

Pratap Chand Jain Vs. Bibbo Devi

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Court : Delhi

Decided On : Jan-22-1973

Reported in : 1973RLR442

Judge : B.C. Misra, J.

Acts : Delhi Rent Control Act - Sections 2

Appeal No. : Regular Second Appeal No. 335 of 1966

Appellant : Pratap Chand Jain

Respondent : Bibbo Devi

Advocate for Pet/Ap. : Daya Krishan and; S.S. Shukla, Advs

Judgement :

B.C. Misra, J.

(1) This defendant's second appeal has been filed against the judgment and decree of the Additional District Judge, Delhi, dated 20th July, 1966 by which he has dismissed the appeal and maintained the decree of the Court of first instance dated 13th August, 1965 decreeing against the defendant-appellant the suit of the plaintiff for recovery of rent/ damages for use and occupation for the period from 1st September, 1958 to 8th November, 1958 at the rate of Rs. 16 per month and for the period from 9th November, 1958 to 31st July 1961 at the rate of Rs 31 per

month.

(2) The facts giving rise to the dispute are that the appellant was a tenant in respect of the premises in dispute situated in Kucha Lattu Shah, Dariba Kalan, Delhi on a contract rent of Rs. 22.50 per month. Lachhoo Mal, the previous owner of the property, on 30th August, 1954, instituted a suit against the appellant herein for eviction and recovery of rent at the rate of Rs. 22.50 per month from 1st January, 1952 to 31st July, 1954, being the date of the termination of notice besides damages for holding over for the month of August, 1954, amounting to Rs. 720.00. The grounds for eviction claimed in the suit were non-payment of rent in spite of notice of demand and the premises being residential, were required bona fide for the plaintiff-landlord for the residence of himself and members of his family. These are grounds mentioned in the clause (a) and clause (e) of the proviso to sub-section (1) of section 13 of the Delhi Rent Control Act of 1952. It may be noticed that under the Act, the suits for eviction between the landlords and tenants were filed in ordinary civil Courts and the change in law excluding the jurisdiction of civil Courts in respect of 443 eviction and fixation of standard rent etc. and conferring it on the Controller has been brought about by the Delhi Rent Control Act of 1958. However, on 8th November, 1954, after the filing of the written statement, the matter was compromised and a decree for eviction was passed against the present appellant, but three years' time with an option of one further year was allowed to the appellant to vacate. A decree for payment of Rs. 580.00 was also passed which was ordered to be paid out of the amount deposited by the present appellant on account of rent up to 30th November, 1954. It was also ordered that the standard rent of the premises would be Rs. 16 per month. Reference to the terms of the compromise would be made in detail hereinafter. Later Lachchoo Mal on 20th July, 1956 (vide copy Exhibit H. 3) made a gift of the property in dispute to his wife (respondent in this appeal) and the appellant attorney to her. It appears that the decree for eviction has not been executed probably on account of the bar created by the Slum Areas (Improvement and Clearance) Act, but we are not concerned with that matter at the moment. However, in order to recover the rent and damages for use and occupation, the respondent herein instituted the suit giving rise to the present appeal on 31st August, 1951 on the allegations that the respondent was the owner of the property

in dispute and on 8th November, 1954, a decree for eviction had been passed against the appellant and four years time had been given to him to vacate but he had not vacated and that the occupation of the/defendant subsequent to the decree was contumacious and unauthorised and therefore, he was liable to pay damages and compensation for use and occupation at the rate of Rs. 40 per month. The respondent herein claimed the rent at the rate of Rs. 16 per month from 1st September, 1958 to 8th November, 1958 and for the subsequent period claimed damages at the rate of Rs. 40 per month from 9th November, 1958 to 31st July, 1961.

(3) The appellant contested the suit and urged that he was still a tenant under the respondent and his occupation was not contumacious and unauthorised and as such he was not liable to pay damages for use and occupation and the suit for recovery of damages for use and occupation was not maintainable. The title of the respondent to the property in dispute was also denied. It is significant to notice that it has not been urged in the original written statement that the decree for eviction passed against the appellant in the previous suit was a nullity or was without jurisdiction but the same was allowed to be raised with the leave of the Court in the amended written statement dated 18th January, 1963. A replication to the written statement was filed on behalf of the respondent in which she maintained that no relationship of landlord and tenant existed between the parties. Further issues were framed:-

'1.-WHETHER the defendant is a tenant under the plaintiff 2.-Whether the decree dated 8th November, 1954 is a nullity and not enforceable If so, its effect 3.-Whether the pleas of the defendant incorporated in issue No. 2 are time-barred and otherwise too cannot be raised by him in these proceedings 4.-Whether the defendant is estopped to challenge the validity of the decree dated 8th November, 1954 on account of his act and conduct 5.-If issue No. 1 is proved, whether the plaintiff is entitled to sue for damages 6.-To what amount of damages or rent, if any, the plaintiff is entitled

