Supreme Court of India
Kamala Devi Budhia & Ors vs Ram Prabha Ganguli & Ors on 2 May, 1989
Equivalent citations: 1989 AIR 1602, 1989 SCR (2) 970
Author: L Sharma
Bench: Sharma, L.M. (J)

PETITIONER:
KAMALA DEVI BUDHIA & ORS.

Vs.

RESPONDENT:
RAM PRABHA GANGULI & ORS.

DATE OF JUDGMENT02/05/1989

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
KANIA, M.H.

CITATION:
1989 AIR 1602 1989 SCR (2) 970
1989 SCC (3) 145 JT 1989 (3) 28
1989 SCALE (1)1270

ACT:
Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947--Sections 2(b), 11 and 12--Extension of period of lease--Eviction of tenant--Civil Court--Whether proper forum.
Constitution of India, 1950: Article 142--Court entitled to pass such decree/make any order as is necessary for doing complete justice in any case/matter.

HEADNOTE:
The contesting respondents have been in occupation of the demised property under a registered lease for 20 years, which was to expire on 31.7.1971. They served a notice on the appellants on 16.7.1971 claiming the right to continue in possession after 31.7.1971 as tenants from month to month. The appellants did not accept the respondents' claim and filed before the Munsif a case purporting to be an application under section 12 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. The respondents contested the application on the ground that as heirs of the original lessee, they had formed a partnership as a result of which a new month to month tenancy had been created. They further contended that the appellants' application before

the Munsif under s. 12 was not maintainable. The Munsif accepted the appellants' case that the legal representatives of the original lessee continued as tenants under the lease after the attornment and were liable to eviction after the expiry of the lease period. The Judicial Commissioner dismissed the respondents' appeal holding that the deed of lease was subsisting, the parties were having the relationship of lessors and lessees, and no month to month tenancy had been created. The Judicial Commissioner further held that the appellants would have to make another application under s. 12(3) of the Act for evicting the respondents if they did not vacate within the time allowed by court. The High Court, in its revisional jurisdiction, set aside the decisions of the courts below and held that in the absence of a month's notice under s. 12(1) from the tenants, the application of the appellants under s. 12 was not maintainable before the Munsif and the entire proceedings was misconceived. The High Court pointed out that in the circumstances the appropriate remedy of the appellants was to file a suit under s. 11 of the Act.

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Before this Court it was contended on behalf of the appellants that an application under s. 12 of the Act before the Civil Court was maintainable, and that both the remedies. i.e., by an application under s. 12 of the Act as also by way of a suit were open to a landlord after the expiry of the period of a fixed term tenancy, and it was for him to choose which course to follow.

On behalf of the respondents it was contended that on the expiry of such a tenancy the only remedy was to file a suit, and in any event s. 12 was wholly inapplicable as, according to their case in the notice, a fresh tenancy had come into existence, and as such their notice was not one under s. 12 of the Act at all.

Allowing the appeal, this Court

HELD: (1) The Act-refers to several authorities for decision of different issues. As regards the question of dealing. with the eviction of tenants under s. 11 and extension of period of lease under s. 12, the civil court is the proper forum. It is the same court before which both a suit under s. 11 and an application under s. 12 are to be filed. [976C, D]

(2) The instant case was tried by the learned Munsif in the same manner as the trial of an eviction suit. The respondents filed a regular appeal before the District Judge, designated as Judicial Commissioner, and he also went through the entire controversy thoroughly. The judgment of the High Court indicates that the scope in which the arguments by the parties were addressed was the same as in a second appeal, and the decision also was accordingly given. In these circumstances, it is wholly immaterial as to whether the application originally filed by the appellants before the Munsif was not in the form of a plaint, specially when

the necessary verification was also there at the foot of the petition. The only difference may be as to the amount of court fee payable by the parties, but that should not come in the way of construing the correct nature of the proceedings. [976G-H; 977C-D]

Madho Bibi v. Hazari Mal Marwari, AIR 1929 Patna 141 and Hazari Lal v. Ramjiwan Ramchandra, AIR 1929 Patna 472, referred
tO.

(3) The court must examine the substance of the application to find out its true nature and should not be guided solely by the heading given to it by a party. [977G-H]
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Lachhoo v. Munnilal Babu Lal, AIR 1935 All. 183, referred to.

