Anandi Prasad vs Pritam Singh on 27 November, 1953

Equivalent citations: AIR1954ALL353, AIR 1954 ALLAHABAD 353

ORDER

Chaturvedi, J.

1. These four revisions arise out of four suits which were brought by the tenants, the landlord in all the cases being the same person, namely, Shri Anandi Prasad. The landlord built certain shops which were ready in October 1949. These shops were allotted to different persons by the Rent Control and Eviction Officer. After the order of allotment, it appears that two of the tenants, namely, Misri Lal and Topan Das, executed rent agreements in favour of Anand Prasad agreeing to pay a rent of Rs. 40/- per month each, for the two snops that had been allotted to them. No such rent agreements appear in the cases of Pritam Singh and Brij Bhushan Lal, but statements were made by their counsel in the court below saying that as an alternative plea, they submitted that the agreed rent ol the shops was Bs. 40/- per month and the same was unfair. In spite of the execution of the sarkhats in two of the cases, applications were made to the Bent Control and Eviction Officer for fixation of rent under Section 3(a) of tne Bent Control and Eviction Act in all the cases. The officer concerned considered some of the circumstances of the case and was of the opinion that annual reasonable rent of these shops was a sum of Es, 4807-, that is, Rs. 40/- per month.

Revisions were filed against this order of the Bent Control and Eviction Officer and the learned District Magistrate modified the order, as he was of the opinion that the rent should be fixed for the shops at the sum of Rs. 30/- per month. The order of the Bent Control and Eviction Officer was passed on the 28th of March 1950 and the order of the learned District Magistrate reducing the rent was passed on the 21st of July 1951. It was after this that the present suits were brought by the tenants on the ground that the annual reasonable rent fixed by the District Magistrate was excessive and should be reduced. In the plaints, as they were originally filed the case of the plaintiffs was that the annual reasonable rent being excessive it should be reduced; and it was nowhere stated that there was any agreed rent between the parties. But during the progress of the suits in two of the cases, as already mentioned, rent agreements were filed, and in the two other suits the counsel for the plaintiffs made statements that the agreed rent may be taken to be Rs. 40/- as an alternative case.

The suits were contested by the defendant landlord and his main contention was that the order of the learned District Magistrate was ultra vires as He had no right to interfere with the order of the Rent Control and Eviction Officer, it was also stated that the agreed rent was not unfair nor were the agreed and reasonable rents excessive. The learned Munsif after going through the facts of the case came to the conclusion that it is the order of the District Magistrate that should prevail because it was not proved in the case that he had delegated his power of fixing the rent under Section 3(a) to the Bent Control and Eviction Officer. The reasonable annual rent, therefore, according to the

learned Munsif, was a sum of Rs. 30/- per month. He then considered whether the reasonable annual rent was excessive and came to the conclusion that even the sum of Rs. 30/- was excessive. On the question as to whether the transaction by which the rent was fixed was unfair, the learned Munsif held that there was a great dearth of accommodation in the district and the tenants are in urgent need of the shops and therefore the transaction must be taken to be unfair. He then considered what the proper rent for these shops should be and came to the conclusion that tile sum of Rs. 20/-per month for each of the shops was the proper rent; he also specified the dates from which this rent was payable.

2. The landlord has now come up in revision against this decision of the learned Munsif.

3. The first point argued by the learned counsel for the applicant landlord was that the tenants could have Drought tne suits either on the ground that the annual reasonable rent was excessive or on the ground that the agreed rent was excessive, and tnat it was not open to them to have included both these assertions in one case. Emphasis is laid on the use of the word 'or' in Sub-section (4) of Section 5 of the Rent Control and Eviction Act. I am unable to accept this contention. If the position is that the agreed rent and the reasonable rent are both excessive, there is no reason for prohibiting the tenant from asserting in one suit that they are both, excessive. The two causes of action can certainly be joined together in the same suit and there is nothing in the provisions of the Rent Control and Eviction Act to prohibit such a joinder of causes of action.

4. The next argument of the learned counsel was that the order of the learned District Magistrate reducing the rent in revision from Rs. 40/-to Rs. 30/- per mensem was without jurisdiction. I do not consider it necessary to decide this point in these revisions as they can be disposed of on the other two grounds that I shall presently consider.

5. The third point that was argued was that there was an agreed rent in each of these cases between the landlord and the tenants and the finding cf the learned Munsif that that rent was unfair is based simply on the fact that there was a great dearth of accommodation and the tenants were in need of the shops and therefore the transaction was unfair. It is urged that this circumstance by itself cannot be taken to be a circumstance proving that the transaction by which the rent was fixed was unfair.

6. The first question that arises in connection with this point is whether there was an agreed rent between the landlord and the different tenants in these cases. I have already stated that two of the tenants who are opposite parties in civil revision Nos. 627 and 628 have actually executed rent agreements in favour of the landlord. One of them is dated the 31st of October, 1949, and the other is dated the 6th of November, 1949. So, there was clearly an agreement of rent in these two cases fixing it at a sum of Rs. 40/- per month for each of the two shops. In the cases out of which civil revisions Nos. 626 and 629 arise it was stated by the learned counsel for the tenants that as an alternative case it may be taken to be that there was an agreed rent at the sum of Rs. 40/- per mensem. The statement certainly was made in a guarded manner but during the trial of the suit it appears from the judgment of the learned Munsif that in each case it was admitted that the agreed rent was Rs. 40/- per mensem. The shops are all similar containing similar accommodation, and before the learned Munsif it was conceded that there was an agreed rent in all these cases. The

defendant-landlord came into witness-box and swore to the fact that there was an agreed rent at the rate of Rs. 40/- per mensem in all these cases.

