

Syed Mohd. Idris Vs. 1st Additional District Judge and ors.

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Court : Allahabad

Decided On : Jan-06-1977

Reported in : AIR1977All296

Judge : D.N. Jha, J.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 2 and 3

Appeal No. : Writ Petn. No. 834 of 1975

Appellant : Syed Mohd. Idris

Respondent : 1st Additional District Judge and ors.

Disposition : Petition allowed

Judgement :

ORDER

D.N. Jha, J.

1. This writ petition has been directed by Syed Mohd. Idris challenging the order passed by the Judge, Small Causes Court, Lucknow, dated 13-3-1973 contained in Annexure 3 and the order dated 21-3-1975 passed by the 1st Additional District Judge, Lucknow, contained in Annexure 4.

2. In brief the facts are that house No. 6 situate in Mohalla Chirendhapurwa near Baisi Ki Masjid, Lucknow, of which the petitioner is the tenant was formerly owned by one Smt. Nasim Bano and her husband Shri Zahoor Ahmad (hereinafter to be referred as the original landlord). The original landlord obtained a permission under Section 3 of the old U. P. (Temporary) Control of Rent and Eviction Act (U. P. Act III of 1947) for permission to file a suit for ejectment of the petitioner on the ground that they were not keeping good health and have been medically advised to shift in the upper storey which was in the occupation of the petitioner. The permission was granted to them and in pursuance of the same a regular suit No. 10 of 1966 was filed for ejectment of the petitioner. The suit was contested and ultimately was dismissed on 11-12-1967 on the ground that the notice to quit was not served on the petitioner. No steps thereafter were taken by the original landlord and the petitioner continued to be his tenant and was regularly paying the rent of the premises in dispute. This disputed house was subsequently sold to opposite party No. 3 Syed Ahmad Husain by a sale deed dated 27-1-1969. Opposite party No. 3 after purchasing the house also accepted the rent from the petitioner and he continued to be his tenant in the disputed house. On 25-3-1970 a notice was sent by opposite party No. 3 terminating the tenancy of the petitioner and this notice was served on 6-4-1970. It is not disputed that this notice terminating the tenancy of the petitioner was in pursuance of the permission granted under Section 3 of the old Act to the original landlord. Opposite party No. 3 Syed Ahmad Husain thereafter filed a fresh suit in May 1970 which was registered as regular suit No. 384 of 1970. During the pendency of the said suit in the State of Uttar Pradesh the old U. P. (Temporary) Control of Rent and Eviction Act was replaced by the new Act known as U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act (Act XIII of 1972). In view of the provisions of this new Act the suit was transferred to the court of Judge, Small Cause Court who after framing of the issue vide his order dated 13-3-1973 decreed the suit. This order is Annexure 3. The petitioner feeling aggrieved by the said order preferred a revision before the District Judge. In this revision an application was moved by the petitioner seeking amendment of the written statement which was allowed but since the stay originally granted was vacated during the pendency of the civil revision the petitioner filed a writ petition No. 1394 of 1974. The writ petition was

admitted and it was ordered that the petitioner will not be ejected but, however, the proceedings in the revision were not stayed, hence opposite party No. 1 decided the revision filed by the petitioner vide order dated 21-3-1975 dismissing the civil revision filed by the petitioner. This order is Annexure 4. It is in these circumstances that the petitioner has now come up before this court impugning the orders passed by the Judge, Small Causes Court and the 1st Additional District Judge. The petition has been contested on behalf of opposite party No. 3 Syed Ahmad Husain, the new landlord and a counter-affidavit has been filed. It is asserted that the impugned orders are legal, just and proper and call for no interference by this Court as the orders do not suffer from any legal infirmity.

3. I have heard the learned counsel for the parties at some length and perused the various material brought on the record of this Court. The learned counsel for the petitioner has raised three questions for the decision of this court. Firstly that the permission granted under Section 3 of the old U. P. (Temporary) Control of Rent and Eviction Act, 1947, to the original landlord could not be availed of by the subsequent transferee landlord as the original permission stood exhausted. The second question posed is that the permission granted to the original landlord could not be transferred along with the property and availed of by the third person. Lastly it was argued that the permission granted to the original landlord stood waived by the conduct of the original landlord as well as the transferee landlord, since no steps to file a suit were taken from 1967 to March 1970 and rent had been continuously accepted both by the original landlord as well as the new landlord. All these propositions were strongly opposed by the learned counsel appearing for the opposite parties.