(4) The principle is well established that the exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory, and there is no reason to exclude the application of this rule to judical proceedings. [977H; 978A]

R.P. Singh v. The Chief Commissioner (Admn.) Manipur, [1977] 1 SCR 1022 referred to.

(5) If it is assumed that an application under s. 12 of the Act is not maintainable in the facts and circumstances of the present case, the proceeding has to be treated as a suit and the judgment of the learned Munsifas a decree therein. [978C]

(6) The occasion for filing an application under s. 12(3) can arise only where the matter is covered by s. 12, and as an assumption has to be made in favour of the respondents that s. 12 has no application, there is no point in asking the appellants to file such an application. [978E]

(7) This Court can and should restore the decree of the trial court even in the absence of an appeal by the appellants before the High Court against the order of the Judicial Commissoner declining to pass a formal decree of eviction and directing the appellants to make an application under s. 12(3) of the Act for that purpose. As mentioned in Article 142 of the Constitution, this Court may pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before it, and the instant case is a most appropriate one for exercise of such power. [978D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9979 of 1983.

From the Judgment and Order dated 8.12.1982 of the Patna High Court in C.R. No. 377 of 1980 (R).

M.P. Jha for the Appellants.

D.P. Mukharjee for the Respondents.

The Judgment of the Court was delivered by SHARMA, J. The dispute in the present appeal by special leave is in regard to certain premises in the town of Ranchi in Bihar which belongs to the appellants and in which a cinema is running. The contesting respondents have been occupying the property under a registered lease for a period of 20 years which expired on 31.7.1971. They served a notice on the appellants on 16.7.1971 claiming the right to contin- ue in possession after 31.7.1971 as tenants from month to month. The appellants did not accept the claim and filed before Munsif, Ranchi a case purporting to be an application under s. 12 of the Bihar Buildings (Lease, Rent and Evic- tion) Control Act, 1947 (hereinafter referred to as the Act). The respondents contested the application and raised several points in defence which were rejected by the learned Munsif. The appellants' application was allowed and an appeal therefrom filed by the respondents was dismissed by the Judicial Commissioner, Ranchi. The respondents, then, moved the Patna High Court in its revisional jurisdiction, inter alia, contending that the appellants' application under s. 12 of the Act before the Munsif was not maintain- able. The plea was accepted by the High Court and the deci- sion of the court below was set aside.

2. According to the appellants' case the property earli- er belonged to M/s Ganapathi Properties (Pvt.) Limited, the predecessor in title of the appellants. The company had granted the lease in favour of one S.M. Ganguli who on his death was succeeded by his legal representatives. There was due attornment of the tenancy and the lessees were liable to vacate the premises on 31.7. 197 1. Their further case of induction of some of the respondents as sub-tenants has been disbelieved and in view of the findings of fact in the case, it is not necessary to deal with this aspect now.

3. Apart from pleading that the application under s. 12 was not maintainable and the allegations contained therein were incorrect, the respondents also stated that the heirs of late S.N. Ganguli had formed a partnership, as a result of which a new month to month tenancy was created, and the respondents, therefore, were not liable to eviction. The parties differed on several questions of fact which, in view of the findings of the trial court and the appellate court, are not necessary to be detailed. The parties led full evidence, both oral and documentary. on the disputed issues and after an elaborate trial the learned Munsif accepted the appellants' case that they are the successors in interest of the lessor company, and the legal representatives of late S.N. Ganguli the original lessee continued as tenants under the lease after due attornment and were liable to eviction after the expiry of the lease period on 31.7. 1971. The court accordingly directed the respondents to vacate the premises.

4. On appeal by the respondents, the learned Judicial Commissioner, Ranchi agreed with the findings of the learned Munsif on merits and concluded in paragraph 48 of the.judg- ment thus:

> "Therefore, from the facts stated above it appears that the present landlords and tenants are the heirs and successors of the original lessor and the lessee respectively. That being so, according to the terms of the deed of lease (Ext. 4) 1 have no hesitation

> in saying that the deed of lease (Ext. 4) is subsisting and the parties are having the relationship of lessors and lessees and also landlords and tenants respectively. No month to month tenan- cy had been created."

He, however, modified the decision of the trial court in so far the learned Munsif had directed that his order would be executed and the respondents would be evicted from the premises on their failure to vacate within the time allowed. The learned Judicial Commissioner confined his decision to deciding the issues between the parties and granting one month's time to the respondents (appellants before him) for vacating the premises and further held that the appellants would have to make another application under s. 12(3) of the Act for evicting the respondents if they did not vacate within the time allowed by court.

