

Gopal Krishan Vs. Ram Lal

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Court : Rajasthan

Decided On : Feb-09-1988

Reported in : AIR1989Raj24; 1988(2)WLN197

Judge : S.C. Agrawal, J.

Acts : Rajasthan Premises (Control of Rent and Eviction) Act, 1950 - Sections 3 and 13; Rajasthan Premises (Control of Rent and Eviction) (Amendment) Act, 1976; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 11 - Order 21, Rule 97; [Evidence Act, 1872](#) - Sections 115; [Delhi and Ajmer Rent Control Act, 1952](#) - Sections 20

Appeal No. : Civil Second Appeal No. 100 of 1979

Appellant : Gopal Krishan

Respondent : Ram Lal

Advocate for Def. : S.M. Mehta, Adv.

Advocate for Pet/Ap. : B.P. Agrawal, Adv.

Disposition : Appeal allowed

Judgement :

S.C. Agrawal, J.

1. This second appeal filed by the defendant Gopal Krishan Singhal, arises out of a suit for ejectment and arrears of rent filed by the respondent, Ram Lal Goyal, against the appellant, in respect of the property bearing No. AMC 32/123B(Old), now renumbered as 24/134 (new) situated in Kaiserganj, Ajmer. The case of the plaintiff-respondent was that the said property was let out to him by Shri N. N. Tondon on a monthly rent of Rs. 27/-. Shri N. N. Tondon had filed a suit (Civil Suit No. 229/64) for eviction against the plaintiff-respondent and in the said suit a decree for eviction was passed by the Munsiff Ajmer City, Ajmer on 20th August, 1965. The case of the plaintiff-respondent was further that the appellant was in occupation of the suit premises as tenant of the plaintiff-respondent. The plaintiff-respondent sought the ejectment of the appellant on two grounds, namely, (i) that the appellant had not paid the rent for the premises from 1st July, 1966 to 31st May, 1971 and had thereby committed default in payment or tender of rent for more than six months and (ii) that the appellant had renounced the character of the respondent as being his landlord and that the respondent has not waived his right. The appellant contested the said suit and pleaded that he is not a tenant of the respondent and, therefore, there was no question of payment of rent by the appellant to the respondent and default in payment of rent. It was also pleaded by the appellant that the respondent is no longer a statutory tenant in respect of the premises after the passing of the ejectment decree against him and, therefore, he has no right to file the suit. It was also pleaded by the appellant that Shri NC N. Tondon had sold the property to one Shri Prem Chand on 17th November, 1970 and that Shri N. N. Tondon also has no interest in this property.

2. The Munsiff-cum-Judicial Magistrate, Ajmer City, (Eest) by his judgment and decree dated 26th May, 1975, dismissed the said suit of the respondent. The Munsiff held that the appellant was a tenant of the respondent and that Shri N. N. Tondon had obtained a decree for ejectment against the plaintiff-respondent on 20th August, 1965. The Munsiff was, however, of the view that after the passing of the said decree on 20th August, 1965, the statutory tenancy of the plaintiff-respondent came to an end that the plaintiff was neither a contractual tenant nor a statutory tenant of the premises after the passing of the said decree of eviction. The Munsiff also held'. that Shri N. N. Tondon had filed an execution petition against the plaintiff-respondent and in those execution proceedings Shri N. N.

Tandon had filed an application under Order 21, , Rule 97, C.P.C. and the said application under Order 21, Rule 97, C.P.C. was dismissed by the execution Court and it was declared that the appellant who was a sub-tenant of the plaintiff in the suit premises had become the direct tenant of the same under Shri N. N. Tandon in view of Section 20 of the [Delhi and Ajmer Rent Control Act, 1952](#) and that the said order passed by the executing Court on the application under Order 21, Rule 97, C.P.C. was not challenged, either in appeal or revision or by filing a regular suit, and that in view of the said order passed by executing Court the appellant should be treated to have become a direct tenant of Shri N. N. Tandon. The Munsiff, therefore, found that there is no relationship of landlord and tenant between the plaintiff-respondent and the appellant and since the relationship of landlord and tenant between the parties is not established there was no question of payment of rent by the appellant to the respondent (sic) is the renouncing character of the respondent as being the landlord.

