Kirpashanker Shastri vs L. Banwari Lal And Anr. on 29 March, 1951

Equivalent citations: AIR1952ALL414, AIR 1952 ALLAHABAD 414

JUDGMENT

Mushtaq Ahmad, J.

1. This is a defendants's appeal in a suit for ejectment from a house and for recovery of Rs. 24-4-6 as arrears of rent for & certain period prior to 4-12-1945. There was also a prayer for mesne profits.

2. The plaintiff's case was that the defendant had been his tenant on a monthly rent of Rs. 6.4 6 the tenancy beginning from the 5th of each month. Prior to the suit the plaintiff had, on 25-10-1943, obtained the permission of the Controller to sue for the defendant's ejectment) under Section 14, Meerut House Control Order 1945. He had given a notice to the defendant, terminating the tenancy on 4-12-1945, before he filed the suit.

3. The defence taken was that the plaintiff was not entitled to sue without joining the other co sharer, his own brother, that the rent had been paid up to 5-9-1945, that the rent for the subsequent period bad been sent by money order to the plaintiff who had refused it, the defendant being, therefore, entitled to a set off for Rs. 2-14 0 as money order charges and that the permission obtained by the plaintiff having been given in the defendant's absence was invalid.

4. The trial Court, rejecting this defence, decreed the suit, holding that the permission was valid, that the plaintiff was entitled to Rs. 15 7 0 as arrears of rent at the rate of Rs. 6 4 6, that he was also entitled to future mesne profits at Rs. 6 4 6 from 5-12-1945 and that the defendant was not entitled to Rs. 2-14 0 claimed by him as money order charges. While passing this decree the learned Munsif added a rider in his order that the decree for ejectment shall be executed if and when the conditions of Section 14, House Rent Control Order, Meerut, were satisfied. This condition was presumably on the authority of a Single Judge decision of this Court which was subsequently dissented from by a Division Bench, and we need say nothing more on this point. The lower appellate Court affirmed this decree in its entirety.

5. Pending the suit the defendant bad by an application attempted to get the permission, already granted by the Controller to the plaintiff cancelled on the ground that it had been granted ex parte, without his (defendant's) knowledge. But before an order could be passed by that authority on this application, the learned Munsif had passed his decree on 18-9-1946. Pending the appeal in the lower appellate Court the Controller withdrew the aforesaid permission by an order dated 20-9-1946. The principal question to be considered in this appeal is whether he was competent to pass this later order, withdrawing the earlier one by which he had permitted the plaintiff to sue for the defendant's

ejectment.

6. Learned counsel for the defendant-appellant has strenuously argued that, on the general principle that a Court having jurisdiction to pass a certain order is also competent to cancel or modify the same, the Controller in the present case, on being satisfied that the permission given by him was wrong, was perfectly competent to with-draw that permission. He also relies on the provisions of Order 20, Rule 3, Civil P. C., which enjoin that a judgment once given cannot be altered except under Section 152, or on review, that is to say, except where a clerical slip is later on discovered or when the conditions prescribed by Order 47, Rule 1, Civil P. C., are present. This argument assumes that the proceedings relating to permission before the Controller were essentially of a judicial nature and, therefore, subject to the provisions of the Civil Procedure Code.

7. In the first place there are no rules prescribed for the application for permission to sue for a tenant's ejectment and none relating to the processes to be followed by the Controller in disposing of the same. Nor is there any rule permitting the Controller to review his own permission on any ground, either found to be existing at the time the permission was granted or found to have subsequently come into existence. The position is further complicated in the present case by the fact that after the permission had been granted, the suit was actually filed by the respondent and even decreed by the trial Court on 18-9-1946. And the question would arise whether, after this suit had been filed admittedly in pursuance of the permission already obtained by the respondents, the Controller could still exercise jurisdiction vested in him by law by withdrawing that permission so as to nullify the institution of the suit or even the decree, that was passed in the suit.

8. The Controller not being a 'Court' was surely not subject to the provisions of the Civil Procedure Code. For the same reason the proceedings before him could not be regarded as proceedings of a judicial nature. The only authority exercisable by him was to receive and dispose of an application for permission to eject a tenant. Once such an application had been received and disposed of by him, he ceased to have any concern with the matter and, if the aggrieved party tried to revive the matter before him in a manner involving a reconsideration of an order already passed, he would be invoking a jurisdiction which never existed in law.

9. Learned counsel also relied on a number of cases, particularly of this Court. The first was the case of Mt. Champa Devi v. Mt. Asa Devi, A.I.R. (25) 1958, ALL. 8. There a Court originally passed an order staying a suit and subsequently it recalled that order. A Bench of this Court held that it had inherent jurisdiction to do so. The matter was obviously governed by the provisions of the Code, and, there is no surprise at all if the Bench took this view. Indeed the decision was in perfect conformity to the provisions of Order 20, Rule 8, of the Code.

10. In Laliteshwar Singh v. Ram Kishan Das, 8 ALL. L.J. 698 at p. 701, the following passage on which learned counsel relies appears that it is an elementary principle which is binding on all persons who exercise judicial and quasi judicial powers, that an order should not be made against a man's interest without there being given to him an opportunity of being heard."

The passage itself confines the application of the observation to proceedings of a judicial and quasi-judicial nature. The question, whether the Controller should or should not permit a landlord to sue his tenant for ejectment, is surely not one of a judicial nature, in the sense that no question of rights need be determined by that officer, when deciding whether permission should or should not be granted. The aspect of expediency and public policy would be generally the determining factor and not whether the plaintiff as a proprietor was entitled to exercise his right of immediate possession over the property.