5. The respondents challenged the decision in C.R. No. 377 of 1980 (R) before the Patna High Court. The learned Judge who heard the case held that in absence of a month's notice under s. 12(1) from the tenant, the application of the appellants was not maintainable before the Munsif, and the entire proceeding was mis-conceived. It was pointed out that in the circumstances the appropriate remedy of the appellants was to file a suit under s. 11 of the Act.

6. Before proceeding further it will be helpful to examine the provisions of the s. 12 which is quoted below:

> "12. Extension of period limited by lease. (1) If a tenant in possession of any building, held on a lease for a specified period, in- tends to extend the period limited by such lease, he may give the landlord at least one month before the expiry of the period limited by the lease, a written notice of his intention to do so; and upon the delivery of such notice the said time shall, subject to the provision of section 11, be deemed to have been extended by double the period covered by the original lease subject to a maximum of one year.
>
> (2) Where the landlord to whom notice has been given under sub-section (1) wishes to object to the extension demanded by the tenant on one or more of the grounds mentioned in sub-section (1) of section 11 or on the ground that the landlord has any other good and sufficient cause for terminating the lease on the expiry of period limited thereby, he may, within fifty days of the delivery of such notice, appeal to the court in that behalf and the Court after hearing the parties may termi- nate the lease or extend the same for such period as it deems proper in the circum- stances.
>
> Provided that the tenant shall not in any case be allowed to remain in possession of the building beyond the period permissible under sub-section (1).
>
> (3) If the tenant fails to vacate the building on the termination of the lease or as the case may be, on the expiry of the period fixed by the Court under sub-section (2), the Court shall, on an application by the land- lord, pass an order for ejectment, which shall be executed as a decree and may further order that the tenant shall pay to the

landlord such amount as may be determined by it as daily compensation."

7. It has been contended on behalf of the appellants that an application under s. 12 of the Act before the civil court was maintainable and the High Court was in error in holding otherwise. The argument is that both the remedies, i.e., by an application under s. 12 of the Act as also by way of a suit are open to a landlord after the expiry of the period of a fixed term tenancy, and it is for him to choose which course to follow. Mr. Kameshwar Prasad, the learned counsel appearing on behalf of the respondents urged that on the expiry of such a tenancy the only remedy is to file a suit and in any event s. 12 is wholly inapplicable in the facts of the case as the respondents, by their notice, did not seek an extension of the term of tenancy. He asserted that according to their case in the notice a fresh tenancy had come into existence. The notice, therefore, was not one under s. 12 of the Act at all. We do not consider it necessary to decide the question as to whether a landlord after the expiry of the period of a fixed term lease is entitled to move the Court by an application under s. 12 of the Act because even on assuming the argument of the respondents to be correct the appellants should succeed. In view of the circumstances of the present case as discussed below, the proceeding arising out of the appellant's application before the learned Munsiff should be treated as a suit and his decision as a decree.

8. It has to be kept in mind that it is the same court before which both a suit under s. 11 and an application under s. 12 are to be filed. The Bihar Buildings (Lease, Rent and Eviction) Control Act refers to several authorities for decision of different issues, one of them being Control- ler as defined in s. 2(b) of the Act, and another 'Court as the court of general jurisdiction under the Code of Civil Procedure, 1908 as defined in s. 2(bb). So far the determi- nation and redetermination of fair rent, or issuing appro- priate directions relating to amenities in the premises and several other matters are concerned, the power is vested in the Controller. But as regards the question of dealing with the eviction of tenants under s. 11 and extension of period of lease under s. 12, the civil court is the proper forum. In the present case it is the Civil Court, Ranchi which is the appropriate court either for filing a suit for eviction under s. 11 or making an application under s. 12. There is, thus, no difficulty so far the jurisdiction of the court is concerned. The question is whether the petition which was filed by the appellants as an application under s. 12 should be treated as a plaint and the impugned proceeding as the one in a suit followed by an appeal and a second appeal.

