Sm. Narain Devi vs Hakim Mohd. Amin And Anr. on 12 March, 1954

Equivalent citations: AIR1955ALL259, AIR 1955 ALLAHABAD 259

JUDGMENT

Malik, C.J.

1. The plaintiff purchased a house situate at Lucknow on 13-1-1945. Hakim Abdul Hasib was a tenant of this house and had been, paying rent at the rate of Rs. 65/- plus the Municipal taxes to the vendor. After the purchase, Hakim Abdul Hasib paid rent to the plaintiff.

2. On 15-10-1946 the plaintiff gave a notice under Section 5 (2), U. P. Control of Rent and Eviction Act, that the rent was enhanced and it would be payable at the rate of Rs. 81/4/- per month. The defendant agreed to pay the rent at the enhanced rate.

3. In 1947 the plaintiff made an application to the District Magistrate for permission to file a suit for ejectment of the defendant. On 11-8-1947 permission was granted, but with respect to only a "portion of the house. The plaintiff thereupon made a fresh application and wanted permission to eject the defendant from the whole house. On 20-3-1948 permission was granted in these terms:

> "I, therefore, hold that the applicant should by mutual agreement or some other ways be able to adjust with this present tenant and pull on until a suitable accommodation is available to the tenant. I allow 3 months' time to find out accommodation after which the applicant will be at liberty to take ejectment proceedings for vacation of the whole house."

The suit for ejectment was filed on 16-12-1948. The plaintiff had also claimed arrears of rent from September 1946.

4. The trial Court decreed the suit for ejectment and granted a decree for arrears of rent, but reduced the amount claimed by the plaintiff. The plaintiff and the defendant both filed appeals in the lower appellate Court. The lower appellate Court, however, dismissed the plaintiff's appeal and allowed the defendant's appeal with the result that the whole suit failed and was dismissed. These two second appeals were thereafter filed by the plaintiff in this Court.

5. Two points have been raised. Firstly whether the plaintiff could rely on the permission granted on 20-3-1948 or was it necessary for her to further prove that one of the grounds given in Section 3, Clauses (a) to (f) existed before she could obtain a decree? The lower appellate Court held that the District Magistrate could grant permission only if one of the grounds mentioned in Clauses (a) to (f),

U. P. Control of Kent and Eviction Act (Act III of 1947), existed. This view had been taken by a learned single Judge of this Court in -- 'Bhagat Singh Bugga and Co. v. Mrs. Gangotri Devi': AIR, 1949 Oudh, 11 (A), but it has been dissented from in a series of decisions of this Court. I need only mention some of the recent cases on the point: -- 'Raj Narain v. Sita Ram', AIR 1952 All 584 (B); --r 'Ghanshyamdas Bagat and another v. Gulab Chand AIR 1952 All 624 (C), judgment of Shankar Saran and Bind Basni Prasad JJ. -- Karam, Chand Thapar and Bros. Ltd., v. Dr. Vijay Anand', AIR 1952 All 699 (D), judgment of Bind Basni Prasad and Gurtu JJ.-- 'R. N. Seth v. Girja Shankar Srivastava', AIR 1952 All 819 (E), judgment of Harish Chandra and Chandiramani JJ., and -- 'Mannu Lal v. Chakradliar', (AIR 1952 All 859 (F)), judgment of Aganvala J. and myself.

As a matter of fact the legislature had intervened and had by subsequent amendment (U. P. Act XLIV of 1948, Section 10) made it clear that the District Magistrate was not confined to any of the grounds (a) to (f) of Section 3 (1) and if the District Magistrate had granted permission to file a suit the landlord could institute a suit for ejectment even though none of the grounds (a) to (D existed. In view of these decisions and the provisions of Section 10 of the Amending Act a recent single Judge decision of in -- 'Nan v. Zamindar', AIR 1954 All 587 (G), cannot be followed. The view taken by the lower appellate Court was, therefore, wrong and must be set aside. The plaintiff having obtained permission from the District Magistrate, as required by Section 3 of the Act, a suit, for ejectment on her behalf did lie.

6. I may mention here, what I have said in a number of cases, that Section 3, was enacted for the protection of tenants due to dearth of accommodation in the cities. The legislature considered that if any of the grounds (a) to (f) existed a landlord should be in a position to eject the tenant. If however grounds (a) to (f) did not exist, there might be a variety of other grounds which would justify a landlord for wanting a tenant to vacate the premises and the District Magistrate was therefore authorised to consider whether it was a fit case where the landlord should be allowed to file a suit for ejectment. Once the District Magistrate had given the permission in accordance with the provisions of Section 3, the landlord is restored to the same position as he would have been if the U. P. Control of Rent and Eviction Act, 1947, had not been passed so far as question of ejectment of the tenant was concerned, that is, he would have the right to eject the tenant if he had given notice to quit in accordance with the provisions of Section 106 of the Transfer of Property Act (Act 4 of 1882) and there was no valid agreement between him and the tenant, restricting his right to eject. None of these two pleas had been raised and the plaintiff was entitled to a decree for ejectment.

7. Coming to the question of arrears of rent, the lower Courts have held that from October 1936 the defendant was liable to pay rent at the rat(c) of Rs. 81/4, as he had agreed to pay rent at that rate. On 29-3-1948, however, the plaintiff had given another notice of enhancement on the ground that he was entitled-to reasonable rent which in accordance with the provisions of Section 2 (f) was Rs. 88712/-. The trial Court gave a decree for arrears of rent at the enhanced rate of Rs. 88/12/-from-April 1948. The lower appellate. Court was, however, of the opinion that a notice of enhancement of rent under Section 5, Sub-section (2) can be given only once and, once the rent has been enhanced by notice, no further enhancement of rent is possible.

8. Section 5 (2) of the Act provides that "when the rent for any such accommodation has , not been agreed upon or where in the case of tenancies continuing from October 1, 1946, the landlord wishes to enhance the rent agreed upon, he may, by notice in writing, fix the annual rent at, or enhance it to, an amount not exceeding the reasonable annual rent....."

The maximum limit to which the rent can be enhanced is, therefore the reasonable annual rent.

What is the reasonable annual rent is defined in Section 2 (f). The reasonable annual rent is the upper limit. The landlord cannot go beyond it, but there is nothing to prevent him from enhancing the rent to a figure less than the reasonable annual rent. If the interpretation given by the lower appellate Court is accepted then the land lord will have to enhance the rent to its maximum limit, as he would not get a second opportunity to enhance the rent. On 15-10-1946, the landlord had enhanced the rent to Rs. 81/4/- which was less than the reasonable annual rent. By a notice dated the 29-3-1948, the landlord enhanced the rent to Rs. 88/12/- which was the reasonable annual rent.

I see nothing in the section which required a landlord to enhance the rent to its maximum limit at the first instance at the risk of losing the right for ever of further enhancement. The Act, it must be remembered, was passed for the benefit of tenants and the legislature could not have in tended to make it necessary for a landlord to enhance the rent to the maximum limit. The limit has been placed at the reasonable annual rent but the landlord can enhance the rent from time to time upto the maximum rent allowable under the Act. I do not, therefore, find anything in Section 5 (2) to justify the conclusion that the plaintiff must be deemed to have exhausted her remedy, once she had enhanced the rent, and she could not subsequently make further enhancement even if the enhancement did not exceed the reasonable annual rent.

9. The result, therefore, is that this appeal is allowed with costs throughout. The decree of the lower appellate Court is set aside and the decree of the trial court is restored.