Bhagwan Dass vs L. Pyare Lal on 21 September, 1954

Equivalent citations: AIR1955ALL19, AIR 1955 ALLAHABAD 19

JUDGMENT

Malik, C.J.

1. This case has been referred to us by a Bench for reconsideration of certain decisions of this Court referred to in the referring order.

2. The facts of the case are that a suit No. 366 of 1944 was filed by the respondent, Pearey Lal, for ejectment of the appellant from house No. 395/417 situate in Kaserat Bazar, Tajganj, Agra, and for arrears of rent due. The suit was decreed on 12-1-1945. The defendant filed an appeal--Civil Appeal No. 35 of 1945--and on 28-1-1946, the lower appellate Court affirmed the decree for ejectment but dismissed the claim for arrears of rent. A rider was added in the decree that the decree-holder will not be entitled to execute the decree for ejectment without the previous sanction of the District Magistrate or the Additional District Magistrate.

This was by reason of the provisions of the Defence of India Rules, Rule 81(2) (bb) (ii), which was as follows:

> "81(2). The Central Government or the Provincial Government, so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order provide-
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> ....
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> (bb) for regulating the letting and sub-letting of any accommodation or class of accommodation, whether residential or non-residential, whether furnished or unfurnished and whether with or without board, and in particular,---

....

(ii) for preventing the eviction of tenants and sub-tenants from such accommodation in specified circumstances and;"

3. The application for execution of the decree was made in January, 1947, but without the sanction of the District Magistrate, and in the execution application it was claimed that the landlord applicant wanted the house for his own 'bona fide' use. On 10-7-1947, however, the decree-holder amended the application for execution and claimed that the tenant had misused the premises and had

brought it to non-residential use by converting it into a 'Bhatti'. On 17-7-1947, the decree-holder obtained the permission of the District Magistrate for the eviction of the tenant. In the meantime the U. P. Control of Rent and Eviction Act (3 of 1947) was passed. It received the assent of the Governor-General on 28-2-1947, arid was published in the U. P. Gazette Extraordinary, dated 1-3-1947. It was, however, provided in the Act that it would be deemed to have come into force on 1-10-1946.

4. An objection was taken to the execution of the decree on the ground that Section 14 of the Act applied and the decree for eviction could not be executed except on one of the grounds mentioned in Section 3. This objection was allowed by the executing Court and the execution application was dismissed. On appeal, however, the lower appellate Court reversed the decision of the executing Court.

5. Two grounds have been urged by learned counsel for the appellant;

1. that the District Magistrate's permission could not be considered to be a 'ground' mentioned in S; 3 of the Act; and

2. that in any case the permission of the District Magistrate should have been obtained before the application for execution was filed.

6. A number of Division Bench cases of this Court were cited before us in all of them the same view was taken and there is no conflict of opinion. The cases cited are -- 'Raj Narain v. Sita Ram', AIR 1952 All 584 (A); -- 'Manzoor Ali Usmani v. Mt. Lal Devi', AIR 1951 All 396 (3); -- 'Sunder Lal v. Mohammad Ishaq', AIR 1954 All 111 (C) and -- 'Mohan Lal v. Lala Kanwar Sen', AIR 1954 All 480 (D).

7. The first point has been considered at some length in -- 'Sunder Lal's case (C)' and it is not, therefore, necessary for us to repeat what has been said there. We agree that the permission of the District Magistrate can be treated as an additional ground for filing a suit for eviction under Section 3 of the Act. If Section 3 is redrafted as suggested in -- 'Sunder Lal's case (C)', ground (g) after the grounds (a) to (f) can be added in these terms:

> "(g) that the permission of the District Magistrate for the eviction of the tenant from the accommodation has been obtained."

In adding it as a ground it cannot be said that we have made any change in the meaning of the section or any substantial change in the language. As was pointed out in -- 'Sunder Lal's case (C)' Section 3, read as a whole, means that if grounds (a) to (f) are there, then a landlord can file a suit for eviction of a tenant, as those grounds were considered by the Legislature to be good grounds which should entitle a landlord to evict his tenant, even though the tenant may be put to hardship by reason of there being dearth of available house-accommodation.

It was also realised that there may be cases where, even though grounds (a) to (f) did not exist, there may be other good grounds for evicting a tenant, the needs of the landlord may be greater and considering everything it may be a fit case where the landlord should not be deprived of the right to eject the tenant. In all such cases, as the Legislature was not able to visualise all possible situations, the residuary power was given to the District Magistrate, in a, fit case, to grant permission. The exercise of this power is now subject to correction in revision by the Commissioner and then by the State Government. It is, therefore, expected that the District Magistrate, before he grants permission to a landlord to evict his tenant, would carefully consider the facts and see that it is a fit case where permission should be granted. It would not amount to straining the language of Section 3, if the right given to the Magistrate in the beginning of the paragraph is put in as a separate clause at the end and the section redrafted as suggested by us above for purposes of interpretation.