3. The plaintiff respondent filed an appeal which Was allowed by the; Addl. Civil Judge, Aimer, by his judgment and decree dated 17th Oct., 1978. The Addl. Civil Judge disagreed with the view of the Munsiff that the statutory tenancy of the plaintiff-respondent came to an end on the passing of the decree for eviction and expressed the opinion that a tenant whose tenancy has been terminated but who continues to be in possession after the termination of the tenancy is still a tenant until he is deprived of his possession in accordance with the provisions of the Rajasthan Premises (Control of Rent & Eviction Act, 1950). (hereinafter referred to as 'the Act'). The Addl. Civil Judge also observed that the appellant, in his previous statement (Ex. 10) recorded on 23rd May, 1970 in the execution proceedings, had admitted that he is a tenant of the respondent and that in his statement dated 12th January, 1973, in the present suit, he had deposed that he had paid the rent up to 1966 to the respondent and the said admissions of the appellant indicated that even after the passing of the decree dated 20th August, 1965, the appellant had paid rent to the respondent and till 23rd May, 1973 he did not deny plaintiff's position as landlord or chief tenant as against him. The Addl. Civil Judge also held that the appellant could not be held to be a direct tenant of Shri N. N. Tandon on the basis of Section 20 of the [Delhi and Ajmer Rent Control Act, 1952](#) because the said Act had been repealed with effect from 27th November, 1957 and was not in

force on 20th August, 1965, the date of the passing of the decree in the suit for eviction filed by Shri N. N. Tandon against the respondent. In view of the findings aforesaid, the Addl. Civil Judge held that the appellant had committed default by not paying the rent from 1st July, 1966 onwards and that he had also denied the title of the respondent and disclaimed his character as tenant. The Addl. Civil Judge, therefore, reversed the decree passed by the Munsiff and passed a decree for ejectment of the appellant from the suit premises as well as for a sum of Rs. 972/- on account of rent up to 31st May, 1970 and for future rent after 31st May, 1970 till ejectment of the appellant. Feeling aggrieved by the aforesaid judgment and decree of the Additional Civil Judge the appellant has filed this second appeal.

4. I have heard Shri B. P. Agrawal, the learned counsel for the appellant and Shri S. M. Mehta the learned counsel for the respondent.

The first question that needs to be so as to whether the respondent continued to have any rights in the suit premises after the passing of the decree for eviction against him on 20th August, 1965 in the suit for eviction filed by Shri N. N. Tandon.

5. Shri Agrawal, the learned counsel for the appellant has argued that after the termination of the contractual tenancy the status of the respondent became that of a statutory tenant who was entitled to continue in possession of the premises on account of the protection afforded by the provisions of the Act and that the said protection given to the respondent by the provisions of the Act ceased to be available to him on the passing of the decree for eviction against him on 20th August, 1965 in the suit filed by Shri N. N. Tandon against him, and that thereafter, the respondent ceased to have an interest in the suit premises. In support of his aforesaid submission Shri Agrawal has placed reliance on the decision of this Court (Jagat Narayan, J.) in *Poonaram v. Rastimal*, (1967 Raj LW 395). Shri Agrawal has also placed reliance on certain observations of the Supreme Court in *V. Dhanpal Chettiar v. Yesodai Ammal*, (AIR 1979 SC 1745).

6. Shri S. M. Mehta, the learned counsel for the respondent, on the other hand, has supported the judgment of the Addl. Civil Judge and has urged that the interest of the respondent in the suit premises did not come to an end with the passing of the decree dated 20th August, 1965 and that he continued to be a

statutory tenant till he was dispossessed from the suit premises under the provisions of the Act and that in the present case the respondent has not been dispossessed from the suit premises in the proceedings for the execution of the decree passed in the suit filed by Shri N. N. Tandon and, therefore, it cannot be said that the interest of the respondent in the suit premises has been terminated. In support of his aforesaid submission Shri Mehta has placed reliance on the decision of this Court (Beri, J.) in *Ambay Prasad v. Jaipur Metals & Electricals Ltd.*, (1967 Raj LW 234).

7. For a proper appreciation of the aforesaid contentions urged by the learned counsel, it is necessary to take note of the definition of the expression 'tenant' as contained in Sub-section (vii) of Section 3 of the Act which at the relevant time read as under : --

'Tenant means the person by whom rent is, or but for a contract express or implied would be payable for any premises and includes any person holding or occupying the premises as a sub-tenant or any person continuing in possession after the termination of a tenancy in his favour otherwise than under the provisions of this Act.'

8. A perusal of the aforesaid definition of the expression 'tenant' indicates that under the Act an extended meaning has been given and a person is treated as a tenant under the Act if he has continued in possession after the termination of his tenancy and such termination of the tenancy is otherwise than under the provisions of the Act. Such a person falling within the definition of tenant is entitled to invoke the protection afforded by the Act to tenants. The aforesaid right of the tenant to continue in possession after the termination of his contractual tenancy is described as 'statutory tenancy' because the said tenant continues in occupation on account of the protection afforded to him by the statute.

