

Chotey Lal vs Sheo Shankar on 1 May, 1950

Equivalent citations: AIR1951ALL478, AIR 1951 ALLAHABAD 478

JUDGMENT

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for ejectment and for arrears of rent.
2. The defendant-appellant was a tenant of a certain shop belonging to the plaintiff-respondent in Urdu Bazar in the city of Gorakhpur. It was a month to month tenancy. The plaintiff-respondent applied to the Town Rationing Officer who seems to have been authorised by the District Magistrate to act under the Control of Rent and Eviction Act, III [3] of 1947, for permission to sue the defendant-appellant for his ejectment from the shop. It is not clear on what ground the permission was sought. There is one application on the record dated 30-4-1948, in which the ground for ejectment mentioned that the defendant-appellant had damaged the wall of the shop. Learned counsel for the plaintiff-respondent asserts that there was another application in which he had alleged that he wanted the shop for his own business. However, that may be, the Town Rationing Officer granted permission to sue the defendant, appellant for his ejectment by an order dated 8-5-1948. There is another order dated 22-5-1948, in which also the Town Rationing Officer had granted the same permission. There appears to have been a further order dated 18-6-1948, in which the permission already granted was again confirmed.
3. The plaintiff-respondent then gave notice for the ejectment of the defendant appellant and after the expiry of the time of the notice he filed a suit on 22-10-1948, for the ejectment of the defendant-appellant. This was Suit No. 760 of 1948. It appears, however, that the plaintiff-respondent accepted rent after he had given notice to the defendant-appellant and he considered that this acceptance of rent may be a bar to his success in the suit. He, therefore,, applied for the withdrawal of the suit with permission to file a fresh suit on the same cause of action. This permission was granted on 26-1-1949, and the suit was withdrawn. Then on. 31-1-1949, a fresh notice was given to the defendant-appellant asking him to vacate the shop. The defendant-appellant not having vacated the shop, the suit which has given rise to the present appeal was filed on 17-3-1949.
4. In the plaint the grounds given in support of the plaintiff's claim entitling him to eject the defendant were that defendant I had damaged the leased premises and further that the plaintiff wanted the shop for himself and that he had obtained the permission of the Town Rationing Officer for the ejectment of the defendant-appellant.
5. The defence to the suit inter alia was that the defendant had not damaged the shop and that the permission obtained by the plaintiff was of no avail.

6. The trial Court held that the shop had not been damaged and that the permission obtained by the plaintiff had come to an end with the withdrawal of the previous suit and could no longer be availed of in the present suit. He, therefore, dismissed the suit for ejectment but, granted a decree for arrears of rent. Against this decree the plaintiff appealed to the lower appellate Court. That Court found that the permission granted was sufficient to entitle the plaintiff to eject the defendant-appellant. It did not record any finding on the question of damage alleged to have been caused to the shop. In the result the suit was decreed for ejectment as well. The defendant has now come up to this Court in Second Appeal.

7. In this Second Appeal three points have been urged before me.

8. The first point urged is that the permission in the case having been granted by the Town Rationing Officer and not by the District Magistrate as required by Section 3 of the Control of Rent and Eviction Act, III [3] of 1947, is of no use.

9. Section 2 (d) defines a District Magistrate as "including an officer authorised by the District Magistrate to perform any of his functions under this Act." Section 3 says :

"No suit shall, without the permission of the District Magistrate, be filed in any civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds."

10. It is urged that this section does not cast upon the District Magistrate any function to be performed under this Act and reference in this connection is made to Section 3A where the District Magistrate is authorised to determine the reasonable annual rent and to Sections 7 and 7 A which cast upon the District Magistrate other functions.

11. It is true that Section 3 does not, in so many words, authorise the District Magistrate to give permission to sue for the ejectment of a tenant but there can be no doubt that the section has that effect. It is under this section that the District Magistrate derives jurisdiction to entertain an application for permission to sue a tenant for ejectment and the District Magistrate is empowered to determine that application. This duty can be delegated by the District Magistrate to the Town Rationing Officer. The permission of the Town Rationing Officer will be the permission of the District Magistrate within the meaning of Section 3 of the Act.

