Keshawdas Wadhumal Advani vs Murtaza Ali Khan on 10 May, 1951

Equivalent citations: AIR1953ALL82, AIR 1953 ALLAHABAD 82

Author: Ghulam Hasan

Bench: Ghulam Hasan

ORDER

Ghulam Hasan, J.

1. These are two revisions under Section 115, Civil P. C., and arise out of proceedings for fixation of rent under the U. P. Temporary Control of Rent and Eviction Act (Act 3 of 1947). The former is a revision by the plaintiff and the latter by the defendant.

2. The plaintiff, Dr. Keshodas Wadhumal Advani, according to the plaint allegations, is a displaced person from Sind, Western Pakistan and is a bona fide registered refugee in Lucknow. He needed accommodation for his residence and for his family members and relations. The defendant, Syed Murtaza Ali Khan is the owner of house styled as Crown Gate, No. 2393, Jagat Narain Road, Lucknow. The plaintiff took a portion of this house consisting of 8 rooms with necessary quarters on 14th February 1948, at a rent of Rs. 170 per mensem and gave cheque of Rs. 900 in advance. He paid this rent to the defendant for nearly 15 months upto 12th May 1949. The defendant told him that Rs. 170 per mensem was the monthly reasonable rent of the portion proposed to be let out to him, but he was unaware of the real rent and took the house on Rs. 170 p.m. as he was in sore need of accommodation. According to the plaintiff, the annual reasonable rent for 8 rooms was Rs. 600 per annum, as shown by the Municipal assessment record, and as he had taken only 7 rooms, the rent would be Rs. 48-12-0 per mensem, but since the house needed repairs, the rent should be fixed at Rs. 40 per mensem (see para, 6 of the plaint).

In para. 7 the plaintiff alleged that RS. 170 per mensem was very excessive and the transaction was very unfair. He accordingly sued for fixation of annual reasonable rent at Rs. 40 per mensem under Section 5 Sub-clause (4) of the Act. He also prayed that for purposes of rent the tenancy should be fixed from 14th February 1948.

3. The suit was brought on lath August 1949-. The short defence to the suit was that the house was constructed in 1947 and completed in April 1947. It was let out to one Pratap Singh on Rs. 175 per mensem in May 1947. The plaintiff' willingly agreed to take the house on RS. 170 per mensem, which he paid up to 12th May 1949, but later refused to pay and caused damage to the house. The defendant further stated that the plaintiff divided the house into four portions and sub-let three of them to three persons on Rs. 50 each and occupied the remaining portion himself. It was alleged

that the newly constructed house was assessed by the Municipal Board for the first time on a total monthly rent of Rs. 170. It was pleaded that the rent agreed upon between the parties was reasonable and the plaintiff was not entitled to any abatement of rent.

4. Two main issues were framed by the Court:

> "1. Wag the house in suit constructed in 1947 and completed in April 47, as alleged by the defendant ?
>
> 2. Whether the transaction was unfair and the rent fixed excessive as alleged in para. 7 of the plaint ? If so, its effect ?"

No objection was raised to the frame of the issues and no other issues were pressed for.

5. The Munsif, North Lucknow (Mr. Om Pra-kash Srivastava) in a lengthy judgment found the first issue in the negative and the second in the affirmative. He accepted the plaintiff's claim and fixed the rent at Rs. 40 per mensem, but confined the operation of the order from the date of the suit and not from the date of the tenancy. The defendant has preferred a revision against the abatement of rent and the plaintiff against the order confining the relief to the date of the suit. Both the revisions have been heard together.

6. The judgment of the Munsif suffers from the defect of being prolix and verbose and a bare perusal shows a lack of intelligent appreciation of the controversy between the parties. It is to be regretted that a case which otherwise was so simple has been sought to be made complicated by the Munsif by indulging in irrelevant matters and by not concentrating on the real controversy in the case.

