

Het Ram Kanodia Vs. Xth Additional District Judge, Kanpur and Others

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Court : Allahabad

Decided On : Jan-24-1994

Reported in : AIR1995All77

Judge : Sudhir Narain, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17; Transfer Property Act - Sections 111; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20(2); Delhi Rent Act - Sections 14(1); Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 13(1); Bombay Rent Act - Sections 12; West Bengal Premises Tenancy Act, 1946 - Sections 13(1)

Appeal No. : Civil Misc. Writ Petn. No. 47636 of 1993

Appellant : Het Ram Kanodia

Respondent : Xth Additional District Judge, Kanpur and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : K.L. Grover, Adv.

Judgement :

ORDER

1. This writ petition is directed against the order dated 28th August, 1991 passed by the Additional Judge Small Cause Court, Kanpur Nagar (respondent No. 2)

allowing the amendment application filed by respondent No. 3 and the order dated 6th August, 1993 passed by respondent No. 1 affirming the said order in revision.

2. Respondent No. 3 filed S.C.C. Suit No. 751 of 1980 in the Court of Judge Small Causes, Kanpur Nagar against respondents No. 4 to 10 and the petitioner on the allegation that the disputed accommodation was under the tenancy of the Purhwal Mills Co. Ltd. which was taken over by the U.P. State Sugar Corporation Ltd. (respondent No. 4). The defendants No. 1 to 4 in the suit illegality and without the consent and permission of the plaintiff sublet the accommodation to defendant Nos. 5 to 8. The petitioner was impleaded as defendant No. 7 in the Suit.

3. During the pendency of the Suit the plaintiff filed an application for amendment in the plaint. It was stated that the petitioner illegally sublet the accommodation to Sri Shiv Kumar Awasthi, Sri Umashankar Mishra and Sri Ramkishan Kanodia and has also made substantial and material alteration and addition to the premises in question and thereby reduced its value. He sought to add Para 10B and 10C in the plaint. The amendment application was opposed by the petitioner on the ground that the allegation contained in the amendment application were false. He had not sublet any portion to any one nor made any material alteration in the tenanted accommodation. The amendment sought will change the nature of the Suit and will introduce new cause of action. This Judge Small Causes Court allowed the application and the order was affirmed in revision.

4. Learned counsel for the petitioner submitted that if such new cause of action is permitted to be added in the suit it will amount to introducing a new case which was not the basis of the Suit at the time of filing of the plaint. The expression 'cause of action' was considered in the case of A.K. Gupta and Sons v. Damodar Valley Corporation, AIR 1967 SC 96, and it was held that every material fact does not constitute a part of cause of action. Their Lordships of the Supreme Court observed as under (at p. 98 of AIR) :--

'The expression 'cause of action' in the present context does not mean 'every fact which is material to be proved to entitle the plaintiff to succeed' as was said in Cooke v. Gill, (1873) 8 CP 107 (116), in a different context, for if it were so, no material fact could ever be amended or added and; of course, no one would waul

to change of. add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd., (1962) 2 All ER 24 and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas'. Dornan v. J.W. Ellis & Co. Ltd., (1962) 1 All ER 303. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time.'

5. In a Suit for eviction against tenant the cause of action is termination of relationship of landlord and tenant. So long there is a relationship of landlord and tenant either under the contract or under the Statute the tenant cannot be evicted. Under the Transfer of Property Act the relationship of landlord and tenant shall come to an end by termination of tenancy by a notice to quit, by efflux of time, by forfeiture etc. In Smt. Abnash Kaur v. Dr. Avinash Nayyar : AIR 1975 Delhi 46, the Court observed :--

'The cause of action in a suit for the eviction of a tenant under the Transfer of Property Act would be the existence of the relationship of a landlord and a tenant which has been brought to an end by the termination of tenancy by a notice to quit, by efflux of time, by forfeiture, etc.'

6. The grounds for eviction mentioned under Section 20(2) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 impose a bar for filing suit for eviction against a tenant unless those grounds exist. Sub-section (2) of Section 20 of the Act reads:

'..... A suit for the eviction of a tenant from a building after the determination of his tenancy may be instituted on one or more of the following grounds, namely

The Court cannot pass a decree unless the grounds mentioned under Section 20(2) of the Act exist.

7. In *Qudrat Ullah v. Municipal Board, Bareilly* : [1974]2SCR530 , Krishna Iyer J. speaking for the Court, observed (at p. 402 of AIR) :--

'Section 3 is only a procedural restoration and does not create a substantive rights. All that Section 3 therein laid down was that:

'No suit shall, without the: permission of the District Magistrate, be. filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds.....' It is more procedural disability that is cast, not a substantive cause of action that is created.'

Their Lordships then conclude stating:

'..... a disability of , the plaintiff to enforce his cause of action under the ordinary law may not necessarily be transmuted into a substantive right in the defendant (at p. 404 of AIR).

