

Murli Singh Vs. Tika Ram

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Court : Allahabad

Decided On : Nov-24-1949

Reported in : AIR1950All401

Judge : Sapru, J.

Acts : Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 - Sections 5(4)

Appeal No. : Civil Revn. No. 513 of 1948

Appellant : Murli Singh

Respondent : Tika Ram

Advocate for Pet/Ap. : Jagnandan Lal, Adv.

Disposition : Revision allowed

Judgement :
ORDER

Sapru, J.

1. The applicant in this revision is a tenant of about eleven years' standing. He was, under an agreement in writing, dated 14th November 1944, bound to pay a rent of Rs. 3-8-0 per month for the house he was occupying. Before that date he

was paying a rent of Rs. 2-8-0. According to the municipal assessment of April 1942 the rental value of the house is Rs. 3 p. m.

2. The landlord applied to the Court under the U. P. Control of Rent and Eviction Act (Act III [3] of 1947) to enhance the rent which the applicant had been paying to him from and about the year 1944. The suit which was brought by him purports to be under Section 8 (4) of the said Act. By its order dated 15th May 1948, the Court enhanced the rent of the house in suit to Rs. 10 p. m. It is against that order of the learned Munsif that the applicant has come up in revision to this Court. Section 5 (1) of the Act lays down that

'the rent payable for any accommodation to which this Act applies shall be such as may be agreed upon between the landlord and the tenant.'

There was an express agreement between the landlord and the tenant whereby the tenant was bound to pay Rs. 3-8-0 per month as rent of the house he was occupying. Sub-clause (2) of that Act provides the procedure for the enhancement of rents by landlord by means of notice in circumstances and up to a certain limit included in the section itself. It is an admitted fact that the landlord has not followed in this case the procedure indicated in Section 5 (2). It is unnecessary to consider Sub-clause (3) as it has no relevance to the facts of the present case. Sub-clause (4) is important and is reproduced below:

' if for any reason the landlord or the tenant, as the case may be, claims that the 'reasonable annual rent' is inadequate or excessive, he may institute a suit for fixation of rent in the Court of the Munsif having territorial jurisdiction if the annual rent claimed is Rs. 500 or less, and in the Court of the Civil Judge having territorial jurisdiction if it exceeds Rs. 500: provided that the Court shall not vary the agreed rent unless it is satisfied that the transaction was unfair. . . . '

It is important to note that the proviso expressly lays down that the Court shall not vary the agreed rent unless it is satisfied that the transaction was unfair. The learned Munsif had, therefore, no jurisdiction under Section 5 (4) to vary the rent which had been agreed upon between the landlord and the tenant unless it was satisfied that the agreement entered into was of an unfair nature. It may be noted

that the words 'transaction' and 'fair' occur in Section 3(2)(d), Usurious Loans Act also. Clause (d) of that Act lays down certain practical tests for the guidance of the Court. In Act III [3] of 1947 no specific tests have been laid down, but the view that I take is that the principles which have been enunciated in the Usurious Loans Act are capable of adoption for determining whether a transaction is fair or unfair. It strikes me, however, that it is not irrelevant to consider in this connection the principles which the Legislature has laid down for determining if a transaction is unfair under the Usurious Loans Act (Act X [10] 1918). Section 3(d) of that Act lays down that:

'In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relation of the parties at the time of the loan or tending to show that the transaction, was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known to the debtor.'

I may refer in this connection also to Section 16(1), Contract Act which lays down:

'A contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.'

There is nothing in, this case to prove that the agreement was not freely entered into by the parties in 1944. There is also nothing in this case to prove that the rent which the parties had agreed upon in 1944 was not, in all the circumstances of the case, a fair rent, or that any unfair advantage was taken by the tenant of the position in which the landlord found himself. The fact that since the agreement was entered into, rents have gone up, is completely immaterial. The object of the Rent Control and Eviction Act of 1947 is to control the rise in rents beyond a certain limit. It strikes me that the approach of the learned Munsif to the case was, therefore, not a correct one. He had, on the admitted facts of this case, and in the absence of any proof that the agreement entered into between the parties in 1914 was unfair, no jurisdiction to enhance the rent agreed upon between them. In so doing the learned Munsif exercised a jurisdiction which was not vested in him by

law.

3. For the reasons given above this revision must succeed. The result is that the judgment and decree of the learned Munsif is set aside and the suit is dismissed. I make no order as to costs as the other party is not represented. Revision allowed.

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