4. I now propose to consider the questions canvassed at the Bar. In my opinion the controversy in the case lies in a very narrow ambit. The question to be determined in the case is whether the permission granted to the original landlord could be utilised by the transferee landlord who subsequently purchased the property. It is to be noted that the original landlord having obtained the permission had filed a suit but that had been dismissed on the ground that the notice was defective. This suit was dismissed on 11-12-1967. It is also not disputed that no subsequent suit thereafter was filed by the original landlord on the basis of the

permission granted on 24-4-1965. On the contrary the original landlord having lost the suit continued accepting rent from the petitioner, thereby treating him as tenant of the premises in dispute. The original landlord had also not given subsequent notice terminating the tenancy of the petitioner. The house in dispute admittedly was sold to the new landlord opposite party No. 3 on 27-1-1969. Opposite party No. 3 Syed Ahmad Husain after purchasing the house in the year 1969 treated the petitioner as a tenant and continued to accept the rent almost for a year and vide notice dated 25-3-1970 served on the petitioner on 6-4-1970 terminated the tenancy on the basis of permission obtained by the original landlord. The learned counsel for the parties have referred to a large number of cases to support their contention. The learned counsel for the opposite parties has mainly placed reliance on a Division Bench decision of this Court in Rameshwar Dayal v. Smt. Mohania (1963 All LJ 198). This case overrules the decision. Sajjan Singh v. Smt. Jamuna Bala Devi (AIR 1960 All 410) which was relied upon by the learned counsel for the petitioner in assertion of his submission that the permission granted to a landlord under Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act 1947 (hereinafter to be referred as the Act) to file a suit for ejectment of the tenant confers on him a personal right and is not transferable to his successor-in-interest. The Division Bench in Rameshwar Deyal's case (supra) held:--

'A suit can be filed for the eviction of a tenant who is an heir of the original tenant, after the death of the original tenant on the basis of a permission obtained against the original tenant during the lifetime of the original tenant.'

It may be mentioned that all the cases relied upon by the learned counsel for the opposite parties are not of much help in resolving the controversy that has been canvassed before me as in the present case the permission by the subsequent landlord, is sought to be utilised in peculiar circumstances, while, in all the other cases the future proceedings which were questioned in the court of law were prosecuted by the legal representatives of the deceased landlord or the deceased tenant. It is clear that opposite party No. 3 could not be deemed to be a legal representative of the original landlord and it is also true that the original landlord did not the during the proceedings initiated in the instant case. The learned

counsel for the opposite parties in order to get over the difficulty referred to the definition of 'landlord' as laid down in Section 2 (c) of the Act The word 'landlord' in the Act is defined as:

Section 2 (c)--'Landlord' means a person to whom rent is payable by a tenant in respect of any accommodation and includes the agent, attorney, heir or assignee of such person.

The learned counsel argued that the words 'assignee of such person' clearly included the transferee and in this view of the matter he maintained that the permission granted to the original landlord was a right for the enjoyment of the property and when the disputed house was sold to opposite party No. 3 that enjoyment remained attached with the property and hence opposite party No. 3 could utilise the permission granted to the original landlord for initiating the present proceedings for the ejectment of the petitioner from the premises in question. In support of his contention he placed reliance on the case, *Ram Raksh Pal v. Brij Nandan Swarup* (AIR 1967 All 325). In this case learned single Judge Gangeshwar Prasad, J. as he then was of this Court observed:--

'Permission granted to landlord to file suit for eviction of tenant -- the permission enures for benefit of purchaser from such landlord.'

It may be pointed out that the learned Judge, while making this observation, relied on the Division Bench decision in *Rameshwar Dayal's case* (supra) and observed that the reason which impelled the permission granting authority to grant the permission might have been of a purely personal character based on the personal need of the landlord to whom the permission was granted but the court is concerned with the permission itself and not with the reasons behind the permission. This decision cannot be sustained in view of the Supreme Court decision, *Smt Phool Rani v. Sh. Naubat Rai Ahluwalia* (AIR 1973 SC 2110). The learned counsel for the opposite parties tried to distinguish the observations made by the Supreme Court by pointing out that in the first instance it related to Delhi Rent Control Act and it stood on a different footing as it is a complete Code in itself while the U. P. Act, he maintained, dealt only with the question of permission and it had no connection whatsoever with the suit to be instituted after the removal of the

rider of the permission to file a suit in the Civil Court for ejectment of the tenant. The learned counsel further maintained that it was not open to the civil court to go behind the validity of the permission granted under Section 3 (1) of the Act.

