

Mahabir Prasad vs Kewal Krishna And Ors. on 27 November, 1952

Equivalent citations: AIR1953ALL441, AIR 1953 ALLAHABAD 441

JUDGMENT

Brij Mohan Lall, J.

1. This is a second appeal by a plaintiff against a decree of the learned second Civil Judge of Kanpur who has affirmed a decree of the learned city Munsif of that place. The latter had dismissed the appellant's suit with costs.

2. It appears that the appellant was the tenant of a house. One Gaya Prasad made an application to the House Allotment Officer of Kanpur praying that the house which was in the occupation of the appellant be allotted to him. On that petition the appellant made an endorsement to the effect that he would vacate the house on 30-11-1951. One Kewal Krishna, who was also anxious to get a house for himself, appeared on the scene and he too made an application for the allotment of the said house to him.

When the appellant came to know of Kewal Krishna's application, he intimated to the House Allotment Officer that he did not intend to vacate the house. The result was that the said officer rejected both the applications. Thereafter the appellant left the house and put Gaya Prasad in possession thereof in the first week of December 1951. Gaya Prasad made another application to the House Allotment Officer so that the house might be allotted to him formally. Kewal Krishna again put in appearance and made an application for the allotment of the said house. The allotment was made in favour of Kewal Krishna.

3. It was, in these circumstances, that the appellant brought the suit, which has given rise to this second appeal, for an injunction to restrain Kewal Krishna from taking possession of the house. His contention was that he had not vacated the house and therefore the House Allotment Officer had no right to make any allotment whatsoever. The findings of the Courts below, as already stated, are that the appellant had actually gone out of the house and had no intention of coming back to it. The contention put forward on behalf of the appellant is that since he had given no notice to the landlord determining the tenancy and since he continued liable to him for the payment of rent he had not 'vacated' the said house.

4. It is true that the House Allotment Officer's power to pass an order of allotment arises when the house falls 'vacant'. But the word 'vacant' does not mean that the tenancy should determine. Had it been the intention of the Legislature that the power of allotment should be exercised only after the determination of the tenancy, it would have said so in clear terms. The word 'vacant', as used in the

U. P. Temporary Control of Rent and- Eviction Act (3 of 1947) means that the tenant should have ceased to occupy the accommodation with the intention of not coming back to it again. If these conditions are satisfied, the house becomes 'vacant' irrespective of the fact whether the tenant's liability to the landlord for payment of rent has ceased or not. Since the findings in the present case are that the appellant had ceased to occupy the house and had no intention of coming back to it, the house had actually fallen 'vacant, and the House Allotment Officer had jurisdiction to pass the order which he did.

5. The propriety of the order passed by the House Allotment Officer cannot be gone into in these proceedings. It is not for this Court to say as to whether Kewal Krishna had a better right or Gaya Prasad. That was a matter within the jurisdiction of the House Allotment Officer.

6. In the circumstances, I find no force in this second appeal. It is dismissed under Order 41, Rule 11, C. P. C.