

Shyam Sunder Lal And Anr. vs Shagun on 27 November, 1951

Equivalent citations: AIR1953ALL322, AIR 1953 ALLAHABAD 322, AIR 1967 ALLAHABAD 214, 1963 ALL. L. J. 185 ILR (1963) 1 ALL 707, ILR (1963) 1 ALL 707

JUDGMENT

Mushtaq Ahmad, J.

1. This is a defendants' appeal in a suit for ejectment and arrears of rent. The suit was filed on 31-10-1946; when the U. P. Ordinance 3 of 1946 was in force, the relief for ejectment being based on the landlord's own requirement of the house. The defendants, who are father and son, executed a rent note in the plaintiff's favour on 23-1-1941, at a monthly rent of Rs. 4 in respect of the house from which their ejectment was sought by the plaintiff. A notice was sent by the plaintiff to the defendants on 9-9-1946, asking them to quit the house by 22-10-1946, and also to pay the arrears of rent. The relief for ejectment was of course, sought on the basis of this notice and the defendants' refusal to leave the house.

2. The defence taken was that the notice was bad, that the defendants had sent Rs. 23-1-0 after deducting 0-15-0 as cost of repairs to the plaintiff, this amount being the sent for the six months for which the claim had been made, that the amount had not been accepted by the plaintiff, that the defendants had, therefore, not been in default of payment of rent and that the plaintiff's allegation of personal need of the house was untrue.

3. The trial Court, while decreeing the arrears of rent, dismissed the relief for ejectment, putting the costs on the parties themselves. The findings recorded by the Court were that the notice served by the plaintiff was valid, that he did not require the house for his own use and that Rs. 24 were payable to the plaintiff as arrears of rent.

4. On appeal by the plaintiff the relief for ejectment was also allowed, with the result that the entire suit stood decreed. The findings in appeal were that the notice was valid and that the U. P. (Temporary) Control of Rent and Eviction Act, 3 of 1947, was not applicable, as the house lay within the town area of Qaimganj.

5. The only point of substance urged before me by the learned counsel for the defendants-appellants was that, although the Act just mentioned did not apply on the date of the decree of the lower appellate Court, it is applicable now, as the Act has since been extended to the town area of Qaimganj under a notification dated 5-3-1949, published at page 201 of the U. P. (Hindi) Gazette.

6. To begin with, if by reason of this notification the U. P. Act 3 of 1947 is held applicable to the present case, we shall be face to face with a very anomalous situation. That would be that, although none of the provisions of the Act were applicable on the date the suit was filed on 31-10-1946, we would be penalising the plaintiff for not doing something which subsequently came to be enjoined by the Act as a result of the notification just referred to. Such a position is commensurate neither with logic nor the ordinary principles of justice. How can a party be made to suffer for not doing something which the law had never enjoined during the period to which the charge about his failure to do that thing relates? To put the position in a concrete form, there was no such provision on the date of the institution of the suit in the present case as is contained in Section 3 of the Act, requiring the landlord to claim the ejectment of his tenant either on the happening of certain specified events or on any other ground with the permission of the District Magistrate. This provision, so far as the locality in dispute is concerned, came to apply only on 5-3-1949, when the notification referred to above was published. To hold, therefore, that the plaintiff ought to have complied with the rules and restrictions contained in Section 3 even at a time when they never existed in this particular locality would be to insist upon something which was a veritable impossibility. In this view, there was, of course, no defect in the suit filed by the plaintiff-respondent by reason of his having failed to do something before he filed it. The question arose before a learned Judge of this Court in *Rup Lal v. Ram Swarup*, 1950 ALL L. J. 345, and it was there pointed out that in circumstances like these it could not be said that there was any defect in the institution of the suit.

7. The matter of the applicability or otherwise of Section 3 may yet be approached from another stand-point. The enforcement of this section has been specifically enjoined in Section 15 of the Act. That section, however, applies only to suits pending on the date of the commencement of the Act. The date of the commencement of the Act, as held in several cases, must now be taken to be 1-10-1946, in view of the provisions of Section 1 (3) of the Act. The suit in the present case was filed much later on 31-10-1946. It was, therefore, not a suit pending on the date of the commencement of the Act and as such Section 15 of the Act would in terms not apply. If the argument advanced by the learned counsel for the defendants-appellants with regard to the applicability of the Act to this case were accepted, we would be necessarily disregarding the position I have just stated with reference to Section 15 of the Act and inevitably hold that the section is applicable also to cases that were not pending on the date of the commencement of the Act but filed later. Such an interpretation would be contrary to the plain terms of the section. This aspect of the matter also was considered in the case I have already mentioned, and it was definitely held that the fact that the Act might have been extended to a particular locality made the Act applicable to that locality only from the date of such extension and not from the date of its commencement. I am in entire agreement with that view, and I hold that the Act having been extended to the Qaimganj town area after the institution of the suit giving rise to the present appeal, the Act did not apply on the date of its institution and as such there was no bar to an ejectment decree being granted to the plaintiff-respondent.

8. It was also contended by the learned counsel for the defendants-appellants that the suit having been brought at a time when the U. P. Ordinance, 3 of 1946, was in force (this was in force from 1-10-1946 to 31-3-1947) and that the Ordinance having enjoined the permission of the District Magistrate being taken before a suit for ejectment could be filed, the plaintiff should have taken such permission in the present case also. I am not inclined to accept this argument. It may be

mentioned again that the U. P. Act 3 of 1947, was made retrospective from 1-10-1946. This Act took the place of the said Ordinance, with the result that nothing required by the Ordinance could be deemed to be in force from that date, so that, if the applicability of the Act was not otherwise barred, it was the provisions of the Act and not of the Ordinance which could be applied to the present case from 1-10-1946. The Act itself was not applicable as it did not apply to town area and it came for the first time to be applied to the town area in Qaimganj as late as 5-3-1949, when the notification to that effect was published in the Gazette, In these circumstances it is the Act and nothing else which was applicable to the case from the date of this notification. Having already held that, under the notification the Act, by which I mean the provisions of Section 3 of it, came to be applicable for the first time on 5-3-1949, and not earlier, I cannot accept this contention also.

9. For these reasons, I uphold the judgment of the lower appellate Court and dismiss this appeal with costs.

10. Leave to appeal to a Bench is granted.