7. Section 5 (4) reads thus :

> "If the landlord or the tenant, as the case may be, claims that the annual reasonable rent of any accommodation to which the Act applies, is inadequate or excessive, or if the tenant claims that the agreed rent is higher than the annual reasonable rent he may institute a suit for fixation of rent in the Court of the Munsif having territorial jurisdiction, if the annual rent claimed or payable is Rs. 500 or less, and in the Court of the Civil Judge having territorial jurisdiction if it exceeds Rs. 500 provided that the Court shall not vary the agreed rent unless it is satisfied that the transaction was unfair, and in the case of lease for fixed term made before 1-4-1942, that the term has expired."

It is obvious from a plain reading of the sub-section that it contemplates two kinds of suits. The first case is when the annual reasonable rent is inadequate from the point of view of the landlord, or excessive from the point of view of the tenant, and the second case is where there is an agreed rent, but the tenant claims that it is higher than the annual reasonable rent. In the two classes of cases contemplated by the sub-section, the right is given to the landlord and the tenant to institute a suit for fixation of rent and it is only in the latter case that the Court cannot vary the agreed rent in

favour of the tenant unless it is satisfied that the transaction was unfair. Para, graphs 6 and 7 of the plaint which have been referred to above leave no manner of doubt that the simple case laid in the plaint is a case of reduction of the agreed rent from Rs. 170 per mensem to Rs. 40 per mensem on the ground that the transaction is unfair. This aspect of the matter requires to be emphasised because of the confusion which has resulted from the failure to distinguish between the two classes of cases mentioned in Sub-section (4).

8. Section 2, Sub-section (e) defines 'Municipal assessment' as the annual rental value assessed by the Municipal Board in force on 1-4-1942, in respect of accommodation which was assessed on or before such date and the first assessment made after 1-4-1942, in respect of accommodation which was assessed for the first time after such date. Section 2, Sub-section (f) defines 'reasonable annual rent' in the case of accommodation constructed before 1-7-1946 :

> (1) If separately assesssed to municipal assessment, such assessment plus 25 per cent. thereon. . . The rest of the definition is not relevant for our purposes. The plaint did not challenge the annual rental value assessed by the Municipal Board, in other words the annual reasonable rent assessed by the Board, and the case, therefore, did not fall within the first portion of Sub-section (4). It clearly fell within the second portion because the agreed rent was alleged to be higher than the annual reasonable rent and it was sought to be varied because the transaction was unfair. Keeping this distinction clearly in view it follows that the Munsif had no jurisdiction to examine the correctness or the propriety of the assessment by the Municipal Board and all that the Court was required to do was to determine whether the transaction was unfair.

9. The judgment, however, contains an elaborate discussion about the propriety of the assessment and proceeds on the erroneous basis that that assessment being of no value, the earlier assessment of Rs. 600 per annum was the correct assessment upon which the case should be decided. This error in assuming jurisdiction has permeated the entire finding in the case.

10. It may be mentioned that according to the defendant, the previous tenant, Pratap Singh, was paying Rs. 175 per mensem for the same building. He defaulted and a suit was filed against him (see plaint EX. A-10) and an ex parte decree was passed at the rate of Rs. 170 per mensem (see EX. A-11). The Munsif has discounted the value of this decree by a curious process of reasoning. He says "the said decree was passed on an ex parte scale against the previous tenant. As such it cannot be said that the rent agreed with the previous tenant was at Rs. 175 per mensem as alleged and the previous tenant agreed to that rate."

This remark is made without reference to any allegation or evidence on the record. Pratap Singh was not produced to rebut the allegation that he paid Rs. 175 per mensem and no attempt was made to show that he was not traceable.

11. In considering the question whether the transaction was unfair, the Munsif referred to four grounds mentioned by the plaintiff presumably in the course of arguments. The first of these is, that

