

Devi Prasad Vs. Janki Prasad

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Court : Allahabad

Decided On : May-01-1953

Reported in : AIR1953All732

Judge : Malik, C.J. and ;V. Bhargava, J.

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

Appeal No. : Letters Patent Appeal No. 59 of 1951

Appellant : Devi Prasad

Respondent : Janki Prasad

Advocate for Def. : D. Sanyal, Adv.

Advocate for Pet/Ap. : Baleshwari Pd., Adv.

Disposition : Appeal dismissed

Judgement :

Malik, C.J.

1. This is a defendant's, appeal against a judgment of a learned single Judge of this Court. The defendant was a month-to-month tenant of a house. The plaintiff gave a notice on 22-1-1948, requiring the defendant to vacate the house in suit by

29-2-1948. The suit out of which this appeal has arisen was filed on 16-3-1948, for ejectment and arrears of rent. Rent was claimed from 1-10-1946, to 30-6-1947, at the rate of Rs. 37/8/-, and again from 1-10-1947, to 29-2-1948, at the same rate. For the period during which the defendant had continued to occupy the premises after 29-2-1948, that is, from 1-3-1948, to 15-3-1948, damages were claimed at the rate of Rs. 56/4/-per month. As the U. P. (Temporary) Control of Rent and Eviction Act (3 of 1947) was applicable the plaintiff had taken the permission, of the District Magistrate under Section 3 on 27-5-1947, and the plaintiff relied on the permission for his right, to institute the suit. The relevant portion of Section 3 is as follows:

'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) that the tenant has wilfully failed to make payment to the landlord of any arrears of rent within one month of the service upon him of a notice of demand from the landlords;.....'

The exceptions to Section 3 were not of importance as according to the plaintiff he had taken the permission of the District Magistrate and by giving a valid notice to quit had terminated the tenancy with effect from 29-2-1948.

2. On behalf of the defendant two points were raised, firstly, that the plaintiff could not avail himself of this permission as the permission had exhausted itself, and secondly, that the plaintiff was not entitled to claim damages for the period during which the defendant was holding over. The trial Court held in plaintiff's favour on both the points with the result that he decreed the plaintiff's suit for recovery of Rs. 408/12/- only as rent upto 15-3-1948. The relief for ejectment was refused.

3. On appeal by the plaintiff the lower appellate Court decreed the suit for ejectment and also allowed the plaintiff damages for the period during which the defendant had held over, i.e., from 1-3-1948 to 15-3-1948.

4. The defendant filed a Second Appeal in this Court and before the learned single Judge only two points were raised, firstly, that the permission had exhausted itself and the plaintiff was not entitled to rely on it, and secondly, that the defendant

having paid rent for the months of July, August and September, 1947, and the plaintiff having accepted the same he had no right to rely on the permission. No point was raised before the learned single Judge as regards damages claimed for the period from 1-3-1948 to 15-3-1948.

5. In this appeal learned counsel has urged the two points that were urged before the learned single Judge and he has also argued that the plaintiff was not entitled to any damages after 1-3-1948. As the last point was not taken before the learned single Judge, we cannot allow him to raise a new point before us. As regards the ground that the permission had exhausted itself and that the plaintiff, by reason of his acceptance of rent, was not entitled to rely on the same, we are not satisfied that the appellant has been able to make out a good case.

6. The ground on which the argument is based is that the plaintiff had filed a suit on 18-12-1946, being Suit No. 790 of 1946, for the ejectment of the defendant and for arrears of rent. The plaintiff had not obtained any permission of the District Magistrate for the institution of the suit. That suit was dismissed on 20-9-1947, for ejectment though arrears of rent claimed were decreed. During the pendency of that suit, the plaintiff had applied to the District Magistrate for permission and the District Magistrate on 27-6-1947, had granted the permission in these terms:

"Reference your letter dated 6-6-47 for permission to file a civil suit against Mr. Debi Pd. Retd. D. S. P. for ejectment of the kothi occupied by him. Permission is hereby given to file a civil suit for ejectment against Mr. Debi Pd. Retd. D. S. P.

Sd/- S. N. Dey,

For District Magistrate,

Bulandshahr.

27-5-47.'

Learned counsel has urged that having filed this permission in the previous suit and that suit having been dismissed, the plaintiff cannot file a second suit on the strength of the same permission. The previous suit was dismissed on the ground

that the District Magistrate had to give permission to file a suit and the permission given by the District Magistrate being to file a suit the plaintiff cannot avail himself of that permission to continue a suit already filed. The suit was no suit at all in the eye of law and the defect of not obtaining the permission to institute it could not be cured by the subsequent obtaining of the permission. That being the position, the plaintiff was entitled to file a fresh suit on the basis of the permission already given and there is nothing in that permission given by the District Magistrate to show that he meant by that permission that the plaintiff was allowed only to continue suit No. 790 of 1946 which had already been instituted. As a matter of fact the permission is clearly worded and shows that the learned Magistrate granted the permission in accordance with the provisions of Section 3 to file a suit in the civil court.

7. The other argument that the acceptance of rent for the months of July, August & September 1947 put an end to this permission has also no substance. The defendant was a month-to-month tenant. Under the Transfer of Property Act, the landlord was entitled to terminate the tenancy by a notice in accordance with the provisions of Section 106, Transfer of Property Act. By reason of the provisions of the U. P. (Temporary) Control of Rent and 'Eviction Act, however, this notice could be of no avail unless the District Magistrate's permission had been taken to file a suit. The defendant was liable to pay rent to the plaintiff every month the rent as it became due and by accepting rent for the months of July, August and September it cannot be said that the plaintiff had done something to disqualify himself from claiming his legal right to eject. The notice for ejectment, as we have already mentioned, was given on 22-1-1948, and it is not suggested that any rent was accepted by the plaintiff after the date of the expiry of the notice.

8. The appeal has no force and is dismissed with costs. The stay order is discharged. The record may be sent down to the lower Court by an early date.

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