

Raja Ram Vs. Daulat Ram

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Court : Allahabad

Decided On : Jan-18-1980

Reported in : AIR1980All161

Judge : K.M. Dayal, J.

Appeal No. : Second Appeal No. 2 of 1972

Appellant : Raja Ram

Respondent : Daulat Ram

Advocate for Def. : G.P. Bhargava and ;A.N. Bhargava, Advs.

Advocate for Pet/Ap. : G.D. Srivastava, Adv.

Disposition : Appeal dismissed

Judgement :

K.M. Dayal, J.

1. The present second appeal has been filed by the defendant against a decree for rent, ejectment and damages passed against him by the lower appellate court.
2. The present suit for ejectment and arrears of rent amounting to Rupees 4,409/32 p., and damages at the rate of Rs. 40/- per month, was filed on the ground that the disputed accommodation was a post-1950 accommodation and,

therefore, U. P. (Temporary) Control of Rent And Eviction Act, 1947 did not apply to the same. The defence was that the Act applied and the disputed accommodation was constructed prior to 31st of December, 1950. The trial court dismissed the suit holding that disputed accommodation was not proved to be a post-1950, construction and the rent of the accommodation was only Rs. 20/- per month and was never enhanced. The suit was, therefore, decreed for a sum at Rs. 27/- as arrears of rent and in respect of other reliefs it was dismissed.

3. An appeal was filed against the judgment and decree of the trial court and the appeal has been allowed holding that the rent of the disputed accommodation was Rs. 20/- per month but the disputed accommodation was proved to have been constructed in the year 1956 and, therefore, the provisions of U. P. (Temporary) Control of Rent and Eviction Act did not apply to the same. The plaintiff having terminated the tenancy validly was entitled to relief of ejectment and damages as well. Consequently the suit was decreed by the lower appellate court for ejectment and recovery of Rs. 131-66 p. The future and pendente lite damages were decreed at the rate of Rs. 20/- per month. The learned counsel for the appellant has argued before me only one point. His argument was that the disputed accommodation was a pre-1951, construction and, therefore the suit was barred by Section 3 of the Act aforesaid.

4. The finding of the lower appellate court that the disputed accommodation was a construction of 1956, was based on appreciation of oral and documentary evidence relied upon the admission of the appellant himself that previously it was a wooden stall and the construction was made in 1956.

5. The learned counsel argued that the court below has placed the burden of proof of the date of construction on the defendant, wrongly, I do not want to enter into this controversy as both the parties knew about the real matter in dispute i. e. the date of construction and led evidence on the same. Under the circumstances the question of burden of proof becomes only of academic nature.

6. The court, below also relied upon the evidence of D. W. 1, Vishnu Dutt, who admitted that the disputed accommodation was a wooden stall before ten years. Subsequently masonry construction was made and wooden stall was removed,

that statement was recorded on 10th November, 1970. Therefore it could safely be held that the disputed accommodation was constructed in the year 1956 or at least in the year 1960. In any case the fact remains that the disputed accommodation was constructed after 1st January 1951, and, therefore, the provisions of U. P. Act No. III of 1947, do not apply to the instant case.

7. The learned counsel for the appellant vehemently argued that proceedings for unauthorised construction in respect of the disputed shop were taken against the plaintiff by the Prescribed Authority. A certified copy of the objection of the plaintiff has been filed by the defendant, which is Exhibit A-1 on record. It is dated 22-4-1967. In that reply the plaintiff mentioned that he did not erect any building and has not violated any provisions of U. P. Regulation of Building Operations Act, 1958.

8. Learned counsel for the appellant relying on the aforesaid document argued that in view of this admission of the plaintiff no reliance could be placed on Exhibits 3 and 4, the Nagar Mahapalika assessments filed by the plaintiff. However, I am not prepared to accept the argument. The question of appreciation of the evidence, oral or documentary was raised before the lower appellate court and the lower appellate court after considering the same came to a finding of fact that the disputed constructions were made after 31st, of December, 1950.

9. The learned counsel for the appellant raised another question before me. Belying upon a case reported in AIR 1932 Lah 503 (FB) Qadir Bakhsh v. Hakam he held that the plaintiff had committed a fraud on the Prescribed Authority of Nagar Mahapalika in mentioning in his objection (exhibit A-1) that the disputed constructions were old constructions. He, therefore, argued that the Maxims 'Nemo allegans turpitudinem suam audiendus est' and 'In pari delicto potior est conditio possidentis' applied.

According to him the plaintiff has come to court by committing a fraud on the Nagar Mahapalika and, therefore, his objection that the construction was made after 1951 should not be entertained. The aforesaid judgment of Lahore High Court was given by a Special Bench of five Judges and the learned counsel argued that as the Allahabad High Court had no view of its own the same should

be followed. He also relied on a Division Bench case of our court, *Vilayat Hussain v. Mst. Misran* AIR 1923 All 504. He argued that, that case also held that where a fraud was committed the court should not help either party. So far as this principle is concerned there cannot be any dispute. The Lahore case was a case of Benami Mortgage taken by the plaintiff to evade provisions of Alienation of Lands Act, The suit was filed by the Benamidar to recover possession of property from the beneficiary. Relying upon Maxim 'Nemo allegans turpitudinem suam audiendus est' and 'It pari delicto potior est conditio possidentis' it was held that no one alleging his own baseness ought to be heard. It was held it is one of the fundamental doctrines of all civilized assessment of jurisprudence that a Court of law shall not lend its aid to enforce a transaction which is tainted with fraud.

A person who has polluted his hands by being a party or privy to a fraudulent transaction shall not be allowed to approach the fountain of justice with his own infamy on his lips and obtain relief on the strength of such a transaction'.

10. In my opinion this doctrine has no application to the instant case. The doctrine applied where the transaction in question itself was based on fraud committed by the plaintiff. In the present case I do not find any fraud was committed by the plaintiff at any stage. Exhibit A-1 was a matter between the plaintiff and the Prescribed Authority. Further if any fraud was committed it was committed on the Prescribed Authority or Nagar Mahapalika with which the defendant had no concern.

11. As far as the second Maxim 'In pari delicto potior est conditio possidentis' is concerned there is no averment that both the parties were the party to the aforesaid fraud. Therefore that Maxim has no application. The Allahabad case (supra) was also a case of Benami transaction in fraud of one's creditors. It was found that the creditors were also a party to the fraud and, therefore, it was held that there being no difference in the decree of the plaintiff and defendants' guilt, the duty of the court is to dismiss the claim. That case is based on the maxim of pari delicto and can have no application to the present case. There is another aspect of the case. The defendant himself took the premises after 1st of January, 1951, on rent. No allotment order was obtained by him. In case the building was

covered by U. P, (Temporary) Control of Rent and Eviction Act, the defendant could not have occupied the same without an allotment order. This circumstance, also goes to prove that the accommodation was a post-1950 construction.

12. There is no other point in the appeal. The finding of fact recorded by the Court below has been recorded after considering the oral and documentary evidence led by the parties, I do not see any reason to differ from the aforesaid finding.

13. In the result the present second appeal fails and is dismissed with costs. The disputed accommodation is a business accommodation and in the City of Agra it will be certainly difficult for the defendant to find out another accommodation. Under the circumstances it will be reasonable to grant him 6 months time to vacate the disputed accommodation. In order to avail of this concession the defendant must deposit the entire rent damages and costs in the trial court within one month from today, failing which the concession shall be deemed to have been withdrawn. The defendant is further directed to deliver peaceful possession to the plaintiff within six months from today.

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