the agreed rent was in excess of the annual reasonable rent on the basis of the assessment made in 1940. Exhibit 1 is the assessment of April 1940. It shows that the proposed assessment was at Rs. 300 per annum, but it was reduced upon appeal by the defendant to Rs. 180. The Munsif is wrong in thinking that the assessment was at Rs. 300 per annum and in not taking into consideration the result of the appeal. Exhibit 3 is the assessment of April 1948. The proposed assessment at Rs. 600 per annum is in respect of property No. 2393 garages, kothries on back and garden with open land and occupied by self, namely the defendant. It is this assessment which has been accepted as correct and final by the Munsif but the grave error into which the Munsif has fallen is to ignore the distinction between two portions of the building, one, the old portion occupied by the defendant and the other the new portion which was rented to the plaintiff. It will appear that on 16-3-1948, the defendant wrote to the Municipal Board stating in reply to the proposed assessment of Rs. 600, that the whole building was not self-occupied, that a portion of it which was originally intended for his own convenience as now let out by him to the Sindh Refugees on Rs. 170 per mensem. The letter also stated that four families will live in the rented portion, three of whom will pay Rs. 50 per mensem and the fourth will pay Rs. 20 per mensem. The defendant emphasised that besides this income of Rs. 170 per mensem, the other portion of the building did not yield any income which was liable to assessment. He asked the Municipal Board to make a note of this fact in the Municipal records. The only mistake which the defendant was guilty of was that he thought that the self-occupied portion was not liable to any assessment. Whether this was due to ignorance or not need not be considered.

12. Turning to EX. 3 again we find that the proposed assessment of Rs. 600 on appeal is shown as Rs. 2040 which shows Rs. 600,600, 600 and 240 against four separate tenements. This variation is completely ignored by the Munsif in the same way as he had ignored in EX. 1. This, however, does not conclude the matter because the question of the self-occupied portion still remains to be settled. Accordingly we find in EX. A2, a letter of the Municipal Board, dated 14-4-1950, addressed to the defendant that the Assessment Committee after hearing him personally on 28-3-1949, had ordered that the portions of the building let out to (1) Dr. Keshodas, (2) to his brother, (3) Lala Kimat Ram and (4) to the brother of Lala Kimat Ram, be assessed on annual rental value of Rs. 170 in four tenements of Rs. 50, Rs. 50, Rs. 50 and Rs. 20 only. This decision of the Assessment Committee was final unless and until it was altered by a competent authority. In the same letter the Municipal Board pointed out that the portions of the building in the occupation of the defendant and his ladies were not assessed at all by the Assessment Committee due to mistake and that necessary steps were being taken to assess those portions from April 1948. Exhibit A6 is Resolution No. 42 of 28-3-1948 of the Assessment Revision Committee showing that the building was assessed on Rs. 170 per mensem in four tenements. After considering these documents the Munsif observes as follows :

> "Exhibit 3, remarks column, shows that the assessment of the house in suit was first made at Rs. 600 per annum i. e., Rs. 50 per mensem hut was later increased Co Rs. 170 per mensem on appeal made by the defendant, vide foresaid Resolution No. 42 dated 28-3-1948. I have, therefore, no doubt in ray mind that the said assessment of Rs. 170 per mensem was made by the Municipal Board on the representation and at the instance and direction of the defendant himself and that the same was done on unilateral evidence and sole representation of the defendant alone without making

> proper enquiries in the matter. As such the assessment rate from Rs. 50 per mensem to Rs. 170 per mensem for the same building was really excessive and unfair. It was made so purely due to the influence, representation and direction of the defendant in this connection."

This finding of the Munsif besides being beyond his competence was clearly erroneous and plainly suggests that the defendant deliberately, in order to raise the value of his property, prevailed upon the Municipal Board to assess it at Rs. 170 per mensem although it should not have been assessed to more than Rs. 50 per mensem. This is an impossible finding. There was no suggestion, much less evidence on the record, that any influence was brought to bear upon the Municipal Board to assess the defendant's property for more than it was worth. No question was put to the Municipal officials who gave evidence on the point.

13. At another place the Munsif goes on to say that "the assessment of the house at Rs. 170 per mensem and the rent at the same rate on the basis of this assessment was really excessive and unjustifiable. I, therefore, come to the conclusion that the former assessment made in 1948 was a true and reliable assessment."

This finding is repeated in more or less similar words. The Munsif concludes that the rent of Rs. 170 per mensem was excessive and unconscionable. The Munsif was not called, upon to decide whether the rent was excessive and unconscionable. All that he had to do was to see whether the transaction, was unfair, but he goes on to say that "this excessive rent would itself be sufficient to show that the transaction of rent was unfair."

