

## Surendra Nath vs Manik Chand on 12 March, 1954

**Equivalent citations: AIR1954ALL750, AIR 1954 ALLAHABAD 641**

### JUDGMENT

Malik, C.J.

1. This is a plaintiff's appeal. It is admitted that the plaintiff is the owner of the house and the defendant is his tenant. On 22-9-1945, the plaintiff filed a suit No. 282 of 1945 in the court of the Munsif Haveli, Lucknow, for the ejectment of the defendant. The parties entered into a compromise and a decree in terms of the compromise was passed on 31-12-1945. The decree provided that the defendant had agreed to vacate the house on 1-8-1946. The defendant, however, did not vacate the premises and the plaintiff filed an application for execution. The defendant thereupon filed an objection under Section 7, U. P. Ordinance No. 111 of 1946, which had come into force on 1-8-1946, that he could not be ejected from the premises except in accordance with the provisions of that section.

Section 7 provided that no decree for the eviction of a tenant from any accommodation passed before the commencement of the Ordinance shall in so far as it relates to the eviction of such tenant be executed against him as long as the Ordinance remained in force except on any of the grounds mentioned in Section 3 provided that the tenant agreed to pay to the landlord reasonable annual rent or the rent payable by him before the passing of the decree, whichever was higher. On 8-2-1947, the objection was allowed and the execution case was dismissed.

2. On 7-11-1950, the plaintiff obtained from the District Magistrate permission under Section 3, U. P. Temporary Control of Rent and Eviction Act (U. P. Act III of 1947), which had replaced the Ordinance, to file a suit for the ejectment of the tenant and filed suit No. 3 of 1951, after having given the defendant notice to quit. The suit failed as the notice to quit was held to be invalid as it did not end with the date of termination of the tenancy. A third suit, Suit No. 161 /174 of 1952, was then filed after a fresh notice and it was decreed by the trial court. The lower appellate court allowed the defendant's appeal and dismissed the suit on the ground that a suit for ejectment of the defendant did not lie and the plaintiff's only course was now to wait as long as the Act remained in force and apply for execution of the decree in suit No. 282 of 1945 after the Act was repealed. The plaintiff has come up to this Court in second appeal.

3. The only question for consideration in this appeal is whether the suit was maintainable. The learned Civil Judge was of the opinion that no fresh suit could be filed.

4. The scheme of the Act has been discussed by me in several cases. I have pointed out that Section 14 applies to cases where a decree was obtained for ejectment of a tenant before the date of the Act. Such a decree can be executed on one of the grounds mentioned in Section 3 of the Act, Section 15

makes the Act applicable to pending suits and no decree for ejectment can be passed except on one of the grounds mentioned in Section 3 and no suit can be filed after the Act was passed except on one of the grounds mentioned in that section.

5. There is no provision in the Act to stay proceedings and the decree has to be executed within the period of limitation prescribed by Article 182 of the Limitation Act and Section 48 of the Code of Civil Procedure.

6. If, before the period of limitation, for execution of the decree has expired, any one of the grounds mentioned in Section 3 of the Act has come, into existence, the decree-holder can execute his decree for ejectment. If, however, instead of executing the decree, he has filed a fresh suit in the court, which could execute the decree, Section 47, Civil P. C., will apply and the suit may be treated as a proceeding for execution. If, however, the period of limitation for execution of the decree has expired, and the decree has thus become unexecutable, if the relationship of landlord and tenant has continued to exist, there is nothing in law to prevent a landlord from giving fresh notice for ejectment and on the new cause of action file a fresh suit on any of the grounds mentioned in Section 3.

7. It is admitted in this case that the defendant has continued to pay rent and the plaintiff has continued to receive it. It is also admitted that the plaintiff is the owner of the premises and the defendant is his tenant. The mere fact that the previous decree has become inexecutable does not take away the right of the landlord to give a fresh notice for ejectment if any of the grounds mentioned in Section 3 of the U. P. Temporary Control of Rent and Eviction Act has come into existence. If a landlord brings a suit for ejectment and that suit fails on any technical ground it cannot be said that he has no right to file a fresh suit. If the decree for ejectment became inexecutable by reason of the provisions of the U. P. Temporary Control of Rent and Eviction Act there seems to be no reason why a fresh suit should be barred. Even if a landlord has obtained a decree for ejectment against a tenant but for some reason has not ejected the tenant and the relationship of landlord and tenant has continued -- the tenant has continued to pay rent and the landlord to accept it -- a fresh suit for ejectment would lie after due notice giving rise to a fresh cause of action.

8. Reliance has been placed by learned counsel on the proviso to Section 14 of the Act and it is urged that the view that I have taken will make that proviso nugatory. I fail to see why that should be so. The proviso to Section 14 is only for the protection of the landlord and it means that a tenant cannot take advantage of the provisions of Section 14 of the Act unless he agrees to pay to the landlord reasonable annual rent or the rent payable by him before the passing of the decree, whichever is higher. If the tenant gives the undertaking the decree becomes unexecutable, but that does not mean that the landlord has lost all remedy and is not entitled to execute the decree if the period of limitation has not expired, or file a fresh suit, if any of the grounds mentioned in Section 3 has come into existence. To take a contrary view would mean that once the undertaking has been given by the tenant under Section 14 and the decree has become unexecutable the tenant has only to wait and after the decree has become time-barred he can do so as he likes and, even if any of the grounds (a) to (f) or all of them in Section 3 exist, the landlord can do nothing to him. Some of the grounds are

serious from the point of view of the landlord; (a) relates to a case of wilful default in payment of rent, (b) relates to a case of causing substantial damage to the accommodation, (c) relates to a case of addition and alteration made to the building, (d) provides for a case of nuisance, (e) for illegal sub-letting and (f) for renouncing his character as such and denying the title of the landlord. No doubt in this case it is not alleged that any of the grounds (a) to (f) exist but the landlord has obtained from the District Magistrate permission to file a suit, which has been held to be enough to entitle him to maintain it. I am, therefore, of the opinion that the case was correctly decided by the trial court and the decision of the lower court is erroneous and must be set aside.

9. The learned Additional Civil Judge has in his judgment made the following remarks:

"unless the legislature desired that some owners should not get their own houses so long as the Act was in force, inspite of the District Magistrate desiring it, an amendment is long overdue".

I may point out that Judges will do well to confine themselves to the issues before them that call for decision and avoid as far as possible such general remarks. I may further point out that it is not open to the courts to question the policy of the legislature, which represents the sovereign will of the people.

10. The decree of the lower appellate court is set aside and the decree of the trial court is restored. I consider, however, it is a fit case in which the parties should bear their own costs.

11. Leave to appeal is refused.