(4) The Court of first instance, after considering the entire evidence on record answered issue No. 1 against the defendant appellant. In respect of issue No. 2, it

followed an authority of the Supreme Court reported as *Ittyavira Mathai Vs Varkeys Varkeyes* : [1964]1SCR495 , and found that the previous decree for eviction had been passed within the jurisdiction of the Court and was not a nullity. Issue No. 3 was decided in favor of the plaintiff. Issue No. 4 was decided in favor of the plaintiff. Issue No. 5 was found to be redundant. Under issue No. 6, the Court decreed the amount of Rs. 16 per month till 8th November, 1958 and thereafter at the rate of Rs. 31 per month, instead of Rs. 40.00 as claimed and it passed a decree for recovery of Rs. 1,053.73 Paise.

(5) The defendant-appellant appealed to the District Court and the Court affirmed the finding of the Court, of first instance on all the issues and dismissed the appeal. It also relied upon the authority of the Supreme Court in *Ittyavira's* case (*supra*).

(6) The defendant (appellant in this appeal) has challenged the finding of the Court below on issues Nos. 2 and 6 and has relied upon three decisions of the Supreme Court, namely *Bahadur Singh v. Muni Subrat Dass*, (1969) 2 Supreme Court Reports 432 and *Kaushalya Devi Vs . Shri K. L. Bansal*, : [1969]2SCR1048 and *Ferozi Lal Vs . Man Mal*, : AIR 1970 SC794 . *Bahadur Singh's* case was the earliest to be decided. *Bachawat, J.* speaking for the Court, after examining the provisions of the Delhi Rent Control Act 38 of 1952 observed that a decree passed by a Court, without satisfying itself about the existence of the ground of eviction specified by the statute, merely on the basis of the award of the Arbitrator, was a nullity and could not be enforced in execution. His Lordship further observed that such a decree being a nullity could not be enforced or executed either by the landlord or by the landlord's son, but that the decree, so far it directed removal of the machinery from the premises, was clearly valid and separable from the rest and could be executed. This decision was followed in *Kaushalya Devi's* case. In that case after the filing of the written statement, denying the allegations and the framing of the appropriate issues, an application was filed by the plaintiff and the defendant that a compromise had been effected on the terms mentioned in the petition. These terms included a decree for ejectment not executable until a specified time and that standard rent be fixed at a lower figure than the contract rent with effect from the date mentioned therein in the compromise . The tenant

did not vacate and execution of the decree was taken out which was resisted in execution proceedings. An objection was raised that the decree contravened the provisions of section 13 of the Rent Act and was a nullity. This objection failed before the Court of first instance as well as the lower appellate Court, but prevailed with the High Court and appeal against the same was dismissed by the Supreme Court which affirmed the finding of the High Court that the decree was a nullity and could not be enforced in execution. The facts of this case are very much similar to the facts of the instant case.

(7) In the case of *Ferozi Lal Jain (supra)* Hegde, J. followed the above mentioned two authorities of the Supreme Court. The Court observed that a decree for recovery of possession could be passed by a Court only if it was satisfied with regard to establishment of one or more of the grounds of eviction in the statute and without such satisfaction, the Court was incompetent to pass a decree for possession; in other words the jurisdiction of the Court to pass a decree depended on its satisfaction that one or more of the grounds had been proved. The Court further observed that in the circumstances of the case it appeared that at no stage the Court was called upon to apply its mind to the question whether the ground for eviction alleged was or was not true and the order made by the Court did not show that it was satisfied about it, nor was there any other material on record to show that it was so satisfied; since the Court had proceeded solely on the basis of compromise arrived at between the parties, there was no doubt that the Court was not competent to pass the impugned decree and the same was a nullity and could not be enforced in execution.

(8) These authorities of the Supreme Court have concluded the matter in controversy between the parties in this case. The facts of the case are that Lachchoo Mal plaintiff had filed the suit for eviction and recovery of rent on the ground of non-payment of rent as well as bonafide, personal necessity as mentioned above. These pleas had been contested, but on the date fixed for the framing of the issues, the parties made the following statement vide copy Exhibit D. 1 viz, the parties have compromised the matter in this way that a decree for eviction from the premises in dispute and for recovery of Rs. 580.00 in all in favor of the plaintiff against the defendant be passed and the defendant would vacate

the premises in three years' time, but if he should fail to obtain other accommodation during the said period, the plaintiff would give the defendant one year's further time. The defendant had deposited Rs. 988.00 in the Court out of which Rs. 628.00 be paid to the plaintiff which provide for, settlement of the decretal amount and the rent till 30th November, 1954 and that the standard rent of the premises in dispute was fixed at Rs. 16 per month including water charges.

