plaintiffs, who are the landlords, filed four suits for ejectment, arrears of rent and also for mesne profits on 2-4-1946. These suits were decreed on 30-9-1946. Before filing the suits, notices for ejectment were given on 11-8-1945, and the tenants were required to vacate by 31-8-1945. The plaintiffs had also applied for permission to the District Magistrate and the permission to file the suits had been granted on 28-2-1946.

3. After the decrees, the defendants filed appeals. During the pendency of the appeals, an Ordinance known as U. P. (Temporary) Control of Rent and Eviction Ordinance, 1946, (Ordinance No. 3 of 1946), was passed which came into force from 1-10-1946. The Ordinance was replaced by the U. P. Control of Rent and Eviction Act, 1947 (Act. No. 3 of 1947), which Act was passed on 31-3-1947, and was made retrospective and was to be deemed to come into force from 1-10-1946. The appeals came up for hearing on 24-1-1947, and though certain objections were taken in the Court of appeal based on the Ordinance, the appeals failed and were dismissed and the decrees for ejectment passed by the trial Court were affirmed.

4. The plaintiffs filed applications for execution of the decrees and in the executing Court the defendants raised objections relying on Section 14 of the Act that the decrees were not executable. The objections were dismissed on 10-3-1947. The defendants filed execution appeals which were dismissed on 30-8-1947. Thereafter there were four execution second appeals filed in this Court, which were all allowed by a learned single Judge on 13-9-1950. The learned Judge, however, gave leave to file special appeals and these appeals were filed on behalf of the plaintiffs decree-holders.

5. The only point for decision in these appeals is whether, by reason of the provisions of Sections 14 and 15 of the Act, the decrees have now become unexecutable and the defendants cannot be ejected from the premises in their occupation.

6. On behalf of the decree-holders-appellants, reliance is placed on Section 15 and it is urged that the cases are governed by Section 15 and decrees having been passed in favour of the appellants no objection can be raised now to the execution of the decrees. It is urged that the defendants had taken the plea in the Court of first appeal that no decree should be passed and had relied on the provisions of Sections 7 and 8 of the Ordinance, but those objections were overruled or withdrawn and the defendants could not in the executing Court raise objections to the execution of the decrees.

7. Section 15 of Act 3 of 1947 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".

Act 3 of 1947 as has been already said, was made retrospective and Section 1(3) provides that the Act shall be deemed to have come into force on 1-10-1946. It is urged by learned counsel for the appellants that an appeal is a continuation of a suit and as on 1-10-1946, or soon thereafter appeals were filed, the suits having been decided on 30-9-1946, Section 15 was applicable and no reliance can be placed by the judgment-debtors on Section 14. On behalf of the judgment-debtors, however, it is urged that the suits having been decided on 30-9-1946, the section applicable is Section 14 of the Act.

8. Section 14 is as follows :

"No decree for the eviction of a tenant from any accommodation passed before the date of commencement of this Act shall in so far as it relates to the eviction, of such tenant, be executed, against him as long as this Act remains in force, except on any of the grounds mentioned in Section 3 :

Provided that the tenant agrees to pay to the landlord 'reasonable, annual rent' or the rent payable by him before the passing of the decree, whichever is higher."

9. In -- 'Raj Narain v. Sita Ram', AIR 1952 All 584 (A), it was held by a Bench of this Court, of which, one of us was a member, that 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 for us in these cases to go into that question as, in our view, whether Section 14 or Section 15 is applied the result is the same.

10. Learned counsel for the judgment-debtors-respondents has urged that the words "except on any of the grounds mentioned in Section 3" in Section 3.4 of the Act mean grounds (a) to (i) of Section 3. Section 3 of the Act lays clown, as has; been held in the case of 'Raj Narain, (A)', cited above, that if the grounds mentioned in Section 3 exist or 'any of them the landlord can file a suit for ejectment, of a tenant without the permission of the District Magistrate. These grounds are set out in Clauses (a) to (f) of Section 3. If, on the other hand, grounds (a) to (f) do not exist, a landlord has no right to file a suit for ejectment unless he has obtained the permission of the District Magistrate, It is said that under Sections 14 and 15 the fact that a suit has been filed after the permission of the District Magistrate would not entitle the landlord to eject the tenant, or to obtain a decree for ejectment. He can obtain a decree or claim ejectment only if grounds (a) to (f) exist. The Legislature has made it now clear, and, it was also decided in 'Raj Narain's case, (A)', that if a landlord has obtained the permission of the District Magistrate, he has a right to eject the tenant even if grounds (a) to (f) do not exist. If he has not obtained the permission of the District Magistrate, then he can file a suit for ejectment only on grounds (a) to (f) mentioned in Section 3.

