

Raj Bahadur vs Babu Ram on 12 September, 1951

Equivalent citations: AIR1953ALL593, AIR 1953 ALLAHABAD 593

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. The applicant, Raj Bahadur, filed a suit in the Court of the Munsif, Kasganj, under Section 5(4), Control of Rent and Eviction Act, 3 of 1947, alleging that the rent agreed upon between him and the landlord was higher than the annual reasonable rent, the agreed rent being Rs. 960/- per annum at Rs. 80/- a month and the annual reasonable rent being Rs. 156/- at Rs. 13/- a month. The Munsif dismissed the suit holding that the house in suit was constructed after 1-10-1946 and that in view of Section 3A of U.P. Act 3 of 1947 no reasonable annual rent could be said to be fixed with respect to the house, as the District Magistrate had not fixed any rent under that section. He did not, therefore, consider any other fact which would have been necessary to consider if he was going to give relief under Section 5(4).

2. The applicant has filed this revision. Two points are urged. One is that the view of the learned Munsif about the necessity of the applicant's first going to the District Magistrate for fixing the annual rent under Section 3A is wrong, and the other is that the Munsif had no jurisdiction over this suit as the annual rent was Rs. 960/-, much above Rs. 500/- upto which valuation the Munsif could have jurisdiction under Section 5(4) of the Act. I do not agree with both these contentions.

3. It was necessary for the success of the applicant's case that he should prove that the agreed rent of Rs. 80/- a month was higher than the annual reasonable rent. "Reasonable annual rent" is defined in Section 2, Clause (f) with respect to accommodation constructed before 1-7-1946. Section 3A of the Act provides for the fixation of the reasonable annual rent by the District Magistrate in case of an accommodation constructed after 30-6-1946. In the absence of any such fixation of the reasonable annual rent by the District Magistrate the civil Court cannot take any amount as being the reasonable annual rent. The mere fact that in deciding the case under Section 5(4) of the Act the civil Court will have to take the same facts into consideration in view of Section 6(1) (b) of the Act as the District Magistrate has to take into consideration in view of Section 3A, Sub-section (2), cl. (a) does not mean that the civil Court can first fix the annual rent, taking into consideration what is mentioned in Section 6, then call it a reasonable annual rent, then decide that the agreed rent is higher than such rent and lastly decide to fix the same rent as the annual rent. I am, therefore, of opinion that the learned Munsif was right in coming to the conclusion that the applicant had failed

to establish what the reasonable annual rent for this house was.

4. On the second point that the Munsif had no jurisdiction, the argument is that jurisdiction is to be determined according to the annual rent which is agreed upon between the parties. The case of -- 'Prayag Narain v. Dr. Mangha Ram', AIR 1951 All 562 (A), is against this view and I respectfully agree with the view expressed in that case. If the contention for the applicant be correct, it would mean that the expression "if the annual rent claimed or payable" in Section 5(4) of the Act is identical with the expression "if the reasonable annual rent or the agreed rent." If it was so, I am of opinion that the latter expression would have been more appropriately used in the section, as the amount of the reasonable annual rent or the agreed rent which must be expressly stated by the plaintiff would have been a definite sum.

5. The section contemplates suit by landlord for fixation of rent on the allegation that the annual reasonable rent is inadequate. He cannot charge rent in excess of reasonable annual rent. He has, therefore, to allege in his plaint what rent he claims as adequate rent. Forum for such a suit will be determined according to the rent claimed. If it was to be determined on the basis of reasonable annual rent, the expression "reasonable annual rent" would have been used for the expression "rent claimed." Reasonable annual rent cannot be the rent claimed. Landlord cannot sue if the rent has been fixed by agreement.

6. The tenant can sue in two cases: firstly when the annual reasonable rent is said to be excessive and secondly when the agreed rent is said to be higher than annual reasonable rent. Forum for his suit is to be determined according to the annual rent payable. The agreed rent may be said to be the rent payable, till the Court fixes the annual rent, but the annual reasonable rent cannot be said to be rent payable when no rent is agreed upon and in that case, therefore, forum will have to be determined from the amount alleged by tenant to be payable as fair rent. The alleged amount should, therefore, be taken to be contemplated by the words "annual rent payable" in the case of a suit on the ground that agreed rent is higher than annual reasonable rent.

7. It follows, therefore, that when the applicant alleged that the proper monthly rent was Rs. 13/- a month, the annual rent worked out to Rs. 156/- and that, therefore, the Munsif had jurisdiction over the case.

8. In view of the above, I reject this application.