(9) Following the said statement. Court passed an order (copy Exhibit D. 2) to the following effect:-

'As per statement of the parties, a decree for eviction from the premises in dispute and for recovery of Rs. 580.00 in all is passed in favor of the plaintiff against the defendant.'

The other terms of the compromise mentioned above are also reproduced in the order, including fixation of standard rent at Rs. 16 per month inclusive of water charges. A decree following the said order was prepared.

(10) The respondent's counsel has contended that the statement of the parties mentioned above contained an admission about the existence of the arrears of rent and on this basis, the Court had jurisdiction to pass a decree for eviction on the ground mentioned in clause (a) of the proviso to sub-section (1) of section 13 of the Act and, therefore, according to the counsel, in terms of the dictum laid down by the Supreme Court in Ferozi Lal's case the decree is not without jurisdiction.

(11) I have carefully considered the submissions. There is no doubt that there was material before the Court in the statement of the parties about the existence of arrears of rent, but this alone would not be sufficient to pass a decree for eviction even on the ground of non-payment of rent as all the conditions mentioned in clause (a) required to be established. For example the service of notice, failure to tender or pay the amount within the prescribed period and failure to deposit the amount of rent in Court within the time allowed. With regard to eviction on the ground of personal necessity, there is not even an allegation about the existence of any material on the record. In any view of the matter, I have no doubt that the

Court passing the decree had not applied its mind to the facts and circumstances of the case and had instead of satisfying itself about the establishment of the statutory grounds of eviction, either on the basis of the evidence on record or admission of the parties, merely recorded acceptance of the compromise. Such a decree is clearly, in terms of the dictum laid down by the Supreme Court in Kaushalya Devi's case (Supra) a nullity and without jurisdiction and such a decree cannot be enforced in execution, nor confer or alter legal rights or status. In the view I am taking, the authority of the High Court of Andhra Pradesh in C. Balakrishnamurthy Vs . Veeramarasaiah : AIR 1971 AP251 , has no application.

(12) In Kiran Singh Vs . Chaman Pawan, : [1955]1SCR117 , the Court observed that it was a fundamental principle that a decree passed by a Court without jurisdiction was a nullity and that its invalidity could be set up whenever and wherever it was sought to be enforced or relied upon even at the stage of execution and even in collateral proceeding. The counsel for the appellant relies upon this authority in answer to the objection of the respondent that the appellant ought to have filed an appeal or revision against the impugned previous decree or at all events ought to have initiated separate proceedings to have it declared void. In my opinion, the Supreme Court above takes the matter out of further controversy and if decree can be accepted in execution proceedings (where the execution Court is normally bound by the decree) there is greater reason to hold that the same could be declared in other proceedings between the same parties. The finding of the Court below with regard to the nullity of the decree will, therefore, have to be reversed.

(13) There is another question that arises for consideration, although it had not been raised directly in the pleadings of the parties in the Courts below. The considerations which have weighed with the Supreme Court in the aforesaid three decisions in dealing with the compromise decrees with regard to eviction, apply with equal force to fixation of standard rent. Standard rent is defined by clause (i) of section 2 of the Rent Act of 1952, but has to be fixed by the Court under section 8 of the Act. The standard rent in variation of the contract rent cannot be fixed by the parties by mutual agreement : See Gopi Kishan v. Murli-dhar A.I.R 1953 Ajm 24 (2), Latha Ram v. Khushi Ram 1955 PLR 188 and Chum Lal v. Sewa Singh

1966 PLR 27 and Manmohan Chawla v. Jaswant Singh 1969 RCR 861. In the instant case, the standard rent was also fixed by the Court only on compromise of the parties (D.I) and not by application of mind in accordance with the provisions of law. So the fixation of standard rent would also be found to be void. The counsel for the appellant has not disputed this proposition of law or the result flowing from it. The application for fixation of standard rent would also be barred by time, as held in Manmohan Chawla's case. In this case, the Supreme Court also observed that a party is bound to pay the contractual rent unless and until standard rent is fixed by the Court according to law. As a result, the appellant would be bound to pay to the plaintiff respondent arrears of rent for the whole period claimed by her at the rate of Rs. 22.50 per month instead of either Rs. 16 (the alleged standard rent) or Rs. 31, the rent allowed by the lower appellate Court by way of compensation.

(14) As a result, I allow the appeal and modify the decree of the lower appellate Court and in its place decree the suit of the plaintiff- respondent for payment of rent or compensation for use and occupation at the rate of Rs. 22.50 per month for the whole period from 1st September, 1958 to 31st July, 1961 amounting to Rs. 787.50. with proportionate costs throughout.

(15) It may farther be observed that since the decree for eviction previously passed has been found to be a nullity and without jurisdiction, it will be open to the parties to apply to the Court which passed the decree to revive the suit from the stage prior to the recording of the compromise and the Court will decide the application, if so moved, according to law. (Raj Singh Varma, Adv.)