

Jiwan Singh vs Mazhar Khan on 31 March, 1952

Equivalent citations: AIR1953ALL734, AIR 1953 ALLAHABAD 734

ORDER

P.L. Bhargava, J.

1. This is a revision under Section 115, Civil P. C. and it is directed against the judgment and decree of the City Munsif of Saharanpur, dismissing the suit filed by the applicant, Sardar Jiwan Singh, under Sub-section (4) of Section 5 of the United Provinces (Temporary) Control of Rent and Eviction Act (No. 3 of 1947), against Mazhar Khan, the opposite party. The applicant occupies a house, situate in the city of Saharanpur, of which the opposite party is admittedly the owner. It appears, that the City Magistrate of Saharanpur who, I am told, has been authorised by the District Magistrate of Saharanpur to perform his functions under the Act, allotted the house to the applicant and "ordered him to get the fair rent of the house fixed by a civil Court."

Accordingly, the applicant instituted the suit which has given rise to this revision. The applicant alleged that the house had been assessed by the Municipal Board, Saharanpur, on a monthly rental of Rs. 5/8/-, and that on its basis the reasonable monthly rent works out to Rs. 6/14/- but the opposite party refused to accept the same. The opposite party contested the suit on the ground that the applicant was not his tenant, and that he was in possession of the house as a trespasser. He further alleged that he was not the Sole owner of the house, which also belongs to his mother and sister.

2. The learned Munsif of Saharanpur found that the applicant was not the tenant of the house and as such the suit was not maintainable. In this view of the matter, he dismissed the suit. Accordingly, the applicant has filed this revision.

3. Learned counsel for the applicant has contended that, in the circumstances of the case, it was not open to the opposite party to deny the tenancy but, in my opinion, it was unnecessary to consider the question of tenancy inasmuch as the suit was clearly not maintainable under Sub-section (4) of Section 5, Control of Rent and Eviction Act.

4. Sub-section 4. of Section 5, Control of Rent and Eviction Act is in these terms:

"If the landlord or the tenant, as the case may be, claims that the 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 Court of the Munsif having territorial jurisdiction, if the annual rent claimed or payable is Rs. 500 or less, and in the court

of the Civil Judge having territorial jurisdiction if it exceeds Rs. 500 provided that the court shall not vary the agreed rent unless it is satisfied that the transaction was unfair, and in the case of lease for fixed term made before April 1, 1942, that the term has expired."

5. The present suit has been filed by the applicant, who claimed to be the tenant of the house. Assuming for the sake of argument that the applicant was a tenant, he could institute a suit for fixation of rent, under Sub-section (4) of Section 5, Control of Rent and Eviction Act, on the ground that "the annual reasonable rent" of the house was excessive or that the "agreed rent" was higher than the annual reasonable rent. The applicant, in this case, no doubt stated the Municipal assessment and the monthly reasonable rent worked on its basis; but he did not contend that the reasonable rent so worked out was excessive; nor did he allege that there was any "agreed rent" or that it was higher than the said reasonable rent. In the absence of any such allegation, the present suit did not fall within the purview of Section 5(4) of the Act and as such it could not be maintained.

6. The present suit was a pure and simple Suit for settlement of rent as the opposite party was according to the applicant's allegations, not willing to accept the rent, which was being offered to him by the applicant. According to the provisions contained in the Control of Rent and Eviction Act, except as provided in Section 5 of the Act, the rent payable by a tenant "shall be such as may be agreed upon between the landlord and the tenant." Under Sub-section (2) of Section 5 of the Act where the rent has not been agreed upon or where the case of tenancies continuing from before October 1, 1946, the landlord wishes to enhance the rent agreed upon, he may, by notice in writing fix the annual rent at, or enhance it to, an amount not exceeding the reasonable annual rent, subject to certain provisos.

Sub-section (3) of Section 5 of the Act makes provision for payment of rent where any accommodation is let out without the rent being agreed upon or where the rent agreed upon is enhanced, but in that sub-section there is no provision for the filing of a suit like this. Then follows Sub-section (4) which provides for fixation of rent where the annual reasonable rent is said to be inadequate or excessive or where the agreed rent is higher than the annual reasonable rent and the transaction of rent is unfair. For determination of the reasonable rent in certain cases provision has been made in Section 3A of the Act; but the power to do so has been conferred upon the District Magistrate.

There is no provision in the Control of Rent and Eviction Act for the institution of a suit for settlement or fixation of rent by a Civil Court in cases where the rent has not been agreed upon or fixed or determined in the manner provided in Sections 5 or 3A of the Act. The order of the City Magistrate ordering the applicant to get the fair rent of the house fixed by the Civil Court was, therefore, clearly wrong; and the applicant was wrongly advised to file the present suit, which was clearly not maintainable under Sub-section 4. of Section 5 of the Act.

7. In my opinion, therefore, the present suit was wholly misconceived and it was liable to be dismissed as not maintainable. For the reasons stated above, I hold that the suit was Tightly thrown out. The revision is summarily rejected.