

**Ram Prakash Vs. Moolchand Gupta**

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**Court :** Allahabad

**Decided On :** Mar-02-1977

**Reported in :** AIR1977All556

**Judge :** T.S. Misra, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rules 100, 101 and 103

**Appeal No. :** Second Appeal No. 77 of 1970

**Appellant :** Ram Prakash

**Respondent :** Moolchand Gupta

**Disposition :** Appeal allowed

**Judgement :**

**T.S. Misra, J.**

1. This appeal by the defendant arises out of a suit filed by the respondent Kunwar Rudra Pratap Singh under Rule 103 of Order 21. C. P. C.

2. Briefly, the facts leading to this appeal are these: The plaintiff Kr. Rudra Pratap Singh purchased Kothi No. 16, Qaiserbagh Palace, Lucknow in the auction sale held in execution proceedings No. 77 of 1956 of the Court of Civil Judge, Lucknow. Lal Chand Pratap Singh was the erstwhile owner of that property. The

northern portion of that Kothi was in possession of the defendant-appellant. The plaintiff applied to the court under Rule 95 of Order 21, C. P. C. for possession of the property and the possession of the property was accordingly delivered to him. While doing so the defendant was dispossessed from the said portion of the property. He, therefore, moved an application under Rule 100 of Order 21, C. P. C., for being put back to possession. The learned Civil Judge allowed that application on 12th Sept., 1964 for delivery of possession of the aforesaid northern portion of the property to the defendant. The defendant was accordingly put in possession of the same. The plaintiff then filed the suit which has given rise to this appeal on 19th March, 1966 alleging inter alia that the defendant was a licensee of the erstwhile owner, that the tenancy rights could not be conferred on him in view of the provisions of the Government Grants Act and that his licence had been determined not by the erstwhile owner but also by the plaintiff. He, therefore, filed the suit for a decree for possession of the property by eviction of the defendant. The suit was resisted by the defendant on a variety of grounds. He pleaded, inter alia, that he was a tenant of the accommodation in question and not the licensee as alleged and that the suit was barred by time. The learned trial Court dismissed the suit holding that it was barred by time. The plaintiff preferred an appeal before the District Judge. It was held by the Addl. District Judge, Lucknow who allowed the appeal and decreed the suit that the suit was not barred by time and that the defendant was licensee and not the tenant. He also held that the suit was not covered by the provisions of Rule 103 of Order 21, C. P. C. aggrieved by that decision the defendant has preferred this second appeal.

3. For the appellant it was urged at the outset that the suit was filed under Rule 103 of Order 21, C. P. C. and as it was filed after one year of the order made under Rule 101 of Order 21, C. P. C. the suit was obviously barred by time. It may be noticed at this stage that the order under Rule 101 of Order 21, C. P. C. was passed on 12th September, 1964 and the suit was filed on 19th March 1966. Art. 98 of the Limitation Act which governs a suit filed under Rule 103 of Order 21, C. P. C. prescribes a period of one year from the date of the order passed under Rule 100 of Order 21. That being so, the suit filed by the plaintiff would be barred by time if it was a suit covered by the provisions of Rule 103 of Order 21, C.P.C. It was contended on behalf of the respondent that the suit was not filed under Rule

103 but was based on a different cause of action, namely, determination of the licence by the plaintiff. Hence the submission was that the suit having been filed for eviction of a licensee could not be governed by Art. 98 of the Indian Limitation Act. This also seems to be the view taken by the appellate court below.

4. In order to appreciate the rival contentions it would be useful to refer to the averments made in the plaint. The plaintiff alleged in para 11 of the plaint that after purchasing the property in an auction held in execution of a decree he applied to the court under Order 21, Rule 95, C.P.C. to be put in possession and consequently a warrant for delivery of possession was issued. In para 12 it was alleged that pursuant to the said order possession of the entire property was delivered to the plaintiff by the Court Amin. Para. 13 of the plaint states that the defendant thereafter applied to the court under Order 21, Rule 100 C. P. C. for redelivery of the portion in his occupation from which he had been dispossessed. Para 14 states that by an order dated 12-9-1964 the Civil Judge ordered restoration of possession to the defendant over the property mentioned in para 7 of the plaint. Para 15 is relevant and may be quoted in extenso. It reads.-

'That aggrieved by the said order, the plaintiff has a right to institute the present suit in conformity with the provisions of Order 21, Rule 103, C. P. C. and otherwise as well.'

