# Gopalji Maharaj vs Shiam Lal And Ors. on 18 September, 1950

## Equivalent citations: AIR1952ALL125, AIR 1952 ALLAHABAD 125

JUDGMENT

Mushtaq Ahmad, J.

1. This is a plaintiff's appeal in a suit for possession over a shop & some land adjoining the shop & also for recovery of Rs. 962 as arrears of rent trill the date of institution of the salt. A permanent Lease of the said shop and land was granted by the predecessor-in-title of the plaintiff to the defendant on 23-5-1927, at an annual rent of Rs. 150 payable half yearly. The lease provided that, in default of payment of three successive instalments, the lessee would be entitled to re enter upon the property. Admittedly, rent was paid till 31-12-1937, after which the defendant made no payments at all. The suit giving rise to the appeal was filed on 31-5-1944, for the reliefs I have already mentioned.

2. In defence, it was pleaded that the defendant had been dispossessed by the plaintiff in 1937 from a major portion of the adjoining land & that therefore, under what is known as the rule of suspension of payment of rent, the defendant was not liable to pay anything at all. After the written statement had been filed, an application was made by the plaintiff that he might be award-ed at least a proportionate amount as rent for that part of the leased premises which was still in the possession of the defendant.

3. The trial Court, holding that the plaintiff had dispossessed the defendant from a portion of the land, as pleaded by the latter, decreed the suit only for a proportionate amount at the rate of Rs. 60 per year, in all for Rs. 390 dismissing the rest of the claim. On appeals by both the parties, the entire suit was dismissed on the finding that the rule of suspension of rent applied in the present case, and that, therefore, there was no alternative but to dismiss the suit in toto.

4. Learned counsel for the plaintiff-appellant has raised two points in support of his appeal : (1) that the finding of the Courts below that the plaintiff had dispossessed the defendant from a portion of the premises was wrong, and (2) that the principle of suspension of rent did not apply to the facts of this case.

5. On the first question, it would be enough to say that it is purely one of fact, and I am not permitted to re-open it in second appeal.

6. The second question is somewhat one of difficulty in view of the authorities placed by the learned counsel for the parties before me. On behalf of the defendant, the decision of the Judicial Committee in Katyayani Devi v. Udoy Kumar Das, 52 Ind. App. 160: 1925 ALL. L. J. 751 (P. C.), was relied upon in the lower appellate Court, & emphasis is laid before me also on this case in sup-port of the judgment of that Court. Certain cases of the Calcutta High Court, which were referred to in the

judgment under appeal, were also cited on behalf of the defendant-respondent. For the plaintiff-appellant reliance was placed on the Privy Council case in Ram Lall v. Dhirendra Nath, A. I. R. (30) 1943 P. C. 24 as well as on two Madras cases, Suryanarayanaraju v. Rajah of Tekkali, A. I. R. (10) 1923 Mad. 459 and Hanumantha Goundan v. Doraiswami Pillai, A. I. R. (15) 1928 Mad. 380.

7. So far as the Calcutta cases on the one hand and those of Madras on the other are concerned, there is undoubtedly a conflict between the two sets. In the former, it was held that the principle of suspension of rent applied where the lessee was subsequently evicted by the lessor from a portion of the land demised. In the latter, the contrary rule was laid down that in such oases there would be no such principle applicable but that the lessor would be entitled to a proportionate rent, that is, to an amount payable for the portion still in possession of the lessee.

8. I have, therefore, to draw upon the two Privy Council cases, referred to above and see how far, if at all, they help the respective contentions raised in this case. It would be convenient to begin with the later case reported in A. I. R. (30) 1943 P. C. 24 first, as the Judicial Committee in that case have considered the proposition laid down in the earlier case in some detail. This later case was no doubt one in which the lessee bad not been put in possession of a portion of the leased property from the very outset: it was not a case of the lessee's subsequent eviction by the lessor from such a portion. Applying the rule of suspension of rent to the former class of oases in the light of their earlier judgment in 52 Ind. App, 160 (P. C.), their Lordships remarked:

> "The observations of the Board in 62 Ind. App. 160 (P. C. ) have only added to the perplexity since they have in some cases been wrongly taken to lay down that, if the rent is a lamp sum rent, then in all cases of failure to give possession of any part there must be a suspension of the entire rent. They were intended only as showing that on its facts that case raised no question of suspension, even if the course of discussions in Bengal be taken as correct, the question upon which there was no need to embark."