In this view, the interpretation of Sections 14 and 15 also becomes simple and all the three Sections, 3, 14 and 15, are brought in line so that the rights of the landlords and the tenants are the same whether the suit is instituted after the Act came into force, or the suit had been instituted before the Act came into force but was pending on that date or whether a decree had been obtained before the Act came into force but had not yet been executed by eviction of the tenant.

8. Bearing this interpretation of Section 3, in mind, if Section 15 is now examined and redrafted as indicated below, there will be, in our view, no difficulty. Section 15 reads as follows: "In all suits for eviction of a tenant from any, accommodation pending on the date of the commencement of this Act, no decree for eviction shall be passed except on one or more of the grounds mentioned in Section 3."

Instead of 'one or more of the grounds mention in Section 3' we may substitute 'grounds (a) to (f) plus ground (g)' as suggested and the section would then include a provision to the effect that a decree for eviction can be passed if the permission of the District Magistrate for the eviction of the tenant from the accommodation has been obtained. The material date, it would appear from Section 15, is the date on which the decree for eviction is passed and the permission, therefore must be obtained before that date. In treating the material date as the date on which the decree for eviction is passed no great innovation can be said to have been introduced by the Legislature.

In pre-emption cases also the Legislature has provided that the right to obtain a decree for preemption must exist on the date of the decree. Section 15 deals with suits previously instituted and it, therefore, provides that a decree for eviction cannot be passed unless the grounds mentioned above exist on the date of the decree. It is the date of the decree, therefore, that is material under Section 15 and not the date of the institution of the suit. Learned counsel has suggested that there is no reason why there should be a difference in the point of time between Ss. 3 and 15, but the difference is not of our making; it has been made by the Legislature itself. While in Section 3 the words are that 'no suit shall,.....

be filed, in Section 15 the words are that 'no decree for eviction shall be passed.'

9. Coming now to Section 14, on redrafting the section in the same way, we get the same result. The relevant portion of Section 14 reads as follows:

> "No decree for the eviction of tenant from any accommodation passed before the date of commencement of this Act shall, in so far as it relates to the eviction of such tenant, be executed against him as long as this Act remains in force, except on any of the grounds mentioned in Section 3."

Instead of the words 'except on any of the grounds mentioned in Section 3' we can easily substitute 'except on any of the following grounds' and re-introduce grounds (a) to (g) mentioned above, so that the section may be complete by itself and it may not be necessary to refer back to Section 3. Reading in that way, the permission of the District Magistrate will be one of the grounds for execution of the decree and the material date will be the date on which the decree is executed by eviction of the "tenant. If, therefore, the permission has been obtained before the tenant has been evicted, the requirements of Section 14 would be deemed to have been satisfied.

10. In -- 'Mohan Lal's case (D)', dealing with the three Sections, 3, 14 and 15, it was said that the words 'to file a suit' in a case where the decree had already been passed before the Act came into force should mean 'to institute proceedings for execution by ejectment of the tenant' and in the case of a suit pending on the date when the Act came into force 'to continue the same'. In the view that we have taken, these observations do not appear to be correct or necessary. While Section 3 provides for the filing of a suit, Section 15 provides for the passing of a decree and Section 14 provides for the execution of a decree by eviction of the tenant. All that we need borrow from Section 3, for the purposes of Sections 14 and 15, are the grounds given in that section and it is not necessary, therefore, to interpret the words 'to file a suit' as including 'to institute proceedings for execution by ejectment of the tenant' or 'to continue the same."

11. We are also of the opinion that Section 14 does not require that the grounds must exist before the application for execution is filed. All that Section 14 requires is that the decree shall not be executed by eviction of the tenant and, therefore, on the date the question of eviction arises, the grounds mentioned in Section 3 must exist. That this would not lead to any hardship, but on the other hand it would be more reasonable and will bring the three sections in line, would be clear from an illustration, e.g., if a decree was passed for ejectment of a tenant on 1-10-1934, and the application for execution had been filed in the year 1945 before the 12 years' period of limitation provided for in Section 48, Civil P. C., had expired and was pending, after the Act came into force on 1-10-1946, the execution proceedings cannot be continued if Section 14 is interpreted in the way suggested by learned counsel for the appellant and it would be necessary for the decree-holder to obtain the permission of the District Magistrate and then file a fresh application for execution, which would clearly be time barred under Section 48 of the Code.

12. In our view, the three sections, 3, 14 and 15, should be read together as regulating the rights and liabilities of the landlord and the tenant which, as far as possible, must be the same under the three sections and in interpreting those sections the wordings of the sections, the scheme of the Act and the object behind it must all be borne in mind. Interpreted that way, permission of the District

Magistrate, for the eviction of a tenant from an accommodation, must be deemed to be one of the grounds mentioned in Section 3 of the Act and under Section 14 the tenant shall not be evicted from the accommodation unless the sanction of the District Magistrate has been obtained before his eviction and under Section 15 a decree for eviction shall not be passed unless the permission has been obtained before the date of the decree,

13. The appeal has, therefore, no force and is dismissed with costs.

14. The stay order is discharged.