11. In Baijnath Salmi v. Parbin Singh, 1944 ALL, L.J. 478 the point arose with reference to the powers of a Special Judge under the U. P. Encumbered Estates Act. It is not denied that the proceedings before such a Judge are governed by the provisions of the Civil Procedure Code and they must, therefore, be of a judicial nature.

12. Lastly, reliance was placed on the case of Panguluri Ankamma v. Vootla Raghavamma, A.I.R. (85) 1948 Mad. 201. That case raises no point which may be usefully considered in the present case. There the question only was whether a person against whom an adverse order had been passed during his minority was entitled to ask for its cancellation within a certain time, the emphasis being on the lapse of time before the expiry of which alone he could make such a prayer.

18. Before concluding this judgment it is desirable to add that the rider added by the learned Munsif in the decree with regard to the necessity of the conditions of Section 14, House Rent Control Order, Meerut, being satisfied before the decree for ejectment against the defendant was executed, cannot now be endorsed. I would accordingly delete the following words from that decree.

> "The decree for ejectment shall be executed when and If execution Court finds that the provisions of Rent Control Order do not bar eviction."

In view of these considerations I would agree with the lower appellate Court and uphold the decree passed in the plaintiff's favour subject to the modification just mentioned.

Bind Basni Prasad, J.

14. I agree with the order proposed by my learned brother and desire to add a few words.

16. Clause (14), Meerut House Rent Control Order, 1945, made under Rule 81, Defence of India Rules, Provides :

> "No landlord shall evict any tenant from any building and no person shall file a suit in any civil Court for the eviction of any person without the permission in writing of the Controller."

The term "Controller" is defined in Clause (3) of the Order as follows :

> "Controller" means the District Magistrate of Meerut or any person authorised by him in writing to discharge all or any of the functions of the Controller for the whole or any part of the district."

16. In pursuance of Clause (14) the plaintiff-respondent obtained permission of the Controller on 25-10-1945 to eject the defendant-appellant from the house in dispute and acting upon that permission he instituted a suit on 8-12-1945. It appears that the defendant appellant went in revision to the District Magistrate from the order of the Controller granting the permission but it was dismissed on 8.8.1946. The Controller who had originally granted the permission was transferred and his successor then reviewed the order, dated 25-10-1945. He vacated the permission on 20-9-1946. It may be noted that prior to this order the suit instituted in the Court of the learned Munsif was decreed on 18-9-1946.

17. Learned counsel for the appellant has raised the following two points: (1) That the permission granted on 25-10-1945, was wrong in law as it was given behind the back of the defendant and without any notice to him. (2) That even if the permission, dated 25-10-1945, was legally correct the Controller had full power to recall it and, as it was actually recalled on 20-9-1946. it should be deemed that the suit Was instituted without any permission of the Controller as contemplated by Clause (14) of the Order.

18. It is true that the permission was granted to the plaintiff without any notice to the defendant, but a perusal of the Order shows that it was not necessary for the Controller to issue any notice to the tenant. The proceeding held by the Controller in considering whether or not to grant the permission was not of a judicial nature. We are all aware chat prior to these control orders every landlord possessed rights under the Transfer of Property Act for ejectment of tenants. It was felt that the rights of the owners of houses to evict the tenants should be regulated in the interests of the general public and so these control orders were made and a brake was pat upon their rights of ejectment by requiring them first to obtain the permission of the Controller. The Controller was to look only to the comparative convenience of the parties and the interests of the public at large and then to decide whether or not to grant the permission. The order passed by the Controller was purely of an executive nature and the rules of procedure applicable normally to Courts were not to apply to him. Hence although it may have been desirable for the Controller to have sent notice to the tenant before granting the permission, it cannot be said that the order which he passed on 25-10-1945, was illegal or void simply because he had not served any notice on the defendant.

19. It is not necessary for us to go into the general question whether or not a Controller can recall the permission once granted by him. The limited question which arises in the present case is that if permission, has been acted upon and a suit has been instituted on its basis and even a decree has been obtained is it competent for the Controller at that stage to recall the permission. I have no doubt in my mind that he has no such authority. The permission he had granted had spent itself out and if the Controller were given a power to recall the permission at any time it would mean that the Controller can nullify a decree of the civil Court by the mere recall of the permission. Certainly it could never have been the intention that by executive orders the decrees of the civil Courts could be rendered nugatory.

20. Learned counsel for the appellant has invited our attention to the fact that when the proceedings for the recall of the permission were pending before the Controller he requested the learned Munsif to stay the suit. He contends that if, disregarding that request, the learned Munsif proceeded with the salt the effect of the recall of the permission by the Controller was not destroyed . The Controller had no power to ask the civil Court to stay the proceedings and the learned Munsif was right in ignoring that request. The decree passed by the learned Munsif is not rendered ineffective by the recall of the permission by the Controller by his order, dated 20-9-1946.

21. The decree passed by the lower appellate Court is correct.

By the Court.

22. The appeal is dismissed with costs throughout. The following sentence in the operative order of the judgment of the learned Munsif, dated 18-9-1946, is deleted:

> "The decree for ejectment shall be executed when and if the execution Court finds that the provisions of Rent Control Order do not bar eviction."

The stay order is discharged.