Supreme Court of India
Lakshminarayan Guin & Ors vs Niranjan Modak on 3 December, 1984
Equivalent citations: 1985 AIR 111, 1985 SCR (2) 202
Author: R Pathak
Bench: Pathak, R.S.

PETITIONER:
LAKSHMINARAYAN GUIN & ORS.

Vs.

RESPONDENT:
NIRANJAN MODAK

DATE OF JUDGMENT03/12/1984

BENCH:
PATHAK, R.S.
BENCH:
PATHAK, R.S.
REDDY, O. CHINNAPPA (J)

CITATION:
1985 AIR 111 1985 SCR (2) 202
1985 SCC (1) 270 1984 SCALE (2)924
CITATOR INFO :
RF 1991 SC1654 (43)

ACT:
West Bengal Premises Tenancy Act, 1956, section 13(1)-Act extended to the area during pendency of first appeal-Appellate Court-Whether bound to take into account change of law and extend benefit at the section.
Words & Phrases-Words "decree" occurring in s.l3(1) of W.B. Premises Tenancy Act, 1965-Meaning of-Whether it refers to a decree which disposes of The suit finally.

HEADNOTE:
The appellants, landlord, filed an eviction suit against the respondent in the year 1967 for possession of some house property situate in Mauza Memari in West Bengal, on the ground of non-payment of arrears of rent and the requirement of the accommodation for demolition to enable the appellants to construct separate houses for their own business. The suit was decreed by the trial Court in 1969. The respondent filed an appeal before the first appellate court. During the pendency of the appeal, the West Bengal Government extended the West Bengal Premises Tenancy Act 1956 to Memari in which the property is situate. Sub-s.(l) of section 13 of the Act provides that no order or decree

for the recovery of possession shall be made by any court in a land lords's suit against the tenant except on certain enumerated grounds. Sub Section 6 provides that no suit or proceeding for the recovery of possession on any of the grounds mentioned in sub-section 1, except the grounds mentioned in clauses (j) and (k) can be filed by the landlord "unless he has given to the tenant one month's notice expiring with a month of tenancy". The first appellate court dismissed the appeal. In a second appeal by the respondent before the High Court, he urged that the appeal would necessarily be governed by the changed law. On the other hand, the appellants contended that the Act could not be invoked in a case where the trial court had already decreed the suit under the provisions of the Transfer of Property Act. The High Court while allowing the appeal held that the first appellate court was bound to take into account, the change of law an(l to extend its benefit to the tenant and consequently to set aside the decree of the trial court and dismiss the suit, and since the notice for eviction served by the appellants on the respondent did not comply with the requirements of sub-section 6 of section 13, the suit was incompetent.

Dismissing the appeal, by the appellant,

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HELD; (1) It is wall settled that when a trial court decrees a suit and the

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decree is challenged by a competent appeal, the appeal is considered as a continuation of the suit, and when the appellate decree affirms modifies or reverses the A decree on the merits, the trial court decree, is said in law to merge in the appellate decree. and it is the appellate decree which rules. Therefore, reference to the word decree in 5.13(1) is intended to the decree which disposes of the suit finally, and thus sub-s.(l) of s.13 of the Act can be invoked by a tenant during the pendency of an appeal against a trial court decree. [1205H; 206A-B]

(2) Sub-sec.(l) of s.13 directs the court not to make any order or decree for possession subject, of course to the statutory exception. The object of the section is to protect the possession of the tenant, subject to the exceptions specified in the sub-section, and that protection is ensured if the Court construes the sub-section to mean that, subject to those exceptions, no effective or operative order or decree can be made by the Court in a landlord's suit for possession against a tenant. The legislative command in effect deprives the court of is unqualified jurisdiction to make such order or decree. It is true that when the suit was instituted the court possessed such jurisdiction and could pass a decree for possession. But it was divested of that jurisdiction when the Act was brought into force. The language of the sub-section makes that abundantly clear, and regard must be had to its object.