14. The second ground urged by the plaintiff was that the defendant took undue advantage of the plight and the needs of the plaintiff and the plaintiff by paying Rs. 900 as advance to the defendant submitted to the extortionate demand of the defendant. This ground is pat briefly by the Munsif in the following words: "As such the transaction was induced by undue influence and pressure put upon the plaintiff by the landlord."

The third ground is that the defendant was guilty of misrepresentation and fraud inasmuch as he told the plaintiff that the monthly reasonable rent was Rs. 170. Although at one place in the judgment the Munsif says that this case cannot be decided with reference to Section 16 or Section 19A, Contract Act, yet he goes on at another (dace to consider the pleas of undue influence, misrepresentation and fraud as vitiating the transaction and making it unfair. The finding of the Munsif on this part of the case is equally interesting. He says :

> "In the present case, as already held above, the rate of rent was excessive and the bargain was, therefore, hard and unconscionable. As such it will be sufficient to presume that there was undue influence."

At another place he goes on to say that the plaintiff being a respectable man, who had migrated from his home, stood in dire need of accommodation and there being shortage of housing accommodation, he had no doubt in his mind that "the defendant was safely in a position to

dominate the will of the plaintiff who was in bodily and mental distress in those days." The use of these expressions and the manner in which the finding is arrived at show that the Munsif did not understand the implications of his words and failed to apply a judicial mind to the question before him.

15. As regards the misrepresentation, he says that the defendant did not specifically deny the allegation and it was, therefore, proved. The plaint nowhere uses the word "misrepresentation." Para 4 of the plaint which refers to the ignorance of the plaintiff of the annual reasonable rent and his dire need, was not admitted by the defendant, and yet by invoking the provisions of R. 5 of Order 8 the Munsif took it to be admitted by necessary implication.

16. The fourth ground was that the plaintiff was required under the terras to pay house and water-tax in addition to the agreed rent. This term was urged as being hard and unconscionable. There was an Urdu agreement written between the parties, but this was not produced by the defendant. The Munsif thinks "the probabilities are and the presumption would be made to the effect that the terms must have been hard and unconscionable, as alleged, and the transaction of rent must have been of a shaky nature and, therefore, the defendant withheld the Urdu agreement which he was bound to produce in support of his contention that the agreed transaction of rent was fair and conscionable." It is difficult to see how the condition to charge house and water-tax. from a tenant renders the contract hard and unconscionable. It is not an invariable rule that the taxes are paid by the landlord. That is a matter of contract between the parties. Admittedly the taxes have not been paid by the plaintiff on the basis of Rs. 170 per mensem.

17. The final finding of the Munsif is as follows: "I have, therefore, no doubt in my mind that the defendant has not come to the Court with clean hands. His conduct is such that the transaction of rent from the very beginning looks shaky, uncivil and unconscionable.

> "I, therefore, hold that the transaction of rent was unfair and the rent fixed was excessive as alleged by the plaintiff and decide the first part of this issue in the affirmative."

The Munaif erroneously disregarded the evidence afforded by A-10 and A-11 which showed that Pratap Singh, the previous tenant was paying Rs. 175 p. m. for the portion let out to the plaintiff.

18. His finding, though a finding of fact, has been reached upon an erroneous basis by questioning the municipal assessment of 1948 which the Munsif had no jurisdiction to do. Such a finding being beyond the powers of the Munsif cannot be accepted as binding on this Court. The finding, therefore, (is?) set aside. The plaintiff failed to discharge the burden of issue laid upon him and his suit for abatement of the agreed rent cannot be decreed. In this view it is unnecessary to consider the other issue whether tbe building was constructed before or after 1946 and what would be the annual reasonable rent under Section 6 of the Act.

19. I accordingly hold that the plaintiff has not succeeded in establishing that the transaction was unfair and his suit was wrongly decreed. The defendant's revision No. 256 of 1950 is allowed and the

suit of the plaintiff is dismissed with costs in both the Courts. The plaintiff's revision No. 230 of 1950 is dismissed with costs.