

# Mohammad Hasan And Ors. vs Bachai Ram on 10 November, 1955

**Equivalent citations: AIR1956ALL203, AIR 1956 ALLAHABAD 203**

## JUDGMENT

Kidwai, J.

1. This is a suit instituted by the respondent for ejectment of the appellants from a building which had been leased by the respondent's predecessor to the predecessor of the appellants. The lease was executed on 15-10-1940 and was to continue for a period of ten years, the rent reserved being Rs. 35/- per annum for the first three years and Rs. 30/- per annum for the remaining seven years.

On 13-8-1950 the plaintiff gave a notice calling upon the defendants-appellants to vacate the house but the defendants-appellants did not do so. On 30-10-1950 the plaintiff again sent a registered notice asking the defendants to pay up the arrears of rent from January 1950 and to vacate the house since the lease had determined but this also led to no result. The period of time allowed for vacating the house was up to 15-5-1951.

On 4-5-1951 the plaintiff-respondent again gave a notice to the appellants to pay the arrears within one week and to vacate the house. The appellants failed to pay the arrears and also failed to vacate the house.

2. The suit, out of which this appeal arises, was instituted on 29-5-1951 for arrears of rent as well as for the eviction of the defendants-appellants. The defendants pleaded that they had already paid the rent in advance inasmuch as they had lent to the plaintiff a sum of Rs. 50/- which was to be adjusted towards the rent.

The trial Court rejected this defence and held that the plaintiff was not entitled to evict the defendants inasmuch as there was no wilful default within the meaning of Section 3 of Act 3 of 1947. The plaintiff appealed to the Court of the District Judge of Partapgarh and the defendants filed cross-objections objecting to the finding that the rent was due from the appellants.

The learned Additional civil Judge of Partapgarh who disposed of the appeal and the cross-objections held that the appellants were liable to be evicted from the house inasmuch as they had not paid the arrears of rent within one month of the demand having been made. He accordingly allowed the appeal and directed the eviction of the appellants.

He dismissed the cross-objections and held that the decree for Rs. 30/-, arrears of rent, must be maintained. The defendants have come up in second appeal to this Court.

3. It has been contended before me on the one hand that accepting the finding of the Courts below that the rent for the year 1950 had not been paid, the rent became due on 31-12-1950 since that was the last date on which the lease expired. On the other hand it has been contended for the respondent that the lease expired on 15-10-1950, that date being the termination of the period of ten years from 15-10-1940.

It was, therefore, urged that the demand made by the plaintiff by his notice dated 30-10-1950 was a valid demand since the rent for the year terminating on 15-10-1950 was due. The failure of the defendants to pay this arrear within a month entitled the plaintiff to claim eviction of the defendants from the premises.

It was further contended by the learned counsel for the plaintiff-respondent that no notice under Section 106, Transfer of Property Act, was necessary in this case because the period of time fixed for the lease had determined and the defendants were not persons who could be said to be persons holding over within the meaning of Section 116 of the Transfer of Property Act.

4. The material question is when the lease determined and when the plaintiff became entitled to sue for the rent. No doubt the lease Ex. 1 was executed on 15-10-1940 and rent for ten years from that date was due. It would, therefore, expire on 15-10-1950.

We have, however, the statement of P. W. 3 Bechai Ram, who is the plaintiff himself, to the effect that "subsequent to the execution of the lease the defendants paid the rent for two and a half months and it was agreed that in future the rent year will be from January to December." Therefore it appears that by a subsequent agreement which was arrived at on payment of two and a half months rent the lease year was altered from one beginning on the 15th of October to one beginning on the 1st of January each year.

The agreement which evidences the lease as well as the oral statement of the plaintiff in the witness box indicates that the lease was from year to year and that the rent was payable for the year and not from month to month.

5. There is no evidence on record either in the agreement or in the oral statement of the plaintiff in Court as a witness to indicate at what period of time during the year the rent was payable. That being so, it must be held on the basis of the decision of their Lordships of the Privy Council reported in -- 'Rangayya Appa Rao v. Bobba Sriramulu', 31 Ind App 17 (PC) (A) that the rent was payable at the close of the period in respect of which it is to be paid, although this is not necessarily always the case and must depend upon express contract or custom or special circumstances of any case.

In the present case no custom or express contract or special circumstances had been pleaded which might make it appear that the rent was payable at any period of time except the last date of the year for which it becomes due.

6. In this view of the case it must be held that no rent was due on 30-10-1950 and that, therefore, the notice issued by the plaintiff on that date for the payment of arrears within one month was a wholly

infructuous notice. Rent having become due on 31-12-1950, the only notice that was given after this date was the notice of 4-5-1951.

It allowed only one week's time for the payment of the arrears. It must be held in accordance with the decision of a Division Bench of this Court reported in -- 'Smt. Baddey v. Shrimati Mahadevi', 1954 All LJ 35 (B) that the notice was not defective because the time allowed was less than the statutory period. Nevertheless the suit cannot succeed because it has been laid down in the same case that in law the tenant must have a full period of one month before he can be sued for eviction.

In the case to which reference has been made although the notice only allowed 15 days for the payment of the rent, the suit was not instituted till after the expiry of more than a month after the date of the notice. In the present case the suit was instituted within one month from the date of the notice. The suit in so far as it related to eviction could not, therefore, have been decreed.

7. The result, therefore, is that I allow the appeal to this extent that I set aside the decree for ejectment passed against the appellants but the decree for the payment of arrears of rent to the extent of Rs. 30/- shall stand. Parties will bear" their own costs of all the Courts.

8. Mr. Akhtar Husain prays that the sum of Rs. 200/- in deposit in the lower court in pursuance of the order of stay be paid over to him.

The learned counsel for the respondent, after consulting his client, states that he has no objection to this order being passed. Let the sum of Rs. 200/- deposited in pursuance of the order of stay passed by this Court be paid over to the appellants.