

## Shri Prayag Narain Mehrotra vs Dr. Mangha Ram Kalani on 25 January, 1951

**Equivalent citations: AIR1951ALL562, AIR 1951 ALLAHABAD 562**

### JUDGMENT

Misra, J.

1. There is only one question of jurisdiction involved in this revision & that is whether or not the suit was beyond the pecuniary jurisdiction of the trial Ct Munsif South, Lucknow. The prayer was for fixation of reasonable rent of a part of the house known as Rauni Kothi in Lal Bagh, Lucknow, under Section 5 (4), U. P. (Temporary) Control of Rent & Eviction Act III (3) of 1947. The portion in occupation of the pltf Dr. Mangharam Kalani, constitutes approximately two-thirds of the kothi. It was rented to him by the owner, Sri Prag Narain Mehrotra, deft-applicant at Rs. 125/- per month on 1-2-1948. The rent fell in arrears from 1-5-1948. The proprietor sued for recovery of ten months' rent & the tenant instituted this counter suit alleging that the transaction was unfair & proper & reasonable rent of the premises in his occupation should not exceed Rs. 26/- per month. The two suits were tried simultaneously. In the suit under the Control of Rent and Eviction Act, the learned Munsif found that the portion rented to Dr. Kalani was worth only Rs. 40/- p.m. & he made a declaration accordingly. The deft is dissatisfied with the assessment; & seeks to revise the decision under Section 115, C. P. C.

2. It is urged on behalf of the appct that the annual rental value of the house under the contract being admittedly Rs. 1500/- the suit was not triable by the Munsif. The contention is based on the provisions of Section 5(4) of the Act which runs as follows:

"(4) If the landlord or the tenant, as the case may be, claims that annual reasonable rent of any accommodation to which the Act applies, is inadequate or excessive, or if the tenant claims that the agreed 'rent is higher than the annual reasonable rent he may institute a suit for fixation of rent in the Ct of the Munsif having territorial jurisdiction, if the annual rent claimed or payable is Rs. 500/-or less and in the Ct Of the Civil Judge having territorial jurisdiction, if it exceeds Rs. 500/-provided that the Ct shall not vary the agreed rent unless it is satisfied that the transaction was unfair, & in the case of lease for a fixed term made before 1-4-1942, that the term, has expired."

The section contemplates two kinds of suits one by the lessor who is given the right to claim that the proper & reasonable rent of the accommodation exceeds the amount which is paid & the other by the lessee for fixation of a fair rent payable by him. The expression "claimed or payable" is used in the section not with reference to the annual rent for which the accommodation was initially rented

out, but the rent which the owner claims to be the proper rent or which the tenant says is fairly payable by him: Cases where the alleged annual reasonable rent does not exceed Rs. 500 are thus triable by a Munsifs Ct. In the present case, the annual rent payable was according to the pltf's case, Rs. 312 & it follows that the suit was well within the pecuniary jurisdiction of the Court of the Munsif, South Lucknow.

3. The next point urged on pltf's behalf was that the learned Munsif failed to give a finding to the effect that the transaction was unfair & since such a finding is made under Sub-section (4) a condition precedent for determination of rent the decision must be set aside. The argument is unwarranted because the judgment does contain a clear finding on the preliminary point. It says:

"The above two documents undoubtedly show that the charging of rent at the rate of Rs. 125/- per month for a portion which is assessed at Rs. 40/- utmost from the return (end) of April 1948 is definitely unfair and excessive."

4. Two further contentions raised by the applt's learned counsel need not be examined. They are: (i) That the lower Ct was in error in holding that the transaction was unfair, & (ii) that the finding of the learned Munsif regarding the sufficiency of Ct-fee is wrong.

5. There is no defect of jurisdiction in the findings reached by the learned Munsif on these points. I dismiss the appln with costs. The stay order dated 6-12-1950, is vacated.