'It is appropriated for a Court to do justice between the parties to the, litigation and in moulding the relief in the light of the subsequent developments to take note of legislative changes. A Court of justice should, if it could, adjudicate finally and not leave the door ajar for parties to litigate again.'

8. In *Rattan Lal v. Vardesh Chander* : [1976]2SCR906 , their Lordships of the Supreme Court observed (at page 591 of AIR) :--

'But, in the Delhi Rent Act, as in many other like statutes, what is intended to be done is not to supplant but to supplement, not to eliminate the statutory requirements of determination of tenancy but to superimpose a ban on eviction which otherwise may be available in conformity with the T. P. Act without fulfilment of additional grounds.

No order for the recovery of possession of any premises shall be made.....in favour of the landlord against a tenant.....is a blanket ban in Sec. 14(1) of the Rent Act. It is followed by enumeration of specific grounds proof of which may authorise the Controller to make an order for the recovery of possession of the premises. It follows that before a landlord can institute proceedings for recovery of possession,

he has to make out this right (a) under the T. P. Act, and (b) under the Rent Act.'

9. In a case where suit is filed on one ground and subsequently an amendment is sought for adding additional ground for ejectment whether such amendment introduces a new cause of action and changes the nature of the suit, this question came up for consideration in *Kedar Nath v. Panna Devi*. Under the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 where the suit for eviction could be filed against a tenant on certain grounds mentioned under S. 13(1) of the said Act. The plaintiff filed the suit to evict the tenant on the ground of non-payment of rent. The landlord filed an application to amend the plaint by adding a ground that he bona fide requires the premises for his own use. The court rejected the application for amendment on the ground that it introduces new cause of action. This decision was overruled by the Division Bench in *Prem Lal v. Jadav Chand*. 'A. P. Sen, Acting C.J. (as he then was) Observed (at p. 50 of AIR) :--

'The grounds of eviction do not constitute a necessary part of cause of action for eviction of a tenant from an accommodation because even if untraversed, the plaintiff is still not entitled to succeed unless one or more of the grounds mentioned in S. 13(1) of the Act are proved to exist. Even if the defendant in such suit does not appear and remains ex parte, the plaintiff is still not entitled to a decree for eviction unless the Court is satisfied about the existence of one or more of the grounds set forth in S. 13(1) : *Rajendra Kumar v. Jamna Das*, 1975 Raj LW 64, The Court cannot also execute a decree for eviction of the tenant from an accommodation unless it is satisfied about the existence of such grounds. Thus S. 13(1) of the Act create a fetter on the power of the Court to pass or execute a decree for eviction.'

10. In that case suit for eviction was filed on the ground of bona fide requirement and the amendment in the plaint was sought on the ground of default in payment of rent as provided under S. 13(1) of Rajasthan Premises (Control of Rent and Eviction) Act, 1950. It was held that the grounds mentioned under S. 13(1) do not constitute cause of action. The question as to whether the grounds mentioned under the Rent Control Statute amounts to part of cause of action came for

consideration in *Zainab Bai v. Navayug Chitrapat Co. Ltd.* : AIR1969 Bom194 , and it was observed by the Court as under (at p. 197 of AIR) :--

'It is true that 'cause of action' means every material fact which, if traversed it would be necessary for the plaintiff to prove in order to support his right judgment. In a suit for eviction filed by a landlord against a tenant the right to sue and to get judgment arises from the determination of the tenancy by efflux of time, expiration of notice to quit or otherwise as provided in S. 111 of the Transfer of Property Act. It is then that the landlord becomes entitled -to evict or to recover possession from the tenant.'

'Section 12 of the Bombay Rent Act provides that no ejectment shall ordinarily be made if tenant pays or is ready and willing to pay standard rent and permitted increases. It provides a protection for tenant against eviction after determination of tenancy. It creates an impediment in the way of the landlord recovering possession.'

'These conditions are termed as 'grounds of ejectment'. It is not necessary for a landlord to set out these grounds in the notice to quit as they are not a part of the cause of action of the landlord. The landlord sets out these grounds in the plaint, not because they constitute his cause of action, but in anticipation of the tenant claiming the protection provided in S. 12, to show that conditions have arisen which have taken away the protection of the tenant and removed the impediment in the way of the landlord, recovering possession. In my opinion, grounds of ejectment are not a part of the cause of action in such suit.'

11. In *Jitendra Nath Das v. K. K.. Banerji* : AIR1977 Cal49 , a suit was filed by the landlord against his tenant for eviction on the ground of default. The landlord applied for amendment of the plaint by the introduction of his reasonable requirement as an additional ground for relief. The Court allowed the application and held that the suit is one for ejectment of a tenant and the amendment will not change the nature and character of the suit inasmuch as it will nevertheless remain suit for eviction of the tenant. The cause of action in the suit is not default but it is determination of tenancy by a notice to quit and the default is only one of the grounds which entitles a Court to pass a decree for eviction against the tenant

under sub-sec. (1) of S. 13 of West Bengal Premises Tenancy Act, 1946.

