

Raja Ram Vs. Madho Prasad

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Court : Allahabad

Decided On : Feb-10-1954

Reported in : AIR1954All592

Judge : Malik, C.J. and ;Sapru, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 23 - Order 43, Rule 1; Control of Rent and Eviction Act - Sections 5(4); Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947; Uttar Pradesh (Temporary) Control of Rent and Eviction (Amendment) Act, 1948; [Transfer of Property Act, 1882](#) - Sections 106

Appeal No. : F.A.F.O. No. 142 of 1950

Appellant : Raja Ram

Respondent : Madho Prasad

Advocate for Def. : Ambika Prasad, ;G.P. Tandon and ;Krishna Sahai, Adv.

Advocate for Pet/Ap. : S.K. Verma, Adv.

Disposition : Appeal dismissed

Judgement :

Malik, C.J.

1. This is a plaintiff's appeal against an order of remand passed by the lower appellate court.

2. The plaintiff is the landlord and the defendant is his tenant. On 1st February 1947, the premises were let out to the defendant on a monthly rental of Rs. 65/-, the tenancy being from month to month in accordance with the Gregorian Calendar. On 29th May 1948, the plaintiff gave to the defendant notice to quit by 30th June 1948, and on 26th July 1948, filed the suit for ejectment, arrears of rent for two months from 1st May 1948, to 30th June 1948; for Rs. 104/-mesne profits from 1st July 1948, on which date according to the plaintiff the tenancy terminated, to 26th July 1948, when the suit was filed; and for 'pendente lite' and future mesne profits.

3. The defendant admitted that he was a month to month tenant on a monthly rental of Rs. 65/-, but pleaded that he had paid Rs. 65/-one month's rent in advance, that when he had occupied the premises on 1st February 1947, the premises had been only partially constructed and that he had advanced to the plaintiff Rs. 910/-, at the end of February, 1947, for completion of the house, and that he had never been given possession over five rooms so that the plaintiff was entitled to rent at the rate of Rs. 40/- per month only and not at the rate of Rs. 65/- per month. It was further pleaded that the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (Act 3 of 1947) applied and the defendant was not liable to be ejected.

4. The learned Munsif framed the following issues :

'(1) Whether the defendant advanced Rs. 975/-to the plaintiff and whether it was agreed that the amount would be adjusted against the future rent?

(2) Whether the plaintiff did not give the defendant possession of a portion of the premises as agreed upon? If so, to what rent is the plaintiff entitled?

(3) Whether the suit is bad for Section 3 of Act 3 of 1947 and there is no wilful default in payment of rent on defendant's side? (4) Whether the house was not completed when the defendant took it up? If so, to what effect?

(5) To what relief, if any, is the plaintiff entitled?

5. The learned Munsif decreed the plaintiff's suit on 28th October 1949. On issue No. (4) his finding was that the house was complete when the defendant took it except for certain minor constructions; and issue No. (3) was decided in plaintiff's favour on the ground that the Control of Rent and Eviction Act did not apply to the premises as they were constructed after 1st July 1946, and the plaintiff could, therefore, claim to eject the defendant. It is not necessary for us to deal with the other issues which related to the cash decree claimed by the plaintiff.

6. On appeal by the defendant the lower appellate court came to the conclusion that the U. P. (Temporary) Control of Rent & Eviction Act applied and the plaintiff was not entitled to eject the defendant unless he was able to bring his case within the purview of Section 3 of the Act. As regards the cash amount claimed, the lower appellate court disagreed with the decision of the trial court and remanded the case for determination of the correct amount in accordance with the directions given in the judgment. It is against that decision that this First Appeal from Order has been filed.

7. Learned counsel for the plaintiff-appellant has urged that the U. P. (Temporary) Control of Rent and Eviction Act did not apply to the case and the view of the lower court that the plaintiff was not entitled to claim ejectment was wrong.

8. A preliminary objection has been raised by learned counsel for the respondent that no appeal lies.

9. These are the only two points for decision by us.

10. As regards the preliminary objection, we are not satisfied that it has any substance. Issue No. 2 framed by the learned Munsif was divisible into two parts. The first part raised the question, whether the defendant was in possession of the entire premises or only a part of it; and the second part was that if the defendant was in possession of only a part of the premises, was he entitled to claim reduction in the rent, and if so, how much. The learned Munsif was of the opinion that if the defendant was in possession of only a part of the premises, he

could not claim reduction in the rent without having recourse to a suit under Section 5(4), Control of Rent and Eviction Act for fixation of proper rent and on that finding he decreed the suit for the entire claim.

The trial court, therefore, did not decide what would be the proper rent payable by the defendant to the plaintiff in case it was held that the defendant was not liable to pay the whole rent by reason of his having been given possession over only a part of the premises. The lower appellate court took the view that Section 5(4) of the Act had no application and the defendant, having been given possession over only a part of the premises, was not (sic.) entitled to claim proportionate reduction in the rent & remanded the case for determination of the question of reduction.

11. Order 41, Rule 23, Civil P. C. as amended by this Court provides that-

'Where an appellate court has reversed a decree and all questions arising in the case have not been decided, the appellate court may, if it thinks fit, by order remand the case.....'