9. This passage is explicit on the point that the mere fact that the rent payable was a lump sum could be no ground for the rule of suspension being enforced in a particular case, and their Lordships made it clear that, if their earlier decision had till then been interpreted differently the interpretation was not right.

10. Their Lordships further pointed out that, where the lessee had been evicted not by the lessor but by some one setting up a paramount title, the mere fact of the rent being a lump sum would present no obstacle to its apportionment, and later they observed that:

> "Where the failure to give possession of a part is due to defeat in the lessor's title, it seems almost absurd that the rule should be any different from that which applies to eviction by title paramount."

That is to say, the rule of suspension of rent was not to be applied also in cases where the lessee's eviction was due to some defect in the lessor's right. Such a case was to be treated at par with a case of the lessee's eviction being due to the assertion of a paramount title. Indeed, their Lordships said:

> "As a matter of broad general principle, the law of India no longer proceeds upon the notion that where a contract is for an entire sum there is a necessity of reason which prevents a party from recovering anything when his full obligations under a special contract have not been discharged."

11. Towards the end of the judgment, their Lordships no doubt confined the rule against suspension of rent, only to the particular facts of that case, which, as I have already said, was one of the lessor's initial failure to put the lessee in possession of a portion of the property and not a case of the lessee's subsequent eviction by the lessor. Their Lordships said that, when such a case arose, the position could then be considered. But they also emphasised that this limitation of the rule against suspension of rent to cases of the lessor's failure to put the lessee in possession of a portion of the leased premises could not be taken to imply that the rule of suspension necessarily applied where the lessee was subsequently evicted by the lessor. These were the words used:

> "Their Lordships must guard themselves from being supposed to assume that bad Sri Nath been ousted from any portion of the land in 1886 it would be open to his successors to set up for the first time in 1931 that the entire rent must be suspended."

12. This means that the specific question, whether the rule of suspension of rent applied in oases where the lessee was subsequently evicted, was really left open, although their Lordships did think it necessary to remark that nothing that they had said in their judgment should be taken to suggest that the rule did actually apply in such a case.

13. I, therefore, consider myself free to decide the question myself. To start with, there seems to be no juridical basis for a distinction between cases in which the lessee was never put in possession of a portion of the leased lands by the lessor and those in which he was subsequently dispossessed by the lessor from that portion, the rent being assumed to be a lump sum in both the classes of oases. The question from its very nature being one of justice, equity and good con-science, I cannot conceive that a different rule should apply where the lessee was subsequently ousted. Even their Lordships of the Privy Council left no doubt on the point towards the end of their judgment in the observation which I have last quoted. In spite of the rent being a Lump sum, in the sense that it is not stated in the lease as being apportionable with reference to particular sections of the leased premises, if it is possible for the Court to determine the proportionate rent of a particular portion, there seems to be no reason why the lessee should not be held liable to pay the same. Any view to the contrary would, in my opinion, be against the elementary rules of justice and equity. I have not been able to discover any rule or principle on which the respondent's contention to the contrary can be entertained for a moment. I, therefore, hold that the lower appellate Court was wrong in disagreeing with the trial Court's view that the plaintiff was entitled to a proportionate amount of the rent.

14. In the present case, the trial Court, on the materials before it, had found that Rs. 60 a year was the proper rent for the portion still in possession of the defendant. The lower appellate Court, though in the view it had taken it was not necessary to say so, did observe that, if an apportionment of the rent was necessary, it would agree with the apportionment made by the learned Munsif. Therefore, on the question of fact as to what was the proper rent for the particular portion, both the

Courts below agreed that Rs. 60 a year was a reasonable amount.

15. So far as the relief for possession is concerned, learned counsel for the plaintiff, appellant has conceded that the decrees of the Courts below were correct.

16. For the reasons given, I modify the decree of the lower appellate Court, so far as the point of the plaintiff being entitled to a proportionate amount of rent is concerned, and restore the decree of the trial Court awarding him a decree, for Rs. 390 as arrears of rent.

17. In the peculiar circumstances of this case, I direct the parties to bear their own costs in all the Courts.

18. Leave to appeal under the Letters Patent is refused.