11. In -- 'Chand Shankar v. Sukh Lal', AIR 1951 All 383 (B) a learned single Judge of this Court held that the words "on any of the grounds mentioned in Section 3" mean and are confined to grounds (a) to (f) of Section 3. This interpretation, however, leads to this absurdity, and we say that with great respect, that while Section 3 allows a landlord to file a suit for ejectment, in a case where grounds (a) to (f) do not exist, if he has obtained the permission of the District Magistrate Section 15 provides that even if he has obtained the permission of the District Magistrate, no decree for ejectment shall be passed.

In other words, while in one section of the Act the landlord has been authorised to file a suit for ejectment provided he has obtained the District Magistrate's permission, in another section of the same. Act there is a complete bar that in spite of such permission no decree shall be passed for ejectment. We fail to see what object there could be in allowing a suit for ejectment to be filed with the permission of the District Magistrate, if Section 15 is so interpreted as to mean that there was a complete bar against a decree for ejectment being passed.

12. No doubt the Act was passed for the protection of the tenants as there was a great dearth of housing accommodation, and there was a possibility that the tenants would be harassed by the landlords who would try to eject them and get higher rent from others who may be in such need of accommodation that they may be compelled to submit to the terms imposed by the landlords. The legal right of a landlord to give notice for ejectment under Section 106, Transfer of Property Act and then to file a suit for ejectment of a tenant was restricted by providing in Section 3 of the Act that the landlord will have the right to file a suit for ejectment in cases coming under. Clauses (a) to (f) and if a case does not come under Clauses (a) to (f), the Legislature left the discretion to the District Magistrate to grant permission in a proper case. This was done as it was not possible for the Legislature to foresee and provide for all possible contingencies. The District Magistrate was excepted to safeguard the interests of both landlords and tenants and grant permission to file a suit where he was satisfied that the landlord wanted to eject the tenant for some good cause.

13. In our view, in Section 15 of the Act the words "except on one or more of the grounds mentioned in Section 3" must be interpreted to include not only grounds (a) to (f) mentioned, in Section 3, but also the additional ground that the suit for ejectment had been filed with the permission of the District Magistrate. No difficulty would have arisen as regards the interpretation of this section if after Clauses (a) to (f) the Legislature had added, a Clause (g) to the effect that "a suit can, however, be filed for ejectment with the previous permission of the District Magistrate." The mere fact, that it was not done by a separate clause, and the provision for filing a suit with the permission of the District Magistrate occurs at the beginning of the section, should not make any difference in the interpretation of the section.

14. It must also be remembered that Sections 3, 14 and 15 were intended to cover all possible cases. Section 14 was confined to cases where decrees had been obtained before 1-10-1946, and the decree was put into execution for ejectment of the tenant after 1-10-1946; Section 15 was intended to cover all pending cases, that is, all suits or appeals pending at the time when the Act came into force, i.e., 1-10-1946; and Section 3 covers all suits which were to be filed after the commencement of the Act. The whole field was thus covered and there is no reason to suppose that the Legislature intended to

treat the landlords and the tenants differently at the three stages under these three sections. It would be reasonable to expect that the rights and liabilities of landlords and tenants were intended to be the same under these three sections.

15. Under Section 3 a suit for ejectment could be filed with the permission of the District Magistrate or if grounds (a) to (f) existed. Section 15 must be interpreted to mean that a decree shall not be passed unless grounds (a) to (f) existed or permission of the District Magistrate had been obtained, which is to be treated as an additional ground; and Section 14 must be interpreted in like manner.

16. With great respect to the learned single Judge, we are not satisfied that 'Chand Shanker's case, (B)' was rightly decided. As a matter of fact, a contrary view was taken, by a Division Bench of this Court in 'Raj Narain's case, (A)', which is binding on us.

17. The appeals are, therefore, allowed, the orders passed by the learned single Judge are set aside and the orders passed by the lower appellate Court are restored.

18. Learned Counsel for the appellants does not ask for costs and we, therefore, do not pass any order as to costs in these appeals.