

## **Makhan Lal Kela And Anr. vs Girdhari Lal And Anr. on 16 July, 1951**

**Equivalent citations: AIR1952ALL421, AIR 1952 ALLAHABAD 421**

### **JUDGMENT**

Bind Basni Prasad, J.

1. This second appeal raises an interesting point of interpretation of the provisions of the U. P. Temporary Control of Rent and Eviction Act, 1947 (hereinafter referred to as "the Act"). The question is :

2. Where a landlord proposes to evict a tenant and a sub-tenant both by a suit, is it sufficient for him to obtain the permission under Section 3 of the Act as against the tenant only or should he obtain such permission as against the tenant and the sub-tenant both !

3. The two Courts below have differed in their answers to this question. The trial Court held that the permission under Section 3 of the Act as against the tenant was sufficient against the sub-tenant also. The learned District Judge took an opposite view and held that without an express permission as against the sub-tenant also, the sub-tenant could not be evicted.

4. The material facts are that the plaintiffs-appellants are the owners of a shop in the city of Aligarh. Several years ago, they let it out to Chandrapal, defendant 1. In 1940, Chandrapal sublet it to Girdhari Lal, defendant 2. The plaintiffs appellants applied to the Town Rationing-Officer for a permission to sue Chandrapal, the tenant, for eviction. Chandrapal contested that application but the Town Rationing Officer granted it. Chandrapal went up in revision to the District Magistrate, but it was dismissed. The plaintiffs then brought a suit on 21-1-1949, for the recovery of Rs. 40, as arrears of rent and for the eviction of Chandrapal and Girdhari Lal both. The claim proceeded ex parte as against Chandrapal, but Girdhari Lal contested it. The only ground of defence with which we are concerned in the present appeal is that the permission obtained as against Chandrapal does not enure as against Girdhari Lal and so he could not be ejected for want of necessary permission under Section 3 of the Act. This contention was repelled by the trial Court and it decreed the suit for Rs. 36-8-0 as arrears of rent and for ejectment. The learned District Judge held that, in the absence of permission to evict Girdhari Lal, the claim for his ejectment could not be decreed against him. He, therefore, dismissed the claim of ejectment as against Girdhari Lal, but upheld the rest of the decree.

5. A perusal of the preamble of the Act will show that it seeks to regulate the relationship between landlords and tenants. The object of the Act is;

"to control the letting and the rent of such accommodation and to prevent the eviction of tenants therefrom."

The Act does not apply where the owner of an accommodation seeks to evict a trespasser or a licenser brings such a suit against the licensee--hence the word "suit" in Section 3 of the Act means suit by a landlord against the tenant. There is an intrinsic indication of this in the section itself. Thus one of the grounds for eviction without permission, according to Clause (a) of the section, is--"that the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlord."

6. This clearly shows that the suit contemplated by that section is by a landlord against a tenant. In other clauses also of that section the word "tenant" appears and the same inference follows. The permission contemplated by that section has to be obtained by the landlord against his tenant and not against a person who is not his tenant. This brings us to the consideration of the question as to what are the meanings of the words "landlord" and "tenant" in this Act. These two terms have been defined in Clauses (c) and (g) of Section 2 as follows:

" 'Landlord' means a person to whom rent is payable by a tenant in respect of any accommodation and includes the agent, attorney, heir or assignee of the landlord and a tenant in relation to his sub-tenant." "Tenant" means the person by whom rent is, or, but for a contract express or implied, would be payable for any accommodation, and includes any person holding or occupying an accommodation as a sub-tenant."

The two definitions must be read together to understand their true implications. From the definition of landlord, it is clear that a tenant-in-chief can be treated as a landlord only in relation to his sub-tenant. This means that where a tenant-in-chief seeks to evict his sub-tenant, he cannot do so without obtaining the permission under Section 3 of the Act except for the grounds enumerated therein. The owner of an accommodation is a landlord in relation to the tenant in-chief only. He is not a landlord in relation to the sub-tenant. There is no privity of contract between the true owner and a sub-tenant. The contract is really between the tenant in-chief and the sub-tenant. A sub-tenant can have no higher rights than those of the tenant-in-chief from whom he derives his title. If the tenant-in-chief becomes liable to eviction under the law, the subtenant cannot be allowed to continue in the accommodation.

7. It is true that in the definition of the word "tenant" it is provided that it includes a sub-tenant, but read in the light of the definition of "landlord", it means that in the various provisions in the Act the word "tenant" should be deemed to include a sub-tenant where the action is taken by a tenant in chief as against the sub-tenant. To avoid a repetition and for the sake of brevity the Act provides that in relation to a sub-tenant, the tenant-in-chief is to be treated as a landlord. Vice versa, the sub-tenant is a tenant only in relation to the tenant-in-chief. I am unable to infer from this provision that a sub-tenant, is a tenant in relation also to the true owner of the accommodation. That being so, Girdhari Lal did not occupy the position of a tenant as against the plaintiffs-appellants and so it was not necessary for them to obtain the permission from the District Magistrate under Section 3 of the Act for his eviction from the shop in dispute.

8. It was argued on behalf of the respondents that the Act is a remedial measure and it must be construed so as to secure the relief contemplated by it. As laid down by their Lordships of the Judicial Committee in *Raghuraj Singh v. Harkishan Das*, 1944 ALL. L.J. 162 (P.C.) the construction must be reasonable. The language of the statute should not be stretched so as to place an interpretation which it does not reasonably admit of. Prior to the enactment of this Act the position was that the rights of a sub-tenant were subordinate to those of the tenant-in-chief. There is nothing in the Act to show that the sub-tenant has been given any rights independent of those of the tenant-in-chief. When Chandrapal has become liable for eviction in the suit by the owners, the sub-tenant, Girdhari Lal, must also submit. How can he continue in the shop when there is no privity of contract between him and the true owners.

9. For the above reasons, I differ from the view taken by the learned District Judge and hold that it was not necessary for the plaintiffs to have obtained the permission under Section 3 of the Act as against the sub-tenant.

10. The appeal is allowed. The decree of the lower appellate Court is modified so as to decree the claim of ejectment as against Girdhari Lal also. The decree of the trial Court is restored. The plaintiffs, appellants will have their costs from Girdhari Lal, respondent, throughout.