

## Badri Narain Lal vs Ramji Lal And Anr. on 27 July, 1953

**Equivalent citations: AIR1954ALL49, AIR 1954 ALLAHABAD 49**

### JUDGMENT

Malik, C.J.

1. These are two connected appeals. Second appeal No. 323 of 1946 has been filed against the decree passed by the lower Court in a suit for ejectment and for certain other reliefs, while the connected appeal,--execution of decree appeal No. 21 of 1947--has been filed against the order passed in execution proceedings dismissing an objection under Section 47, Civil P. C., by the judgment-debtor.

2. Learned Counsel for the respondent raised a preliminary objection that the second appeal is incompetent. The trial Court had decreed the suit filed by the plaintiff but had directed the plaintiff to pay the costs incurred by defendant No. 2 and to pay in addition a sum of Rs. 25/- as compensatory costs. The defendants had submitted to the decree, but the plaintiff had filed an appeal against the portion of the decree directing him to pay costs and in addition compensatory costs. The appeal was allowed and the lower appellate Court set aside the order of the trial Court awarding costs and compensatory costs to defendant No. 2, against the plaintiff. The defendants have filed an appeal now really not against the order passed by the lower appellate Court but against the order passed by the trial Court decreeing the suit for ejectment. The appeal is clearly incompetent. The decree for ejectment passed by the trial Court had become final, and it cannot be challenged in second appeal when the defendants did not appeal to the lower appellate Court. This appeal, therefore, fails and is dismissed with costs.

3. As regards the second execution of decree appeal, after the decree for ejectment was passed an Ordinance -- (U. P. Ordinance No. III of 1946) -- was passed, Clause 7 of which is as follows:

"No decree for the eviction of a tenant from any accommodation passed before the date of commencement of this Ordinance shall in so far as it relates to the eviction of such tenant, be executed against him as long as this Ordinance remains in force, except on any of the grounds mentioned in Section 3, provided that the tenant agrees to pay to the landlord 'reasonable annual rent' or the rent payable by him before the passing of the decree, whichever is higher."

This Ordinance has now been replaced by an Act -- The U. P. Control of Rent and Eviction Act -- (U. P. Act No. 3 of 1947), Section 14 of which is exactly in similar terms. When the decree-holder filed an application for execution of the decree and claimed ejectment of the defendant, an objection under Section 47, Civil P. C., was filed on behalf of the judgment-debtor on 16-11-1946. The judgment-debtor relied on Clause 7 of the Ordinance and urged that in view of the provisions of that clause he was no longer liable to ejectment. The executing Court dismissed the objection and an

appeal was filed against his order before the learned District Judge who, however dismissed the appeal on 23-7-1947. The learned District Judge rejected all other contentions of the decree-holder but based his decision on one finding that the tenant was liable to ejectment for contravention of Clause 3 (d) of the Ordinance inasmuch as he had allowed a marriage party to stay in the premises for a period of two days. The learned Judge held that the judgment-debtor "had no business to allow a marriage party to stay in the house even if it was a question of couple of days", and he thought that this user was inconsistent with the purpose for which the accommodation had been rented to him. In the earlier part of the judgment the learned Judge came to the conclusion that the premises had been let out to the defendant for purpose of residence and for a school.

4. On behalf of the appellant, learned counsel has urged that the building having been let out for human habitation, the fact that the marriage party was allowed to stay for two days was not inconsistent with the purpose for which was (the?) building had been let out. Learned counsel has relied on certain observations of their Lordships of the Judicial Committee in -- 'U P. O. Naing v. Burma Oil Co. Ltd.', AIR 1929 PC 108 (A) in which they interpreted Section 108(c), Transfer of Property Act, and said that the provisions must be liberally interpreted. On behalf of the respondent, however, reliance is placed on -- 'Hobson v. Tulloch', (1898) 1 Ch 424 (B) in which case a house given for private residence was used for a boarding house and it was held that it was inconsistent with the agreement that no trade or business would be carried on on the premises. Neither of these two rulings are of much assistance to us. It is the usual practice in villages in this State that on occasions of marriages etc., in the village the 'barat' party is put up in a public building like a school building if the school is closed at the time. The learned Judge has recorded a finding that the stay of the barat party in the building for two days did not cause any damage to the building. In the circumstances, we do not think that the use of the building for a couple of days for putting up a marriage party could be said to be so inconsistent with the purpose for which the house had been let out to the defendant as to entitle the landlord to put an end to the tenancy.

5. Learned counsel for the respondent has, however, urged that even under Clause 7 of the Ordinance, and now under Section 14 of the Act, the judgment-debtor could resist the execution of the decree provided he agreed to pay to the landlord the reasonable annual rent or the rent payable by him, whichever is higher and in the case before us the judgment-debtor not having given any Such undertaking in the executing court when he filed the objection under Section 47 of the Code he could not rely on Clause 7 or Section 14. Clause 7 quoted above, read with the proviso means that where the ejectment is not on any of the grounds mentioned in Section 3, a tenant shall not be ejected in execution of a decree for ejectment provided he agrees to pay to the landlord reasonable annual rent or the rent payable by him before the passing of the decree whichever is higher. In other words, if the decree for ejectment is on any of the grounds mentioned in Section 3 the decree can be executed and the tenant ejected, but if the decree for ejectment has been passed on any other ground then also the decree can be executed and the tenant ejected unless he is willing to pay to the landlord reasonable annual rent or the agreed rent whichever is higher.

We have looked into the objection filed by the judgment-debtor. No undertaking as regards liability to pay rent or reasonable rent was given in that objection. In the grounds of appeal before the lower Appellate Court, however it was said that the tenant was always willing to pay the rent. No mention,

however was made that the tenant was willing to pay the reasonable annual rent. In this Court a clear ground was taken to the effect that the judgment-debtor was willing to pay the reasonable annual rent or the rent payable by him before the passing of the decree, whichever was higher. The same undertaking has also been repeated at the Bar by learned counsel for the appellant, Chaudhary Niamatullah. Learned counsel for the appellant has urged that his client was always anxious to continue the tenancy and to pay the reasonable rent and if the undertaking was not given at the earliest opportunity it was because of a mistake made by learned counsel who did not carefully read the clause at the time he filed the objection.

6. On behalf of the respondent, an objection is taken that it is too late now to give the undertaking; the undertaking should have been given at the earliest opportunity, at any rate in the executing Court. We have already quoted the terms of Clause 7 of the Ordinance and it provides that if the decree relates to the eviction of a tenant such a decree shall not be executed against him provided he agrees to give the undertaking. The execution proceedings have not yet terminated, nor has the judgment-debtor been ejected. An order has merely been passed that the decree shall be executed and the tenant shall be ejected. As the clause is worded there seems to be no bar to the tenant giving now the undertaking mentioned in the clause. The provisions in this clause are for the benefit of the judgment-debtor and the proviso has been put in to safeguard the interest of the landlord. The undertaking given by learned counsel would to our minds fulfil the intention of the legislature.

7. Under the circumstances we consider that the undertaking given by Chaudhary Niamatullah on behalf of the appellant that he agrees to pay to the landlord the reasonable annual rent or the rent payable by him before the passing of the decree, whichever is higher should be accepted. We, therefore, accept the undertaking and direct that the tenant shall not be evicted in execution of the decree passed against him.

8. The appeal is therefore allowed. Inasmuch as no clear undertaking was given either in the trial Court or in the lower appellate court, we consider that this is a fit case in which the appellant should pay the costs of the respondent in all the courts. Learned counsel for the respondent has mentioned that there is some money in deposit in this Court. The money shall be handed over to the learned counsel for the respondent.