9. With the assistance of learned counsel for the par- ties we have gone through the relevant papers in the case and are satisfied that both the parties dealt with every aspect of the case from their respective angles elaborately, and led their full evidence--both oral and documentary--and the case was tried by the learned Munsif in the same manner as the trial of an eviction suit. The decision of the learned Munsif is also a detailed one considering every relevant question in the case. The respondents filed a regular appeal from the decision before the District Judge, Ranchi, designated as Judicial Commissioner, and he also went into the entire controversy thoroughly. The respondents lost the case once more and moved the High Court but in civil revision application instead of second appeal, presum- ably because the Judicial Commissioner after deciding the disputed issues in favour of the present appellants instead of confirming the decree of the Munsif directed them to file a fresh application under s. 12(3) for a formal decree of eviction. The judgment of the High Court indicates that the scope in which the argu- ments by the parties were addressed was the same as in a second

appeal, and the decision also was accordingly given. The findings on the disputed issues of fact between the parties were concurrently recorded against the tenants by the first two courts and it was not open to the High Court to reverse them under s. 100, C.P.C. We have also gone through the judgments of the first two courts on this aspect and considered the criticism of Mr. Kameshwar Prasad, learned counsel for the respondents appearing before us, and we do not find any error therein. In these circumstances, it is wholly immaterial as to whether the application original- ly filed by the appellants before the Munsif was not in the form of a plaint specially when the necessary verification was also there at the foot of the petition. The only differ- ence may be as to the amounts of court fees payable by the appellants in the first court and by the respondents before the Judicial Commissioner and the High Court, but that should not come in the way in construing the correct nature of the proceeding. A similar approach was adopted in several cases decided by some High Courts and we would like to refer to three decisions in this regard.

10. In Madho Bibi v. Hazari Mal Marwari, AIR 1929 Patna 141, a suit was dismissed as against one of the defendants who in the proceeding of execution of the decree filed an objection to an attachment order under Order XXI, Rule 58, C.P.C. which was recorded under that Rule only. The court proceeded under that Rule and after making inquiries reject- ed the claim. When a revision application was filed before the High Court, it was held that the objection petition, though wrongly preferred under Order XXI, Rule 58, must be treated as one under s. 47, and the order passed by the court would have the effect of a final order under s. 47 which would be appealable as a decree and against which no revision would lie. In another decision by the same Court in Hazari Lal v. Ramjiwan Ramchandra and others, AIR 1929 Patna 472, the Division Bench held that a defendant against whom a suit is dismissed is nevertheless party to the suit, and an objection petition though described by him as one Under Order XXI, Rule 58, C.P.C, is such as would fall under s. 47 and so the decision on it is appealable and a regular suit is barred. In Lachhoo v. Munnilal Babu Lal, AIR 1935 Allaha- bad 183, it was observed that in considering whether an application is under s. 47 or not, the court must examine the substance of the application to find out its true nature and should not be guided solely by the heading given to it by a party. The principle is well established that the exercise of a power will be referable to a jurisdiction which confers validity upon it and not to a jurisdiction under which it will be nugatory, and there is no reason to exclude the application of this rule to judi- cial proceedings. In a case dealing with compulsory retire- ment this Court in M.R. Singh v. The Chief' Commissioner (Admn.) Manipur and others, [1977] 1 SCR 1022, observed that "if power can be traced to a valid power, the fact that the power is purported to have been exercised under a non-exist- ing power does not invalidate the exercise of the power".

11. If it is assumed that an application under s. 12 of the Act is not maintainable in the facts and circumstances of the present case, in our opinion, the proceeding has to be treated as a suit and the judgment of the learned Munsif as a decree therein. A further question may arise as to the effect of the Judicial Commissioner, Ranchi declining to pass a formal decree of eviction and directing the appel- lants to make an application under s. 12(3) of the Act for that purpose. Can this Court restore the decree of the trial court in absence of an appeal by the appellants before the High Court? We think that we can and we should. The question does not affect the substantive right of the parties as the controversy was concluded by the first appellate court in favour of the appellants. What was left was only procedural in nature and inconsistent with our decision to treat the proceedings as a suit.

The occasion for filing an applica- tion under s. 12(3) can arise only where the matter is covered by s. 12, and as we have made an assumption in favour of the respondents that s. 12 has no application to the present case, there is no point in asking the appellants to file such an application. As mentioned in Art. 142 of the Constitution of India, this Court may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and the present case is a most appropriate one for exercise of such power. Accordingly, we set aside the judgment of the High Court and restore the decree passed by the Munsif, Ranchi. The re- spondents are directed to restore peaceful possession of the premises in question to the appellants within one month from today, failing which the appellants shall be entitled to execute the decree in accordance with law. The appeal is allowed, but the parties are directed to bear their own costs throughout.

R.S.S. Appeal allowed.