5. I have given my anxious consideration to the arguments advanced by Sri Shukla but I am constrained to observe that I do not find myself in agreement. It may be mentioned that the definition of 'landlord' as mentioned in the Act is only for the purposes of collection of rent and it may be pointed out that the inclusion of the words 'agent, attorney, heir or assignee' is very significant. The inclusion of any one of them within the definition of 'landlord' could be either by operation of law or by means of an execution of a deed. The case of heir of a landlord in the circumstances would stand on altogether a different footing because soon after the death of the landlord the legal 'heirs' step into the shoes of the landlord by operation of law while on the other hand the case of an agent or an assignee would stand on a different footing. It is to be shown by these people how they are entitled to be landlord; whether by operation of law or by execution of deed. It may be mentioned that the original sale deed executed in favour of opposite party No. 3 has not been brought on record, nor is there any document to show that the permission granted under Section 3 of the Act was passed on to be utilised by opposite party No. 3. The owner of any accommodation is actually the person in law who is entitled to receive rent of the accommodation. It is not necessary that every landlord be owner of the house, likewise it is also clear that it is not necessary that every owner of the accommodation be a landlord as per definition of Section 2 (c) of the Act. That being so, in my opinion the contention of the learned counsel that the word 'assignee' included the transferee as per definition of 'landlord' defined in Section 2 (c) of the Act, holds no ground.

6. It may be mentioned that the Supreme Court in the case of Smt. Phool Rani (AIR 1973 SC 2110) (supra) laid emphasis over the maxim-- 'actio personalis moritur cum persona' and it observed that the attraction of this principle in various proceedings in the court of law is often misunderstood and referring to Salmond's Law of Torts. 15th Edn. Page 569, pointed out that the plain meaning of that common law maxim is that personal action dies with the parties to the cause of action. Its purport, until sweeping changes were made in the previous law by the

Law Reforms (Miscellaneous Provisions) Act 1934, was that no executor or administrator could, subject to certain exceptions, sue or be sued for any tort committed against or by the deceased in his lifetime. The action for a tort had to be begun in the joint lifetime of the wrongdoer and the person injured. This observation had come down in a case when the case of a legal representative of a landlord (since deceased) was being considered with respect to the right to maintain an application for substitution in place of a deceased landlord. The court repelled the submission of the right being vested in the legal representatives to be brought on the record in place of a deceased landlord. It is true that in the said decision the proposition in Rameshwar Dayal's case (1963 All LJ 198) (supra) was considered and not overruled but at the same time it was observed that in that case the permission to evict related to the condition of the premises which did not change with the death of the tenant.

7. On careful consideration of the entire facts and circumstances I do not think that this is a case in which any exception can be drawn to the 'maxim' a personal action dies with the person, which, in my opinion is a well established principle. Undoubtedly if the legal heirs of the original landlord had brought the suit for ejectment of the petitioner, I might have been inclined to draw an exception to the 'maxim' on the ground that a statutory relief in relation to the property had been obtained by the family members after satisfying the statutory Tribunal that he or she was entitled to that relief. In the instant case, there is nothing before the Court from which, it can legitimately be concluded that the right of the original landlord became so annexed to the property that it could project a right in opposite party No. 3 to initiate an action for ejectment of the petitioner.

8. The learned counsel for the opposite parties also argued on certain principles of interpretation and procedure prescribed for the same. In my opinion it is not necessary to discuss the same, as it is well settled that law and decisions have to be applied in the light of the facts and circumstances of each case. The facts and circumstances of the instant case stand on a peculiar footing as observed earlier and hence the law has to be applied on the basis of admitted facts of the case.

9. On consideration of the entire facts and circumstances as observed above I am of the opinion that this writ petition deserves to be allowed as the orders passed by the courts below in my opinion cannot be sustained.

10. The result is that the writ petition succeeds and is allowed. The order dated 13-3-1973 passed by the Judge, Small Cause Court, Lucknow and the order dated 21-3-1975 passed by the 1st Additional District Judge, Lucknow contained in Annexure 4 are quashed. Let certiorari issue accordingly to cancel the originals of the same from the record. I, however, make no order as to costs.

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