Mohan Lal vs Kunwar Sen on 26 October, 1951

Equivalent citations: AIR1953ALL598, AIR 1953 ALLAHABAD 598

JUDGMENT

Mushtaq Ahmad, J.

1. The appeal first mentioned was filed by the defendant in a suit for ejectment and arrears of rent regarding a shop together with some rooms on the first floor. There was originally a lease granted by the plaintiff-respondent to the defendant on 27-4-1938 for one year. It was provided in the lease that the rent shall be paid from month to month according to the Hindi calendar and that the tenancy was to begin from Baisakh Badi 1, Sambat 1995. Prior to the suit, the plaintiff had served a notice dated 8-12-1944 on the defendant, demanding arrears of rent and also the vacation of the premises. Subsequently another notice was sent on 23-12-1944, in which a certain error in the earlier notice with regard to the real date of the commencement of the lease was sought to be rectified.

2. It may be mentioned at once that, in para 1 of the plaint, the plaintiff had alleged that the monthly tenancy, meaning of course the tenancy at will that had come into existence after the expiry of the period covered by the written lease of 27-4-1938, commenced on the 1st of each Hindi month. This was admitted in the corresponding paragraph of the written statement. There was, therefore, no doubt on the question, and this indeed is the finding of the lower appellate Court also, that the tenancy began on the 1st of each Hindi month.

3. The defence taken was that, although the tenancy alleged by the plaintiff was a fact, there had been no default in payment of rent as the defendant had tried to make such payment in various ways, the same not being accepted by the defendant that the notices given by the plaintiff were invalid and that the defendant was not liable to be ejected in view of the protection afforded by the Defence of India Rules.

4. The trial Court decreed the suit in the terms of the relief on 26-5-1945, holding that the arrears had been proved, that the notices served by, the plaintiff were valid and that the orders of the District Magistrate under the Defence of India Rules did not affect the present suit.

5. On appeal by the defendant, this decree was affirmed by the lower appellate Court, although the learned Civil Judge remarked that the question of the arrears and the question of the defendant's ejectment could be determined only in the execution proceedings. That was on the authority of the case in --'Makhan Lal v. Shankar Lal', 1944 All L W 591 (A), since overruled.

6. The defendant then filed the present second appeal and applied for stay of execution of the decr.se for ejectment, as an application for such execution had been made by the respondent in the trial Court. The prayer for stay was refused. Then the defendant filed an objection to the application

for execution on the ground of Section 14, U.P. (Temporary) Control of Bent & Eviction Act, 3 of 1947. That objection was allowed by the execution Court but disallowed by the lower appellate Court. The connected execution second appeal has arisen out of the order of the latter Court.

7. After the regular second appeal had been filed in this Court, the plaintiff respondent, on 8-7-1948, obtained a permission from the Additional District Magistrate in the following terms :

> "I, therefore, permit Kunwar Sen to file a civil suit for the ejectment of Mohan Lal if necessary and also for the execution of the civil Court's decree for ejectment if required."

8. Considerable argument has turned in this case on the question of the effectiveness of this permission, a matter with which I shall deal hereafter.

9. Mr. S. B. L. Gaur, learned counsel for the defendant-appellant, has raised in the main two points (1) that the aforesaid Act, 3 of 1947, applied to the present case, although it came into force after the suit had been filed & that, therefore, in the absence of a ground mentioned in any one of the various clauses of Section 15 of the Act, there could be no question of ejectment at all and (2) the notices served, by the plaintiff were invalid and for this reason also no decree for ejectment should have been passed.

10. As regards the first point, as we know, the U. P. Act, 3 of 1947, came into force on 1-10-1946, as provided by Section 1(3) of the same, although it was published later on 1-3-1947. The suit giving rise to the appeal had been filed much earlier on 10-1-1945. The argument of the learned counsel for the appellant is that, unless this suit, though filed at a time when the Act was not in existence, satisfied the conditions enjoined by the Act, a decree for ejectment could not be passed. On the face of it the argument appears to be strange, for it is not intelligible how a plaintiff can be refused relief merely because he had not done something prior to his suit, which he had never been required by any law to do, and this only because some law had later on been enacted which required him to do that particular thing. The argument was based on the explicit provisions of Section 3 of the Act. That section no doubt requires the landlord to obtain the permission of the District Magistrate before he files his suit for ejectment. Obviously the section would apply where the suit has to be filed after the Act has come into force. To suits pending on the date of the commencement of the Act, however, the rule contained in Section 15 of the Act would apply. This latter section expressly provides that, in suits pending on the date of the commencement of the Act, no decree for eviction shall be passed except on one or more of the grounds mentioned in Section 3. 'Ex facie', it may be argued that the section, being confined only to the grounds mentioned in Section 3, excludes and has nothing to do with a suit based on grounds other than those mentioned in that section, and it was on this interpretation of Section 15 that the learned counsel for the defendant-appellant argued that the section could not help the plaintiff-respondent who had sued for the defendant's eviction on a ground other than those mentioned in Section 3. Learned counsel for the latter, however, relied on the authority of the Bench decision of this Court in -- 'Raj Narain v. Sita Ram Shri Kishen Das', AIR 1952 All 584 (B), to which I was a party, and contended that the present case is governed by Section 15. In that case Section 15 was interpreted to mean that, where a suit for ejectment on a ground

other than those mentioned in Clauses S (a) to (f) of Section 3 of the said Act, had been filed prior to the commencement of the Act a decree could no doubt be passed if the plaintiff had obtained the permission of the District Magistrate. On this point the following passage occurs in the 'judgment of the Bench :

