

## Moti Lal vs Basant Lal And Anr. on 30 March, 1955

**Equivalent citations: AIR1956ALL175, AIR 1956 ALLAHABAD 175**

### JUDGMENT

H.S. Chaturvedi, J.

1. This is a defendant's appeal arising out of a suit for ejectment and for recovery of rent.
2. Basant Lal and Babu Ram, the two respondents, brought the suit on 3-12-1951, for ejectment of Moti Lal appellant from the shop which had been purchased by the two brothers some time before the suit. It appears that on 22-10-1951, the two brothers (plaintiffs) served a notice on the appellant requiring him to vacate the shop. This notice was served after Basant Lal had obtained the permission of the District Magistrate of Kheri to eject Moti Lal appellant from the shop in question.
- 3.. The title of the plaintiffs to the shop which was in occupation of the defendant as a tenant was not disputed. The only ground upon which the suit was contested was that the permission obtained from the District Magistrate as also the notice served on the defendant were bad in law.
4. The learned Munsif held the notice-which was served upon the appellant Moti Lal was a perfectly valid notice. He also held that the permission obtained by one of the two joint owners from the District Magistrate was a good permission so as to entitled both the brothers the owners of the shop, to maintain the suit.

On these findings the plaintiffs' suit for ejectment and for recovery of Rs. 199/14/- was decreed.

It was also ordered that "the plaintiffs shall get damages at the rate of Rs. 33-3-0 per month from the date of the suit till the date of the ejectment".

5. After the decision of the learned Munsif the matter was taken up in appeal by the tenant. During the pendency of the appeal one of the plaintiffs, i. e. Basant Lal, entered into a compromise with Moti Lal tenant which was filed and . Verified on 11-2-1952. By this compromise Basant Lal agreed to give up his moiety share of the rent due and damages which had been awarded by the learned Munsiff, It was also mentioned in the compromise petition that Basant Lal who was the owner of a moiety share in the shop, did not want to continue the appeal, so far as he was concerned. The compromise referred to other matters also, but it is not necessary to mention them here.

6. The other appellant before the lower appellate Court i.e. Babu Ram, prosecuted the appeal, which was heard and decided by the Civil Judge. The lower appellate Court found that the notice which was served upon the tenant by the plaintiffs was a good and valid notice. It also held that the sanction granted by the District Magistrate in the name of one of the two joint owners was a valid sanction.

Lastly, the Court below held that the compromise entered into between one of the plaintiffs and the tenant did not affect the right of the other plaintiff to eject the tenant from the premises in suit. The decree of the learned Munsif for ejectment of the defendant was confirmed but, in view of the compromise only a decree for half of the arrears of rent and damages in favour of Babu Ram was passed.

7. Dissatisfied with the decision of the lower appellate Court Moti Lal (tenant) has come up in second appeal and the points canvassed in this Court were:

(1) No proper sanction was obtained for the filing of the suit.

(2) The compromise between one of the joint owners and the tenant operated as a waiver of the notice and, therefore, no decree for ejectment could be passed.

8. As regards the first point, it has been contended before me that only Basant Lal had applied to the District Magistrate for sanction to eject the tenant, & as there were two owners of the shop in question the permission should have been obtained by both the owners. This contention has little substance.

The two brothers Basant Lal and Babu Ram were the joint owners of the shop and both of them had served a notice upon the tenant determining the tenancy. They could eject the tenant (Moti Lal) but for the provisions contained in Section 3, U. P. Rent Control and Eviction Act, 1947, which provided that no suit for ejectment could be brought without the previous permission of the District Magistrate.

The only hurdle in the way of the owners of the shop in bringing the suit was the permission of the District Magistrate. Once that permission was obtained, the hurdle was removed and both could bring the suit. It does not matter if the permission was obtained by both or either of them. Once a permission was granted by the District Magistrate it took away the bar imposed by Section 3 and it did not matter whether the District Magistrate granted permission to one or the two joint owners.

Permission to sue having been obtained under Section 3 it will automatically enure not only to the benefit of the person who obtained it but also to the benefit of others who were interested in filing the suit. Moreover, it is manifest that both the plaintiffs are brothers and both of them had served a notice on the tenant to vacate the premises in suit.

Therefore both of them brought the suit to eject the defendant. In these circumstances Basant Lal who obtained the permission, will be deemed to have acted as agent on behalf of the other plaintiff

even though we exclude the theory that they were members of the joint Hindu family. The Courts below were, therefore, quite right in holding that the permission obtained from the District Magistrate by one of the plaintiffs was a good permission to enable both of them to maintain the suit. .

9. The only other "point that remains to be decided is whether Sabu Ram can be prevented from ejecting the appellant on the principle of waiver. This principle is contained in Section 113, T. P. Act, which runs as follows:

"A notice' given under Section 111, Clause (h) is waived, with the express or implied consent of a person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting."

10. Learned counsel for the appellant has argued that in view of the compromise arrived at between the tenant and one of the lessors, namely Basant Lal, there was a waiver of the notice as contemplated by Section 113, T. P. Act. This argument is on the face of it untenable. Under the terms of the compromise between the appellant and Basant Lal the latter agreed to give up the arrears of rent and the claim for damages so far as his share was concerned.

It is significant that in the compromise it was specifically mentioned that the compromise had nothing to do with the right and interest of the other lessor, i.e. Babu Bam. This compromise was arrived at in the lower appellate Court after the suit for ejectment had been decreed by the learned Munsif.

As will appear from the language of Section 113, a waiver can be brought about by the action of the landlord if after determining the tenancy by notice the landlord chooses to accept rent again from the tenant. In such an event under Section 113, T. P. Act, a notice for determination of the lease already given by the landlord to the tenant will be deemed to have been waived. No question of waiver arises after the landlord has brought a suit on the basis of a valid notice given for determination of the lease. After such a suit has been brought, there can be no waiver, though it is always open to a landlord to renew the lease at any time he pleases. I do not therefore think that any question of waiver arises in this case.

There is yet another reason why the plea of waiver is not open to the appellant. It is obvious that the lease of the appellant was determined by the owners of the property, i.e. the two plaintiffs who brought the suit. As the interests of both the lessors were joint, one of the lessors was incompetent either to waive the notice or to renew the lease.

A waiver to be effective and binding must be made by the entire body of joint owners and it is not open to one of the joint owners to waive notice. After the tenancy of the appellant was determined by the two owners, the possession of the appellant was that of a trespasser. If the appellant wanted back his tenancy rights, it could be done only by grant of a fresh lease by the two joint owners. Both the plaintiffs being joint owners, one of them could not create or restore back the lease.

11. Since the tenancy of the appellant was determined by notice by both the owners of the shop, it came to an end. The possession of the appellant was no better than that of a trespasser and this fact was confirmed by the decree of the learned Munsif. The compromise could not and did not change the status of the appellant which was no other than that of a trespasser. One of the co-sharers is quite competent to eject a trespasser even though the other co-sharer does not join. Babu Ram plaintiff could validly continue the appeal and seek ejectment of the appellant.

The learned Civil Judge was, therefore, justified in passing the decree for ejectment as the compromise could not stand in the way of Babu Ram from ejecting a trespasser. The decree passed by the lower appellate Court must be affirmed.

12. There is no substance in the appeal, which is dismissed with costs. The interim order of stay dated 6-9-1954 is hereby vacated.

13. Leave for special appeal is refused.