9. In *Ambey Prasad v. Jaipur Metals & Electronics Ltd.* (supra) this Court was not dealing with the question as to at what stage the statutory tenancy comes to an end. In that case this Court was only dealing with the question as to whether the tenant was entitled to invoke the protection of the provisions of Section 13A which was inserted in the Act in 1965 by Rajasthan Act No. 12 of 1965. In that

case a decree had been passed by the trial Court against the tenant on the ground of default in payment of rent and the said decree was affirmed in appeal. The tenant had filed a second appeal in this Court and during the pendency of the second appeal Section 13-A was inserted in the Act. The said section afforded additional protection to tenants against whom decree for eviction on the ground of default in payment of rent had been passed. This Court held that the tenant was entitled to invoke the protection afforded by Section 13-A of the Act. It was urged before this Court that . since the tenancy of the appellant in that case had come to an end he was not a tenant and he had only a personal right to remain in possession (sic) the provisions of Section 13-A were not applicable. This Court rejected the said contention and, after referring to the definition of the tenant contained in Section 3(vii) of the Act, observed that the legislature has given an extended meaning to the expression 'tenant' and has afforded legislative recognition to statutory tenants. This Court has also observed that a tenant whose tenancy has been terminated but who continued to be in possession after the termination of the tenancy is still a tenant until he is deprived of the possession in accordance with the Act.

10. In *Poonaram v. Hastimal*, (1967 Raj LW 395) (supra) a decree for eviction had been passed against the appellant and the said decree had been affirmed in second appeal by this Court before the coming into force of Rajasthan Act No. 12 of 1965 whereby Section 13-A was inserted in the Act. The tenant wanted to take advantage of the provisions of Section 13.A, in the execution proceedings but he was denied such protection on the view that a person against whom a decree for eviction has been passed is no longer a tenant within the meaning of the definition of 'tenant*' as defined under the provisions of the Act and only a person against whom a decree is passed under some other law and who continues in possession despite the said decree can be treated a tenant within the meaning of the Act.

11. I find that the aforesaid view in *Poonaram v. Hastimal* is in consonance with the law laid down by the Supreme Court in *V. Dhanpal Chettiar v. Yesodai Ammal*, (AIR 1979 SC 1745) (supra). In that case a special bench of seven Hon'ble Judges has dealt with the question as to whether giving of a notice under Section 106 of the Transfer of Property Act is necessary for termination of a lease in view of the

protection that has been afforded to the tenants against eviction under the State Rent Control Laws. In that case the Supreme Court has observed as under ; --

Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction. Until then under the extended definition of the word 'tenant' continues to be a tenant even though the contractual tenancy has been determined by giving of a valid notice under Section 106 of the Transfer of Property Act.'

Again it has been observed : --

'The tenancy actually terminates on the passing of the order or decree for eviction and the building falls vacant by his actual eviction. The giving of the notice, therefore, is a mere surplusage and unlike the law under the Transfer of Property Act it does not entitle the landlord to evict the tenant.'

The aforesaid observations of the Supreme Court indicate that the jural relationship of the lessor and lessee comes to an end with the passing of an order or decree for eviction on the ground mentioned in the State Rent Control Law and the said relationship continues till then. In this context, it may also be mentioned that the definition of 'tenant' contained in Section 3(vii) of the Act was amended by Rajasthan Premises (Control of Rent & Eviction) (Amendment) Act, 1976 (Act No. 14 of 1976) and the said definition now reads as under : --

'3(vii) 'tenant' means : --

(a) the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be, payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act, and (b) in the event of death of the person as is referred to in Sub-Clause

(1), his surviving spouse, son, daughter and other heir in accordance with the personal law applicable to him who had been, in the case of premises leased out for residential purpose ordinarily residing and in the case of premises leased out for commercial or business purposes, ordinarily carrying on business with him in such premises as member of his family up to his death.'

In Clause (a) of the amended definition it has been made clear that a person is to be treated as a tenant if he continues to be in possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of the Act meaning thereby ; that a person against whom a decree for eviction has been passed in accordance with the provisions of the Act, cannot be treated as a tenant. The decision of this Court in Poonaram v. Hastimal, (1967 Raj LW 395) (supra) (sic) but also in consonance with the intention of the legislature as indicated in the definition of 'tenant' as amended by Rajasthan, Act No. 14 of the 1976. In so far as the decision in Ambey Prasad v. Jaipur Metal & Electricals Ltd., (1967 Raj LW 234) (supra) is concerned it may be stated that in that case the question as to whether the appellant in that case was a tenant under Section 3(vii) of the Act did not squarely arise for consideration because under cl. (a) of Section 13-A, the benefit of Clauses (a) and, (b), was, in terms, extended to a pending appeal against a decree for eviction on the ground of default in payment of rent. In my view, therefore, the observations contained in Ambey Prasad v. Jaipur Metals & Electricals Ltd., (supra) do not directly deal with the question as to at what stage the statutory tenancy comes to an end. This question arose for consideration in Poonaram v. Hastimal (supra) and has been dealt with there and, as pointed out above, the said view is in consonance with the observations of the Supreme Court in Dhanpal Chettiar v. Yesodai Ambal, (AIR 1979 SC 1745) (supra), as well as the intention of the legislature as expressed in the amendment introduced in the Act by Rajasthan Act No. 14 of 1976. It must, therefore, be held that the Munsif was right in holding that the rights of the respondent in the suit premises come to an end on the passing of the decree for eviction on 20th August, 1965 and, therefore, he did not have any interest in the suit premises, and the Additional Civil Judge was not right in reversing the said finding of the Munsiff.