Therefore, a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties even though the suit may have been instituted, before the Act came into force. In the instant case, there is no dispute that the around mentioned in cls.(j) and (k) do not come into play and since there was no compliance with the requirement of sub-s.6 of s.13 the suit was incompetent. [206D; B; E; 207E; 205 F]

Shah Bhojraj Kuverji oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha [1962] 2 S.C.R. 159. Mst. Rafiquennessa v. Lal Bahadur Cheetri [1964] 6 S.C.R. 876, Ram Sarup v. Munshi and others etc. [1963] 3 S.C.R. 858 Mula and two other v. Godhu and others [1970] 2 S.C.R. 129 & Amarjit Kaur v. Pritam Singh and others [1975] 1 S.C.R., followed.

Dayawati and Another v. Inderjit and others [1966] 3 S.C.R. 275, Kristnhma Chariar v. Mangammlal & Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudauri [1940] F.C.R. 84 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDlCTION: Civil Appeal No. 439 of 1977.

Appeal by Special leave from the Judgment and order dated the 28th January, 1976 of the Calcutta High Court in Appeal from Appellate Decree No. 1195 of 1970.

Pankaj Kalra, D. N. Mukherjee and Rathin Das for the Appellant.

Shankar Ghose and G.S. Chatterjee for the Respondent.

The Judgment of the Court was Delivered. by PATHAK, J. This is a plaintiffs' appeal by special leave against the judgment and decree of the High Court at Calcutta dismissing their suit for ejectment and arrears of rent.

The appellants are the owner of house property situate in Mauza memari in the District of Burdwan in West Bengal. The respondent is the tenant of some rooms in the said property on a monthly rent of Rs. 100. The appellants filed a suit, out of which the present appeal arise, claiming that the respondent was in arrears of rent which he refused to pay despite demands and that the accommodation was required for demolition to enable the appellants to construct separate house for their own business.

The suit was resisted by the respondent who alleged that he had been let in by one Sishubala Bisayee, that the appellants had no title to the property and had fraudulently secured some documents from her which had given rise to a suit which was pending. It was also denied that the premises were old and needed to be demolished, and that the respondent was in arrears of rent.

The suit was decreed by the trial court which found that the respondent was a tenant of the appellants, and that the appellants were entitled to possession and to recover the arrears of rent. An appeal by the respondent was dismissed by the first appellate court. A second appeal by the respondent was, however, allowed by the High Court by its judgment and decree dated January 28, 1976. The High Court held that by virtue of the West Bengal Premises Tenancy Act, 1956 being extended to Memari during the pendency of the first appeal, the first appellate court was bound to take into account the change of law and to extend its benefit to the tenant, and consequently to set aside the decree of the trial court and dismiss the suit.

Sub-s. (1) of s. 13 of the West Bengal Premises Tenancy Act as extended to Memari during the pendency of the first appeal, provides.-

> "Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the grounds.. "

and then follow the specific grounds upon which alone a landlord is entitled to evict his tenant. There was considerable debate before the High Court whether the benefit of the Act could be extended to the respondent in the instant case. The appellants contended that it could not be invoked in a case where the trial court had already decreed the suit under the provisions of the Transfer of Property Act, whereas the respondent urged that the appeal would necessarily be governed by the changed law. The same point arises before us. Upon the considerations which follow, we think that the High Court is right in upholding the contention of the respondent, and that this appeal must faill.

The suit was filed on June 12,1976, and was decreed by the trial court on February 17,1969. During the pendency of the first appeal, the West Bengal Government extended the West Bengal Premises Tenancy Act, 1956 to Memari, in which the property is situate. S.13 of the Act provides for a qualified protection of the tenant against eviction inasmuch as it injuncts the court from passing an order or decree in a landlord's suit for recovery of possession except on the limited grounds detailed in sub-s. (1) thereof. Sub-s. (6) provides that no suit or proceeding for the recovery of possession on any of grounds mentioned in sub-s. (1), except the grounds mentioned in clauses (j) and (k), can be filed by the landlord "unless he has given to the tenant one month's notice expiring with a month of tenancy". There is no dispute that the grounds mentioned in clauses (j) and (k) do not come into play in the instant case. The High Court that the notice for eviction served by the appellants on the respondent gave notice of less than one month and, therefore, there was no compliance with sub-s.(6) of s. 13. Consequently, it held that the suit was incompetent.