Para 19 says that the cause of action accrued to the plaintiff against the defendant on 12-9-1964 when the summary order under Order 21, Rule 101, C. P. C. was passed by the Civil Judge, Lucknow in Misc. Case No. 68 of 1964 allowing restoration of possession to the defendant and there-after when the defendant reoccupied the said property.

5. These averments made in the plaint clearly make out that the suit was filed under the provision Rule 103 of Order 21, C. P. C. However, the plaintiff had stated in para 17 of the plaint that as a matter of precaution the plaintiff also served the defendant with a notice revoking his licence and demanding delivery of possession. The said notice was served on him on 3-2-1966. In view of this averment made in para. 17 of the plaint it was said that the present suit is based on the cause of action which occurred when the licence was revoked by the

plaintiff by notice dated 2-2-1966 and the defendant failed to comply with the same. In my view it is manifest from the plaint that the suit was brought by the plaintiff under Rule 103 of Order 21, C. P. C. He was aggrieved by the order dated 12-9-1964 which was admittedly passed under Rule 101 of Order 21, C.P.C. The period of limitation prescribed under Art. 98 of the Limitation Act for filing a suit under Rule 103 of Order 21, C. P. C. is one year commencing from the date of the order passed under Rule 101 of Order 21, C. P. C. The present suit was not filed within this period; rather it was filed after the expiry of the period of one year from the date of order passed under Rule 101, that being so, the suit was barred by time.

6. Even on merits the relief claimed on the basis of licence could not be granted. In the proceeding taken under Order 21, Rule 100, C. P. C. the defendant had alleged that he was a tenant. Kunwar Rudra Pratap Singh in reply had asserted in those proceedings that Ram Prakash was a licensee and not a tenant. The Court passed the order of redelivery of possession to Ram Prakash holding that he was a tenant and not a licensee. This order was passed under Rule 101 of Order 21, C. P. C. No suit was filed under Rule 103 of Order 21, C. P. C. within one year of the said order by Kunwar Rudra Pratap Singh. Consequently the order passed on 12-9-1964 under Rule 101 became conclusive. True it is that the order passed under Rule 101 in a proceeding commenced under Rule 100 of Order 21, C.P.C. would not operate as *res iudicata* but the effect of Rule 103 is that unless a suit is brought as provided by the Rule the party against whom the order in the claim proceeding under Rule 100 is made, or any person claiming through him cannot re-agitate in any other suit or proceeding against the other party or any person claiming through him that the other party was not holding the property on his own account or on account of some person other than the judgment-debtor.

7. In the case in hand, it was held by the court in the proceedings initiated under Rule 100 that Ram Prakash was in possession of the property as a tenant. This finding cannot, therefore, be assailed in the present suit which was filed after the expiry of one year from the date of the order passed under Rule 101. Hence if the contention of the respondent is accepted that the suit which has given rise to this appeal was not filed under Rule 103 of Order 21, C.P.C. the finding that Ram

Prakash was a tenant and not a licensee being conclusive cannot be assailed and is in fact, binding on the plaintiff respondent. Consequently the assertion of the plaintiff that Ram Prakash was a licensee which runs counter to that finding cannot be sustained. The plaintiff sought the relief of eviction of Ram Prakash not on the ground that Ram Prakash was tenant and his tenancy had been determined, but on the ground that Ram Prakash was a licensee and his licence had been revoked. The plaintiff having filed the suit on the basis that Ram Prakash was licensee is, therefore, not entitled to the relief prayed for by him. Hence in either view of the matter the plaintiff's suit was liable to be dismissed.

8. In the circumstances the appeal is allowed with costs. The decree passed by the appellate court below is set aside and the one passed by the trial Court is restored whereby the suit was dismissed.

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