12. Shri Mehta has submitted that the Munsiff was not right in holding that the appellant had become a direct tenant, under Section 20 of the [Delhi and Ajmer Rent Control Act, 1952](#), since the provisions of the said Act had been repealed prior to the passing of the decree dated 20th August, 1965 and that the said provisions could not be invoked on the date of the passing of the decree. In this connection it may be mentioned that this view taken by executing Court was not challenged, in appeal or revision by the decree-holder or by the respondent. Nor was any suit filed by them for setting aside the said order. The said order of the executing Court, thus, became final and it is binding on the respondent who was a party to those execution proceedings. I am unable to accept the contention of Shri Mehta that the said order is nullity and should, therefore, be ignored. Merely because the executing Court has wrongly applied the provisions of Section 20 of the [Delhi and Ajmer Rent Control Act, 1952](#) which stood repealed and were not applicable, does not mean that the order passed by the executing Court was a nullity. The executing Court had the jurisdiction to decide the application submitted by the decree-holder under Order 21, Rule 97, C.P.C. and merely because while deciding the said application the executing Court acted wrongly does not mean that the said order of the executing Court was without jurisdiction and a nullity.

13. I may now refer to the admissions said to have been made by the appellant in the statement Ex. 10 recorded in the execution proceedings as well as his statement recorded in this case. In the statement Ex. 10 dated 23rd May, 1970 in the execution proceedings the appellant had stated that he was the tenant of the Ram Lal respondent in the suit premises and that he was paying Rs. 27/- as rent for the same and that he was regularly paying the rent to Ram Lal. During the course of cross examination he stated that Ram Lal used to give the receipt for the rent paid by him. He has also stated that he did not remember up to what year rent has been paid by him to Ram Lal. He has also stated that he paid the rent for two years and thereafter Ram Lal did not accept the rent. From the said (sic) by the respondent and whether any rent was paid by him to Ram Lal after the passing of the decree for eviction on 20th August, 1966 (sic).

14. In his statement recorded in this case as D.W. 1 on 12th January, 1973, the appellant stated that after the passing of the decree he has not paid any rent to

Ram Lal. During the course of cross-examination he has stated that he had paid the rent always to Ram Lal and that he had paid the rent to Ram Lal in the year 1966 and that thereafter he had not offered any rent to anybody, but he had offered the rent to Shri N. N. Tandon in 1968. He has also stated that since decree for eviction had been passed against Ram Lal he wanted to pay the rent to Shri N. N. Tandon. He has also stated that his relationship with Ram Lal had come to an end in the year 1965 and thereafter he has not paid the rent to Ram Lal because the rent used to be paid through Ram Lal. He was confronted with his statement Ex. 10 recorded in the execution proceedings and he stated that the said statement is wrong and that he is not the tenant of Ram Lal. From the aforesaid statement recorded in this case, it appears that the appellant has denied the payment of any rent to Ram Lal respondent, after the passing of the decree for eviction against him. On the basis of the aforesaid statement it is not possible to hold that after the passing of the decree, the appellant has treated Ram Lal to be his landlord. Moreover, in view of the fact that the respondent had ceased to have any interest in the suit premises on account of the determination of the statutory tenancy by the passing of the decree for eviction on 20th August, 1965 the plaintiff respondent has no right to maintain the suit for eviction of the appellant from the suit premises.

15. For the reasons, aforesaid, the judgment and decree passed by the Additional Civil Judge decreeing the suit of the respondent cannot be upheld and must be set aside, and the said suit is liable to be dismissed. The appeal is, therefore, allowed, the judgment and decree dated 17th October, 1978 passed by the Additional Civil Judge, Ajmer in Civil Appeal No. 88/77 is set aside and the judgment and decree dated 26th May, 1972 passed by the Munsiff and Judicial Magistrate, Ajmer City (East) in Civil Suit No. 199 of 1971, whereby the said suit was dismissed, is restored. The parties are left to bear their own costs.