

Pahlad Das vs Ganga Saran And Ors. on 7 September, 1951

Equivalent citations: AIR1952ALL32, AIR 1952 ALLAHABAD 32

JUDGMENT

Mushtaq Ahmad, J.

1. This is a defendant's appeal in a suit for ejectment and arrears of rent in respect of a shop. On 24-1947. the plaintiff obtained permission from the District Magistrate under Section 3, U. P. Rent Control and Eviction Act, III [8] of 1947, and filed a suit for ejectment against the defendant, being Suit no. 723 of 1947. The suit was decreed for arrears of rent but dismissed for ejectment on the ground that the notice served on the defendant was invalid. Then the plaintiffs served another notice on the defendant dated 3-12-1947, and brought the suit giving rise to the present appeal. The defence taken was that the notice was invalid, that no permission had been obtained in respect of the suit and that the defendant has not been guilty of wilful default in payment of the rent, an allegation on which permission had been obtained by the plaintiffs before the earlier suit. The trial Court dismissed the suit, holding that it did not lie in the absence of a permission specifically obtained to file it, that the notice was bad, and that the defendant was not guilty of any wilful default. The lower appellate Court reversed this decree on the findings that no fresh permission was necessary and that the notice served by the plaintiffs was valid. There was no finding by the learned civil Judge on the question of the defendant's default.

2. Only two points have been urged by the learned counsel for the defendant-appellant before me (1) that, in the absence of a fresh permission to file the suit giving rise to this appeal, it was not maintainable and (2) that the period fixed in the notice for the defendant to vacate not being a period expiring with the end of the tenancy, the notice was bad in law. On the first question, I have been referred by the learned counsel for the plaintiffs-respondents to a decision of this Court in Chotey Lal v. Shea Shankar, A. I. R. (38) 1951 ALL. 478. In that case a suit for ejectment had been filed in pursuance of a permission obtained by the plaintiff from the District Magistrate. The suit was, however, withdrawn. Then, after issuing a fresh notice but without obtaining a fresh permission, a fresh suit for ejectment was filed. It was contended that the suit did not lie for want of such permission. But the contention was repelled on the ground that permission having once been obtained by the plaintiffs to eject the defendant from the premises, the cause of action in the later suit for the same relief was virtually the same and that, therefore, want of a fresh permission was not fatal to the maintainability of the later suit. As a matter of principle also, I do not think that a fresh permission in a case like this can be reasonably insisted upon. The only question with which the District Magistrate is concerned, when approached by the landlord to allow him to sue a tenant for ejectment, is whether, in view of all the circumstances of the situation, such permission can be properly granted. The District Magistrate having in this case granted a permission, it would be

presumed that those circumstances existed. The relief for ejectment in the earlier suit was disallowed by the decree dated 29-11-1947. A fresh notice was served by the plaintiffs on the defendant on 3 12 1947 and the later suit was filed on 7-1-1948. It is nobody's case that, during this interval between the dismissal of the earlier suit for ejectment and the institution of the later suit, circumstances had altered which might have changed the attitude of the District Magistrate and that officer might possibly have refused permission, if approached again, before the second suit was filed. The permission after all was to eject the defendant. It did not matter whether the object was to be achieved by filing suit No. 1 Suit No. 2 or Suit No. 3 of such and such year. The object in view could be sought to be achieved by the plaintiff filing a second suit, if the suit first filed had for some or other reason proved infructuous. I, therefore, see no substance in the argument of the learned counsel for the appellant.

3. As regards the question of the validity of the notice, the argument was that it did not expire with the end of the tenancy. The notice had required the defendant to vacate the house on 26th of the month or on any date on which the defendant considered that his tenancy expired. This obviously made it permissible for the defendant to vacate the premises immediately after the expiry of the month of his tenancy. In that sense, surely the notice was perfectly valid. A point precisely like this arose before a learned Judge of this Court in *Ganga Prasad v. Prem Kunwar*, A. I. E. (36) 1949 ALL. 173 in which the notice had required the tenant to vacate "on 18-5-1944 or on such date as your then current month of tenancy will end." It was held that the notice was good.

4. For these reasons, I do not see any force in this appeal, and I, therefore, dismiss it with costs. Permission to appeal to a Bench is granted.