

Nan Vs. Zamindar

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Court : Allahabad

Decided On : Jan-28-1954

Reported in : AIR1954All587

Judge : Beg, J.

Acts : Uttar Pradesh Temporary Control of Rent and Eviction Act, 1947 - Sections 3 and 16

Appeal No. : Second Appeal No. 57 of 1951

Appellant : Nan

Respondent : Zamindar

Advocate for Def. : Hyder Husain, Adv.

Advocate for Pet/Ap. : D.P. Khare, Adv.

Disposition : Appeal allowed

Judgement :

Beg, J.

1. This is a defendant's appeal. It arises out of a suit brought by the plaintiff for arrears of rent and ejection. The ejection of the defendant was sought on the ground that the defendant had caused substantial damage to the accommodation

under Section 3(b), U. P. Control of Rent and Eviction Act.

2. The defendant admitted his liability for arrears of rent but resisted the relief of ejectment on the ground that he had not caused any damage to the building.

3. The trial Court decreed the suit for arrears of rent. It, however, dismissed the suit for ejectment holding that the defendant had not caused any damage. Dissatisfied with the judgment of the trial Court on the question of ejectment, the plaintiff filed an appeal which came up for hearing before Sri T. N. Chatterji, Civil Judge, Gonda. Before the lower appellate Court, it was argued that the permission to file a suit for ejectment having been given by the rent control and eviction officer the civil court was bound to decree the suit for ejectment. This argument was accepted by the Court below which allowed the plaintiff's appeal and varied the decree of the trial Court by decreeing ejectment also. The defendant has filed this second appeal against the said judgment.

4. It has been argued on behalf of the appellant that the order of the lower appellate Court is legally incorrect. This argument must be accepted. There is no warrant for the proposition that once permission to file a suit has been granted by the rent control and eviction officer, the landlord is absolved from his liability to prove any of the grounds mentioned in Section 3(a) to (f), Rent Control and Eviction Act before he can get a decree for ejectment. Reliance has been placed in this connection by the lower appellate Court on Section 16 of the Act.

That section provides as follows;

'No order made under this Act by the State Government or the District Magistrate shall be called in question in any Court.'

5. In my opinion Section 16 has no application whatsoever to the present case. Under Section 3, U. P. Control of Rent and Eviction Act the District Magistrate only gives permission to file a suit. He does not and cannot order ejectment of the tenant under that section. In the present case, however, the suit was brought on the ground that the tenant has caused substantial damage to the accommodation. Section 3, U. P. Control of Rent and Eviction Act states as follows:

'Subject to any order passed under Sub-section (3) 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;

'(a)

'(b) that the tenant has wilfully caused or permitted to be caused substantial damage to the accommodation;'

6. In view of certain doubts which were created regarding the interpretation of the above provision of law, an amendment had to be enacted to make it clear that no permission was necessary for filing a suit for eviction against a tenant on any of the grounds mentioned in Clauses (a) to (f) of the said Act. It is, therefore, clear that the permission of the District Magistrate was not necessary at all for filing the present suit. Any permission granted by the District Magistrate or any observations made by him in his order have therefore no legal sanction and should be ignored altogether. The view taken by the lower appellate Court is clearly erroneous and cannot be sustained.

7. The judgment of the lower appellate Court is, therefore, set aside and the appeal allowed with costs.

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