Order 43, Rule 1 (u) provides that an order under Rule 23 of Order 41 remanding a case, where an appeal would be from the decree of the appellate court, is appealable. There can, therefore, be no doubt that the order of remand was under Order 41, Rule 23 and the appeal lies under Order 43, Rule 1(u), Civil P. C.

12. As regards the point raised by the appellant, we have already given some dates. The lower courts have held that the premises were incomplete on 1st July 1946. The said premises were let out to the defendant on 1st February, 1947. On 29th May, 1948, the plaintiff gave to the defendant notice to quit by 30th June 1948, and on the expiry of the period filed the suit on 26th July 1948. The suit was decreed on 28th October 1949. On 1st March 1947, however, the U. P. (Temporary) Control of Rent and Eviction Act, 1947 (Act 3 of 1947) was passed. Under Section 1(3) the Act was to be deemed to have come into force on 1st October 1946. The Act, however, when passed, made an exception as regards premises which were incomplete on 1st July 1946, or were constructed thereafter.

'Accommodation' in Section 2(a)(iii) did not 'include any newly constructed building or part of a building which was incomplete on the 1st July, 1946'. The lower courts have found that the premises were incomplete on 1st July 1946. So the Act did not apply to these premises. On 15th December 1948, however, the Act was amended by the U. P. Act No. 44 of 1948, and the words quoted above that the Act will not apply to any newly constructed building or part of a building which was incomplete on 1st July 1946, were omitted. A section -- Section 3A -- was added as to how reasonable annual rent of accommodation constructed after 30th June 1946, was to be fixed and other consequential amendments were made in the Act.

13. The position, therefore, is that on the date when the suit was filed the defendant was liable to be ejected in accordance with the provisions of Section 106, T. P. Act (Act 4 of 1882), but during the pendency of the suit in the trial court the U. P. (Temporary) Control of Rent and Eviction Act, 1947 was made applicable to these premises also, so that a defendant could be ejected only in accordance with the provisions of Section 3. The point, therefore, arises, whether this amendment, which was made during the pendency of the suit, should govern the decision. There can be no doubt that if the plaintiff had withdrawn the suit and filed a fresh suit for ejectment, the Act would have applied having already been amended. It is, however, urged that though the amendment would apply if a fresh suit had been filed, but the Act would not apply to an already pending suit as the amendment was not made expressly retrospective.

14. In examining the scheme of the Act this Court has in several cases pointed out that the Act was intended to apply to cases in which the decree was passed before the commencement of the Act, to cases pending on the date when the Act came into force and to cases instituted after the Act came into force. See -- 'Sunder Lal v. Mohammad Ishaq : AIR1954 All111', where it was pointed out that:

'Sections 3, 14 and 15 were intended to cover all possible cases. Section 14 as confined to cases where decrees had been obtained before 1st October 1946, and the decree was put into execution for ejectment of the tenant after 1st October, 1946; Section 15 was intended to cover all pending cases, that is, all suits or appeals pending at the time when the Act came into force, i.e., 1st October 1946;

and Section 3 covers all suits which were to be filed after the commencement of the Act.'

15. In -- 'L Raj Narain T. Sita Ram : AIR1952 All584 , it was held by a Bench of this Court that Section 15 was intended to apply not only to suits pending in the trial court but also to a suit in its later stages right up to the court of final appeal.

16. The same view was taken by another Bench in -- 'Hazari Lal v. Kanhaiya Lal : AIR1953 All686 .

17. In -- 'Niranjan Lal Bhargava v. Mt. Ram Kali Devi : AIR1950 All396 , Wanchoo and Seth, JJ. held that a court of appeal is entitled to take into consideration an Act passed during the pendency of the appeal which prohibited the passing of a decree.

18. The same point arose before another Bench in -- 'Har Sarup v. Lokeshwar Prasad', 1951 All LJ 256 (E), where it was held that:

'an appeal was merely a continuation of a suit and Courts of Appeal in India were not merely courts of error and the hearing of an appeal was in the nature of a re-hearing of the suit so that the Courts of appeal must pass decrees in accordance with law that exists on the day when the case comes up for hearing.'

19. In the case before us, though it is true that the amendment was not retrospective, the whole scheme of the Act being such that it not only affected future suits but also pending proceedings and decrees already passed, it must be held that the amendment which came into effect during the pendency of the suit in the trial court had to be taken into consideration.

20. It is no doubt true, as has been pointed out in -- 'Urquhart v. Urquhart', (1853) 1 Macq 658 at p. 736 (F), that:

'any Court will be slow to construe an enactment as retrospective and thereby as disturbing existing rights, unless Parliament has clearly said that the enactment is to be construed retrospectively'

but it is not necessary that it should be expressly stated that the provisions of a statute are retrospective in their operation if the intention can be gathered by necessary implication. See -- Dila Ram v. Atma Ram : AIR1949 All225 .

21. Taking into consideration, therefore, the whole scheme of the Act, we are inclined to accept the view of the lower court that the amendment must be interpreted to apply not only to future suits but also to pending proceedings.

22. The appeal, therefore, has no force and is dismissed with costs.

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