> "This Amendment Act (44 of 1948) attempts to make it clear that, if any of grounds (a) to (f) exists, then a suit for ejectment of a tenant can be filed, and it is not necessary to go to the District Magistrate for his permission. There being no other provision restricting the right to file suite for ejectment in the U. P. (Temporary) Control of Rent and Eviction Act (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 grounds 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."

11. This view was followed in a later Bench case in --'Manzoor All v. Lal Devi', AIR 1951 All 398 (C). The word 'suits' in Section 15 of the Act, it is now settled, includes appeals, and so far as the present litigation is concerned it would be perfectly correct to say that the suit was pending when the Act in question came into force. There would, therefore, be no difficulty in applying the earlier part of Section 15 of this case. Nor would there be any difficulty in this behalf on the ground that the section, as it reads, confines itself only to 'one or more of the grounds mentioned in Section 3', as in the two cases just mentioned it has been held that the section would apply where the landlord was seeking the tenant's ejectment on a ground outside Claues (a) to (f) of Section 3 and he had been granted a permission by the District Magistrate to obtain such a relief.

12. Mr. S. B. L. Gaur, on behalf of the defendant-appellant, however, contended that the permission in this case, having been obtained by the plaintiff-respondent during the pendency of this appeal and not prior to his filing the suit, cannot stand him under Section 15 of the said Act. He pointed out that the permission relied upon by the landlord in both the cases referred to above had been obtained, prior to the institution and not during the pendency of the suit. That undoubtedly is a fact, but I do not consider that this was the 'ratio decidendi' of the judgments in those cases. In the first place, if the word 'suits' in Section 15 includes 'appeals' as already held by this Court, so that the 'suit' in this case was pending on the date of the commencement of the Act, and if, as held in the two cases mentioned above, a decree for eviction can be passed an such case even on a ground outside Clauses (a) to (f) of Section 3 if the landlord has obtained the permission of the District Magistrate, it must necessarily follow that the permission may be of a date subsequent to the institution of the suit. In the second place, the language of the section itself, unlike that of Section 3, explicitly shows

that the existence of a ground under any one of the aforesaid clauses or, as held in those rulings, of the permission of the District Magistrate is a condition precedent not to the institution of a suit but to the passing of a decree for eviction. In contradistinction to the words "no suit shall without the permission of the District Magistrate, be filed in any civil court" in Section 3, we have in Section 15 the words "no decree for eviction shall be passed". Indeed, the said words in Section 3, would have carried no meaning if repeated in Section 15 of the Act, and the Legislature in the latter section, therefore, only required a certain circumstance to exist before 'a decree for eviction could be passed'. On the bare language of Section 15 that circumstance was the existence of "one or more of the grounds mentioned in Section 3" and, under the two Bench decisions referred to above, it could also be a permission of the District Magistrate on a ground other than those grounds.

13. In support of his contention that the permission of the District Magistrate must precede the filing of the suit learned counsel for the appellant called my; attention to the decision (not yet reported) of a learned Judge of this Court in --'Motilal v. Mahabir Prasad', Second Appeal No, 664 of 1948 D/- 25-1-1951 (All (D). That was a case expressly under Section 3, in which the suit, unlike the present case, had been filed after and not before the commencement of the Act. There was, therefore, no question of applying Section 15 in that r.-ass, and as such the ruling is on the face of it distinguishable. Considering every aspect of the matter I am positively of the opinion that the permission obtained by the plaintiff in this case from the District Magistrate on 3-7-1948 was quite effective to entitle him to a decree.

14. As regards the second point raised by the learned counsel for the appellant relating to the invalidity of the notice the position is much simpler. As already mentioned, both the parties are agreed that the tenancy commenced on the 1st day of each Hindi month. The plaintiff had required the defendant to vacate the premises on the 1st day of the month following the month Sn which the notice was given. As such, the notice expired with the end of the month of the tenancy. As a further precaution the plaintiff had allowed the defendant to vacate the premises on such day of the Hindi Calendar month as the latter himself believed to be the date on which the tenancy expired. In such circumstances, I must hold that the notices given by the plaintiff were perfectly valid. Indeed, in the present context, much of the enthusiasm with which the argument on this point had commenced gradually abated.

15. As regards the execution second appeal, the appellant's objection, as I have already said, was based on Section 14, U. P. Act, 3 of 1947. Having held that Section 15 applied to the case, I cannot possogly hold that Section 14 applied. The failure of the regular second appeal must entail the failure of the execution second appeal.

16. For these reasons, I dismiss both the appeals with costs.

17. Leave to appeal to a Bench is granted.