

Rahim Bux and ors. Vs. Mohammad Shafi

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Court : Allahabad

Decided On : Jul-29-1969

Reported in : AIR1971All16

Judge : Jagmohan Lal, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 108; Uttar Pradesh Municipalities Act, 1916 - Sections 263(1); [Contract Act, 1872](#) - Sections 56; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47

Appeal No. : Second Appeal No. 146 of 1962

Appellant : Rahim Bux and ors.

Respondent : Mohammad Shafi

Advocate for Def. : Qazi Farooq Hasan, ;S. Rahman, ;Shahid Ali, ;S.N. Srivastava and ;Ramapat Ram, Advs.

Advocate for Pet/Ap. : Mohd. Naziruddin, ;S. Saghir Ahmad and ;Sahdeo Singh, Advs.

Disposition : Appeal dismissed

Judgement :

Jagmohan Lal, J.

1. This second appeal filed by the defendants is directed against a judgment and decree dated 5-1-1962 passed by the lower appellate court under which the claim of the plaintiff in respect of a shop situate in the town of Lucknow for possession and injunction has been decreed though the same had been dismissed by the trial court.

2. The facts of the case as found by the courts below are that the plaintiff-respondent is a tenant of a shop which was a part of a big building owned by the defendants-appellants 1 to 3. This entire building including the shop in dispute was demolished by the landlords on 4-4-1958 in pursuance of a notice issued to them by the Municipal Board, Lucknow under Section 265(1) of the U. P. Municipalities Act. The plaintiff-respondent filed a suit for injunction on 17-4-1958 restraining the landlords from interfering with his possession over the said premises, offering at the same time to pay rent for these premises even in the condition in which they existed then and in the alternative praying for a decree for possession. During the pendency of the suit the landlords were enjoined by the trial court from making any construction on this land but subsequently this injunction was modified and the landlords were permitted to rebuild on this land at their own risk.

3. The trial court found that since the shop which had been let out to the plaintiff-respondent was no more in existence, his tenancy rights had come to an end and he was not entitled to retain possession over the site of the shop-The lower appellate court did not agree with this view. According to that court the plaintiff was entitled to continue in possession of the premises so long as his tenancy was not determined according to one of the modes prescribed by law. The plaintiff's suit for possession and injunction was, accordingly, decreed.

4. In this second appeal it has been contended on behalf of the appellants that after the shop had been demolished the lease became void under the provisions of Section 108(e) of the Transfer of Property Act. This contention is not acceptable. In the first place the demolition of a building by the landlord, even though in pursuance of a notice under Section 263(1) of the U. P. Municipalities Act, cannot be said to be a destruction of the premises by an irresistible force within the meaning of the said clause of Section 108. In the second place the

option to avoid the lease under this clause rests with the tenant and not with the landlord.

5. The next point that was raised on behalf of the appellants was that after the demolition of the building the contract of tenancy was frustrated and it became impossible of performance under Section 56 of the Contract Act. This argument also does not appear correct. In the first place the doctrine of frustration applies to purely contractual obligations and not to a contract creating an estate or interest in land which had already accrued in favour of a party. On behalf of the appellants reliance was placed on a ruling *Kshitish Chandra Mondal v. Shiba Rani Debi* : AIR1950 Cal441 . This ruling has no application to the facts of the present case.

In that case a thatched shop which had been let out to a tenant had been destroyed by a fire and subsequently the tenant in spite of protests from the landlord reconstructed that shop. The landlord after terminating the tenancy by a notice filed a suit for possession which was resisted by the tenant. The suit of the landlord was decreed on other grounds but an additional ground on which the tenant was held liable to ejectment was also given that after the destruction of the premises, the contract of tenancy became void by the doctrine of frustration. On behalf of the respondent reliance was placed on a ruling, *Court of Wards Dada Siba Estate v. Raja Dharan Dev Chand* which is more to the point- In this case it was held that Section 56 of the Contract Act embodies a positive rule of law relating to doctrine of frustration and this section must be treated as exhaustive so far as it goes and the same is applicable only to purely contractual obligations and not to a contract creating an estate in land which had already accrued in favour of a party. With respect. I find myself in agreement with the principle laid down in this ruling.

So this doctrine of frustration cannot apply to a lease of the present nature. Moreover, in this case even if this doctrine had been applicable, the facts do not show that the contract of lease had become impossible of performance. The landlord who demolished the premises in compliance with a notice issued by the Municipal Board under Section 263 (1) of the Municipalities Act, could rebuild the premises in the same form in which they existed before, and the rights of the

lessor and lessee would then be available with respect to the new premises. So this second point raised on behalf of the appellants has also no force.

6. Lastly, it was contended that due to the reconstruction of the building during the pendency of the case it has become difficult to identify the portion of it on which the plaintiff's shop existed and so the decree is not capable of execution. In my opinion this point does not arise at this stage. As mentioned above, the landlords were permitted to rebuild the building at their own risk which implied that the rights of the plaintiff would not be prejudiced thereby. It would, therefore, be for the execution court to decide, after taking such evidence as may be necessary, as to which portion of the present premises consisted of the shop which was in the tenancy of the plaintiff and to restore possession to him only in respect of that portion.

7. Subject to the above observations the appeal is dismissed, but in the circumstances of the case the parties shall bear their own costs in this Court.

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