12. In *M/s. Tara Properties Private Ltd. v. M/s. Allied Resins and Chemicals Ltd.* : AIR1989 Cal192 , the Division Bench of the Calcutta High Court held that an application for amendment of the plaint filed by the landlord in a suit for eviction by him against the tenant introducing ground of sub-letting should be allowed as it neither changes the character or nature of the ejectment suit nor makes out any new cause of action. A Full Bench of Delhi High Court also took the same view in the case of *Smt. Abnash Kaur v. Dr. Avinash Nayyar* : AIR1975 Delhi46 . The Madhya Pradesh High Court also expressed the same view in *Bhanu Prakash Agarwal v. Munna Lal* : AIR 1979 MP157 .

13. In *Haripada Das v. Sristidhan Chakrobarty* : AIR1979 Cal221 , an application for amendment of the plaint was made for amendment of plaint adding the ground of 'reasonable requirement of the suit premises'. It was urged before the Court that in the notice of termination of tenancy it was not mentioned as a ground for eviction. The Court repelled the contention holding that it was not necessary for the landlord to make out all the grounds in the notice nor did the grounds constitute cause of action. The cause of action arose after the notice was given determining the tenancy and, therefore, the nature of suit, which was a suit for ejectment, could not be changed by adding new ground.

14. In *Abdul Wahab v. Judge Small Causes Court, Mainpuri*, (1988) 1 All Rent Cas 560, this Court upheld an order allowing the amendment application filed by the landlord who had sought amendment in the plaint by introducing a ground of sub-letting. The landlord had filed the suit for eviction on the ground that the tenant committed default in payment of arrears of rent but by amendment he sought to introduce the ground of sub-letting by the tenant.

15. Learned counsel for the petitioner placed reliance upon certain decisions in support of his contention that the amendment sought by the plaintiff introduced a new case which should not have been allowed by the courts below. In *Kanda v. Waghu* AIR 1950 PC 68, the suit was filed by the plaintiff challenging the gift deed on the ground that the land was ancestral and gift of such land was contrary to custom. It was found by all the courts that the land was not ancestral. Before the

Privy Council it was suggested that the plaintiff should be permitted to amend the plaint to state that even if the land was found to be non-ancestral, the widow who had executed the deed was still incompetent to dispose of the property. Their Lordships of the Privy Council repelled the contention observing that an amendment which involves the setting of a new case and alters the realmatter in controversy between the parties cannot be allowed.

16. In *Km. Manmohan Mishra v. Seth Bal Gopal Das*, (1983) 1 All Rent Cas 324, the plaintiff had filed the suit for declaration of tenancy rights. He sought amendmenun the plaint stating that the defendant was not owner of the property in suit. This Court took the view that the plaintiff wanted to alter the nature of the suit and also get the ownership rights in respect of the property in dispute adjudicated and in that circumstance upheld the order of the Court rejecting the amendment application.

17. In *Chandra Bhan v. Mange Ram* , a suit was filed for pre-emption. The plaintiff stated that the landlord had inherited the suit land from her husband and he being vendor's-husband's brother's son had preferential right of preemption. He filed an application for amendment of plaint claiming the right of preemption as vendor's co-sharer. The Court disallowed the amendment application holding that the plaintiff had taken totally inconsistent plea by way of amendment and he wanted to introduce a new case in the plaint.

18. In *Smt. Uma Gupta v. Smt. Sushila* : AIR 1989 MP169 , the plaintiff based the claim that she was owner of the property and the property was purchased Benami. She sought amendment claiming the right on the basis that the property came to her share and her husband in the family arrangement. The Court disallowed the amendment application holding that the cause of action cannot be substituted by another distinct cause of action.

19. The cases cited by the learned counsel for the petitioner are not applicable to the facts of the case. Where an amendment is sought to substitute one cause of action with another distinct cause of action or the nature of the suit is altered by permitting amendment in the plaint, the court is justified in rejecting the application for amendment. But where an additional ground is added for asking the same

relief without changing the nature of allegations contained in the plaint, a court should allow the amendment application.

20. In the present case the nature and character of the suit will not be changed by permitting amendment of the plaint. The nature of the suit shall remain that of eviction. He has only added certain grounds stating that the defendant No. 7 had sub-let and made material alteration in the disputed accommodation. The rights of the petitioner will not be affected by amendment of the plaint by lapse of time as no right has been accrued to him by lapse of time.

21. In the result the writ petition fails and is accordingly dismissed.

22. Petition dismissed.

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