12. The next point urged is that the permission granted in the present case was a permission upon one of the grounds mentioned in Section 3, namely, ground (c) and it is urged that such a permission is of no value and the ground upon which the permission was granted has to be proved in the civil Court.

13. Now Section 3 empowers a landlord to file a Suit for the eviction of any tenant if he can be ejected under the contract of tenancy, provided the landlord does one of two things : (a) He obtains a permission of the District Magistrate to sue the tenant for ejectment, or (b) he proves that any of the grounds (a) to (f) mentioned in Section 3 exists. If a permission has been granted by the District

Magistrate and if under the contract of tenancy a landlord is entitled to sue the defendant for the ejectment it is wholly immaterial on what ground the District Magistrate has granted the permission. The Civil Court will not go into the question whether the District Magistrate was justified in granting the permission or not. The permission granted by the District Magistrate removes the obstacle from the path of a landlord in enforcing a right which was his under the contract. It is, therefore, not necessary for the plaintiff, who relies upon the permission of the District Magistrate to prove that any of the grounds mentioned in Section 3 exists even though the District Magistrate may have granted the permission on one of those grounds. There is therefore, no force in this contention.

14. Lastly it is urged that the permission granted by the Town Rationing Office had exhausted itself when the previous suit was withdrawn or rather by the acceptance of rent by the plaintiff after the notice for ejectment had been once given by him. It is urged that the acceptance of rent creates a fresh tenancy. In the present case it no doubt appears from the record that the plaintiff accepted rent after he had given the notice to quit before filing the previous suit. It does not, however, appear for what period the rent was accepted. Therefore the mere acceptance of rent after the giving of the notice will not be material. Under Section 111, Clause (h), T. P. Act a lease of immovable property determines :

"On the expiration of a notice to determine the lease or to quit, or of intention to quit the property leased, only given by one party to the other."

Notice to quit was given in this case before 22-10-1948. Section 113 lays down :

"A notice given Under Section 111, Clause (h) is waived with the express or implied consent of the person to whom it is given, by any act, on the part of the person giving it, showing an intention to treat the lease as subsisting."

Illustration (a) to the section shows that in order that acceptance of rent may amount to a waiver of the notice the rent accepted must be for a period after the notice.

15. In the present case there is no proof that rent for a period after the notice was given was accepted.

16. Learned counsel then urged that since a second notice to quit was given his case fell under Illus. (b). That, no doubt, is true. Therefore there was a waiver of the first notice to quit. The effect of a notice to quit Under Section 113, and I may add, of a waiver of forfeiture Under Section 112 is that the determination of the lease under Clauses (g) and (h) of Section 111 does not take effect, because it is waived and the previous tenancy continues as before. The tenancy that runs after the waiver is not a fresh tenancy but is the same old tenancy that existed before the events mentioned in Clauses (g) and (h) of Section 111 happened.

17. In this respect the position of 'holding over' Under Section 116 is different. Under the doctrine of 'holding over', the previous tenancy is actually determined and thereafter fresh tenancy is by

operation of law, on account of certain conduct of the parties, presumed to have come into existence. There is no fresh tenancy under the operation of Sections 112 and 113.

18. In this view of the matter, the mere fact that a second notice to quit is given when the first notice is found defective or is waived does not affect the permission which had been granted by the District Magistrate or the Town Rationing Officer unless, of course, the permission was conditional and the condition is broken. In the present case the permission was an unconditional one. It was to sue the tenant for ejectment i. e., for the determination of a particular tenancy. As the cause of action for the present suit is the determination of the very same tenancy in respect of which the permission was granted, the permission is in full force and has not exhausted itself by anything that has happened before the institution of the suit.

19. In my opinion the learned Judge of the Court below took a correct view of the law.

20. There is no force in this appeal and, I dismiss it with costs.