In view of the admission made before the learned Munsif, and in view of the fact that it was never contended before him that there was any case in which rent was not agreed upon, I have no hesitation in accepting the statement of the landlord that in all these cases the rent was agreed at the sum of Rs. 40/- per mensem. The position, therefore, is that there was an agreed rent fixed at Rs. 40/- per mensem and there was also a reasonable rent fixed by the Rent Control and Eviction Officer at Rs. 40/- per mensem though. the District Magistrate held that Rs. 30/- per mensem was the proper rent.

7. The argument of the learned counsel for the opposite parties is that the tenants came to court on the allegation that the reasonable rent was excessive ana therefore the question whether there was an agreed rent or not and whether that agreed rent was the result of an unfair transaction or not did not arise in these casea at all. His argument is that even if there is an agreed rent but tne tenant does not mention it in the plaint and just comes to court and says that the reasonable rent is excessive, the court can decide whether the reasonable rent is excessive or not; and if it holds that the reasonable rent is excessive then the agreed rent will automatically be reduced to the figure which is found to be the proper rent of the accommodation. I am afraid I do not consider it possible to accept this contention. If there is an agreed rent, then in a suit under Section 5(4) it can only be varied if it is proved that the transaction at which the figure was agreed upon was unfair. It is true that in the case of reasonable rent it need not be shown that the transaction was unfair, for the obvious reason that in a case of that kind there is no transaction between the parties fixing the rent. So no question of the transaction being fair or unfair arises. If there were no agreed rent in these cases then the suits of the tenants could have been decreed according to the findings arrived at by the learned Munsif. But I have found it to be proved in all these cases that there was an agreed rent, and unless this agreed rent is reduced by a court under Section 5(4), it is obviously this rent which will have to be paid, and a decision on the point of the reasonable rent being excessive or not would be infructuous. In a case where there is an agreed rent, and the transaction is not proved to be unfair, there is no point in deciding the question whether the reasonable rent is excessive or not. The learned counsel next contended that in the case of an accommodation constructed after the 30th of June 1946 the District Magistrate can fix the rent, and he says that the amount fixed by the District Magistrate will be the amount that will be payable by the tenant in spite of there being an agreed rent different from the rent fixed by the District Magistrate. This contention also does not appear to be sound. Section 5(1) says that the rent payable by the tenant is the rent which has been agreed upon between the landlord and the tenant. If it is varied by the court in a suit filed under Section 5(4), then it is superseded by the decree of court, and the rent fixed by the court would be the rent payable by the tenant. But the District Magistrate has been given no powers to vary the agreed rent. He can determine the annual reasonable rent under Section 3 (a) in cases to which the Section applies; but that does not have the effect of superseding the agreed rent. In the cases before me, however, the rent had been agreed upon, and therefore the only question is whether that agreed rent could have been reduced by the learned Munsif on the findings that he has arrived at. The question whether the rent fixed by the District Magistrate should be taken to be the annual reasonable rent or that fixed by the Rent Control Officer, does not arise for determination in these cases, as they are

both unenforceable.

8. This leads me to the question whether the agreed rent could be reduced on the ground that the transaction under which it was fixed was an unfair transaction. On this point the learned Munsif has stated that the district of Saharanpur, from where these cases come, borders the State of Punjab and there was a great influx of displaced persons in this district. The landlord had also admitted that Topan Das and Misri Lal tenants were in great need of accommodation. On this ground alone the learned Munsif has held that the transaction fixing the rent was unfair.

On the facts found by the learned Munsif I find it difficult to agree with him in his conclusion that the transactions were proved to be unfair in these cases. It is well known that there is a dearth of accommodation in every town in this State and the bigger the town the greater the dearth of accommodation. If this fact alone were sufficient for proving that the transaction was unfair, then the rent being unfair could be presumed in every case where the agreed rent was higher than the proper or annual reasonable rent; and the imposition of the condition of the transaction being proved to be unfair would be superfluous. It would have been quite enough to say that if the agreed rent was excessive or above the annual reasonable rent, it should be reduced because there would be a presumption that the transaction was unfair in every case on account of the general prevailing conditions in the State. I, therefore, do not think that the mere fact that there was dearth of accommodation and the tenants were in need of it can be sufficient for holding that the transaction by which the rent was fixed was unfair. But I need not consider this question in any detail as in the cases before me it is not possible to say that the tenants accepted the rent for any such reason. They agreed to the rent after obtaining the allotment orders in their favour and could be in no fear of being ejected from the shops if they did not agree to pay Rs. 40/- per mensem each. The allotment orders being there, the landlord could not exercise any undue influence over them. They could easily have the rent determined under Section 3(a), if they thought that the landlord was demanding a high rent. The learned Munsif therefore had no jurisdiction to reduce the agreed rents.

9. For the reasons given above, I allow these revisions, set aside the decrees of the court below and dismiss the suit brought by the tenants. But in view of the circumstances of these cases I direct that the parties shall bear their own costs in both the courts.