Jagat Ram Sethi vs R.B.D.D. Jain And Ors. on 28 March, 1972

Equivalent citations: AIR1972SC1727, (1972)2SCC613, AIR 1972 SUPREME COURT 1727

Author: A.N. Grover

Bench: A.N. Grover

JUDGMENT

A.N. Grover, J.

1. This Is an appeal by Special leave from a judgment of the Allahabad High Court.

2. The facts may Be shortly staled. Harbans Lal deceased, now represented by the respondents, let out certain land to one Mistri Ibrahim in January 1941 at a monthly rent of Rs. 12/-. The rent was later on Increased to Rs. 24/- with effect from February 1948. According to the respondent the present appellant colluded with the tenant, Mistri Ibrahim, and entered into possession of the land sometimes before 1950. Mistri Ibrahim ultimately left for Pakistan and the appellant was recognised as his tenant by Harbans Lal on the same terms and conditions. Harbans Lal died in November 1954 and left a will in which he created a trust known as Harbans Lal Charitable Trust. In 1959 after serving a notice on the appellant in accordance with the provisions of the Transfer of Property Act terminating the tenancy the respondent filed a suit for ejectment. The Suit was contested by the appellant on the ground , inter alia, that when the land was let out to him It had a roofed varandah and kothri. Mistri Ibrahim had installed a workshop and in 1949 the appellant acquired the goodwill, workshop and business of Mistri Ibrahim and settled on the land with the consent and permission of Harbans Lal. He also constructed a permanent building by investing a sum of Rupees 40,000/- with the knowledge and consent of Harbans Lal. The main plea was that the suit was barred by Section 3 of the U.P. (Temporary) Control of the Rent and Eviction Act, 1947, (U.P. Act No. III of 1947), hereinafter called the 'Act'.

3. After framing the necessary Issues and trying them the trial Court decreed the suit for ejectment as well as for recovery of Rupees 314.80 as arrears of rent . The appellant filed an appeal to the Court of the Additional Civil Judge who dismissed the same. The appeal to the High Court also failed.

4. Section 2(a) of the Act to the extent it is material is as follows:

> "Accommodation" means residential and non residential accommodation in any building or part of a building and includes....

> According to Section 3 no suit can be filed without the permission of the District Magistrate in any Civil Court against a tenant for his eviction from any accommodation except on the grounds set out in Clause (a) to (g) of that Section. It is common ground that if the demised premises in the present case falls within the meaning of "accommodation" as defined by Section 2(a) the permission of the District Magistrate was necessary and the suit could not have been filed for eviction of the appellant without obtaining such permission which admittedly was not done.

5. The principal argument on behalf of the appellant is that an allotment Order was made on February 27, 1950 by the Rent Control Officer in favour of the appellant. In that allotment Order the schedule of accommodation contained the following:

> A mud roof varandah and a kothri with open place at present is used by Shri Mohd. Ibrahim for tonga repairing work, situated at Begum Bridge Road in front of Dr. Phopel's Kothi.
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> It appears that Harbans Lal drafted out a letter, to the Rent Control Officer pointing out that only a part of the land had been let out by him to Mistri Mohd. Ibrahim by an agreement dated 7-1-1041 according to which he was authorised to make temporary construction and that he had actually constructed a shed at his own cost which he was liable to remove when the land was required by the landlord. This letter, however, was never sent to the Rent Control Officer. It has, therefore, been urged on behalf of the appellant that Harbans Lal accepted this statement contained in the allotment Order. It is suggested that the existence of a mud roof varandah and kothri on the land would bring the premises within the definition of "accommodation". The Additional Civil Judge who considered the evidence expressed the view that the kothri and varandah had been constructed by Mistri Ibrahim but Harbans Lal never came into possession of these constructions as the appellant had been given possession by Mistri Ibrahim. Reliance was placed on para 14 of the written statement in which it was admitted that the defendant-appellant had acquired the goodwill, business and the workshop of Mistri Ibrahim and had settled on the land with the consent and permission of Harbans Lal. Reference was also made to the notice dated April 21, 1950 according to which both Mistri Ibrahim and the appellant were in possession of the property in suit on April 21, 1950. According to the learned judge the evidence established that the appellant was making efforts to take possession of the property in the tenancy of Ibrahim without its reverting back to the landlord and had succeeded in doing so. Under Section 108(h) of the Transfer of Property Act the lessee could, after determination of the lease, remove while in possession the construction made by him but if he failed to do so and the property reverted to the lessor the fixtures etc. would become the property of the latter. Since Mistri Ibrahim did not put the landlord in possession and transferred the land together with the structure put up by him to the appellant the transferee stepped into the shoes of the lessee. Thus so far as the appellant and Harbans Lal were concerned the former was tenant only of the land and no accommodation had been rented out to

him by the latter. As such the provisions of Section 3 of the Act would not be attracted. The High Court also considered this point and expressed the opinion that the structures never became the property of the landlord.

6. Mr. M. C. Chagla who argued the case on behalf of the appellant does not and indeed cannot contend that if the structures which were put up by Mistri Ibrahim never became the property of Harbans Lal any accommodation within the meaning of Section 2(a) of the Act could be said to have been leased or let out to the appellant by Harbans Lal. It was the land alone in respect of which the tenancy existed. That by itself could not fall within the definition of 'accommodation' and consequently the permission of the District Magistrate under Section 3 of the Act was not necessary for institution of a suit for ejectment. We have no doubt, therefore, that the conclusion of the Courts below on this point is correct.

7. Mr. Chagla has sought to urge that the respondents were estop ped from filing the suit. According to him, several constructions were made by the appellant on the land in question with the knowledge of the respondents. The High Court relied on the findings of the Courts below that no such action on the part of the lessor had been proved on the basis of which it could be held that the appellant had altered the position to his detriment. If the lessee chose to make unauthorised constructions at his own risk and the lessor did not take action the latter could not, on that account, be estopped from filing a suit for eject ment. According to Mr. Chagla the allotment Order made in February 1950 by the Rent Control Officer in favour of the appellant was never challenged by Harbans Lal or the respondents. It was on the basis of that Order and the representation contained in it that it was accommodation which was to be the subject matter of tenancy that the appellant had expended a good deal of money on further construction. We are wholly unable to understand how any description of the property in the allotment Order could be treated as a representation made by the respondents. It has not been shown that the allotment Order created any such rights on the basis of which the appellant could found his defence on the Rule of estoppel. The Additional Civil Judge had found on issue No. 4 that Harbans Lal never gave express consent for the constructions to be raised but he knew about their existence. We concur in the view of the High Court that mere inaction on the part of the lessor did not entitle the lessee to resist the suit on the ground of estoppel. The lessee had the right under Section 108(h) of the Transfer of Property Act to remove the constructions while he was in possession. There was no pro vision in that Act which debarred the lessor from determining the lease under Section 111 merely because constructions had been made by the lessee even to the knowledge of the lessor, and from instituting the suit for ejectment.

8. The appeal fails and it is dismissed with costs. The appellant will have six months time for vacating the premises.