As has been stated earlier, sub-s. (1) of s. 13 of the Act provides that no order or decree for the recovery of possession shall be made by any court in a landlord's suit against the tenant except on certain enumerated grounds. Does the decree here refer to the decree of the trial court or, where an appeal has been preferred, to the appellate decree? Plainly, reference is intended to the decree which disposes of the suit finally. It is well settled that when a trial court decrees a suit and the decree is challenged by a comptenet appeal, the appeal is considered as a continuation of the suit, and when

the appellate decree affirms, modifies or reverses the decree on the merits, the trial court decree is said in law to merge in the appellate decree, and it is the appellate decree which rules. The object of sub-s. (1) of s. 13 is to protect the possession of the tenant, subject, to the exceptions specified in the sub-section, and that protection is ensured if we construe the sub-section to mean that, subject to those exceptions, no effective or operative order or decree can be made by the Court in a landlord's suit for possession against a tenant. To our mind, therefore, sub-s. (1) of s. 13 of the Act can be invoked by a tenant during the pendency of an appeal against a trial court decree.

The next point is whether sub-s. (1) of s.13 can be invoked where the suit was instituted before the Act came into force. In the instant case, the suit was instituted long before the Act was extended to Memari. Sub-s. (1) of s. 13 directs the court not to make any order or decree for possession subject, of course, to the statutory exceptions. The legislative command in effect deprives the court of its unqualified jurisdiction to make such order or decree. It is true that when the suit was Instituted the court possessed such jurisdiction and could pass a decree for possession. But it was divested of that jurisdiction when the Act was brought into force. The language of the sub-section makes that abundantly clear, and regard must be had to its object. In Shah Bhojraj Kuverji oil Mill and Ginning Factory v. Subhash Chandra Yograj Sinha(l) a Bench of five Judges of this Court had occasion to consider sub-s.(l) of s.12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Sub-s. (1) of s. 12 provided:

> "A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent .. .

On the question whether the provision applied to pending suits for possession, the learned Judges drew attention to the point of time specifically mentioned in the sub-section. lt operated, they said, "when the decree for recovery of possession will have to be passed" and did not refer back to the institution of the suit. By a (1) [l962] 2 S.C.R. I59.

unanimous judgment the learned Judges held that the sub- section applied to pending suits. In passing, it may be noted that the A learned Judges expressed a degree of hesitation on whether a statutory injunction of that nature could be applied retrospectively to appeals against decrees already made. But any doubt on the point must be considered to have been finally removed by this Court when in Mr. Rafiquennessa v. Lal Bahadur Cheetri(l) another Bench of five Judges, which included J. C. Shah J. who was a member of the Bench in the earlier case, held on an interpretation of clause (a) of sub-s. (1) oft he Assam Non-Agricultural Urban Areas Tenancy Act, 1955, which prohibited the eviction of a tenant. that the statutory provision came into play for the protection of the tenant even at the appellate state. The learned Judges relied on the principle that an appeal was a continuation of the suit and that the appeal would be governed by the newly enacted clause (a) of sub-s. (1) of s.5 even though the trial court decree had been passed earlier.

That a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties was laid down by this Court in Ram Sarup v. Munshi and others etc.(2), which was followed by this Court in Mula and others v. Godhu and others.(3) We may point out that in Dayawati and Another v. Inderjit and others(") this Court observed:-

> "If the new law speaks in language, which expressly or by clear intendment, takes in even pending matters, the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance. "

Reference may also be made to the decision of this Court in Amarjit Kaur v. Pritam Singh and others(') where effect was given to a change in the law during the pendency of an appeal, relying on the proposition formulated as long ago as Kristnama Chariar v. G (1) [1964] 6 S.C.R. 876, (2) [1963] 3 S.C.R. 858.

(3) [1970] 2 S.C.R. 129.

(4) [1966] 3 S.C.R. 275 (5) [1975] I S.C.R. 605.

Managammal(1) by Bhashyam Iyengar J., that the hearing of an appeal A was, under the processual law of this country, in the nature of a rehearing of the suit. In Amarjit Kaur (supra) this Court referred also to Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri(2) in which the Federal Court had laid down that once a decree passed by a court had been appealed against the matter became sub judice again and thereafter the appellate court acquired seisin of the whole case, except that for certain purposes, for example, execution, the decree was regarded as final and the court below retained jurisdiction.

It is apparent that this appeal cannot succeed. The appeal is dismissed with costs.

M.L.A Appeal dismissed.

(1) ILR 1902 26 Mad 91 (FB).

(2) [1940] F.C.R. 84.