

Hanuman Bux Vs. Dev Dutt

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Court : Rajasthan

Decided On : Apr-27-1951

Reported in : AIR1952Raj111

Judge : Ranawat, J.

Acts : Rajasthan Rent Control Order - Sections 3, 5 and 8; [Transfer of Property Act, 1882](#) - Sections 106

Appeal No. : Suit No. 44 of 1950

Appellant : Hanuman Bux

Respondent : Dev Dutt

Advocate for Def. : R.C. Sharma, Adv.

Advocate for Pet/Ap. : P.N. Dutt, Adv.

Disposition : Appeal allowed

Judgement :

Ranawat, J.

1. Hanuman Bux filed a suit against Dev Dutt in the Court of Munsil Jaipur west on the 21st July, 1948 for Rs. 30/- as arrears of rent and Rs. 100/- as damages for the use and occupation of the premises from the 1st of June 1948 to 20th of July

1948 at the rate of Rs. 2/- per day. The defendant admitted the liability of Rs. 30/- as rent but contested that he was not liable to pay any damages at the rate of Rs. 2/- per day. For the period for which the plaintiff claimed damages at a higher rate, the defendant only admitted the liability to pay at the rate of Rs. 30/- per month. The trial Court held that the defendant was liable to pay damages at the rate at which the plaintiff made a claim against him by virtue of the notice that was served by the plaintiff upon the defendant. In appeal, the District Judge reversed the finding of the trial Court and held that on account of the provisions of Sections 3 and 5 of the Rent Control Order, 1947, the plaintiff was debarred from claiming anything in excess of the amount of rent. The lower Appellate Court, therefore reduced the decree to Rs. 80/- from Rs. 130/-. The plaintiff has filed this second appeal against the judgment and decree of the Court, of District Judge. It has been urged on behalf of the appellant that the lower Appellate Court was wrong in applying the provisions of Sections 3 and 5 of the Rent Control Order in this case as those provisions are applicable to cases where the relationship of landlord and a tenant exists between the parties. Sections 3 and 5 of the Rent Control Order are as follows:

'3. (1) Except where rent is liable to periodical increment by virtue of an agreement entered into before the 1st day of September 1939, or where rent is payable under a lease entered into before the 1st day of September, 1939, which has not expired before the first day of the period for which the rent is claimed, no tenant shall notwithstanding anything contained in any contract, be liable to pay to his landlord for occupation of any premises any sum in excess of the standard rent of those premises, unless such sum may lawfully be added to the standard rent in accordance with the provisions of this order.p

(2) Any agreement for the payment of rent in excess of the standard rent shall be null and void and shall be construed as if it was an agreement for payment of the standard rent only.

5. (1) It shall not be lawful for the landlord or any person acting or purporting to act on behalf of the landlord or the tenant or any person acting or purporting to act on behalf of the tenant, to claim or receive, in consideration of the grant, continuance

or renewal of a tenancy or sub-tenancy of any premises payment of any fine, premium, advance or other like sum in addition to rent, or save as otherwise provided in Clause 4 of Clause 6 (sic) any rent in excess of the standard rent of the premises.

(2) It shall not be lawful for the tenant or any person acting or purporting to act on behalf of the tenant, or a subtenant to claim or receive any payment in consideration' of the relinquishment of his tenancy of any premises.

(3) Nothing in this section shall apply to any payment made in pursuance of an agreement entered into before the 1st day of September 1939.'

2. It will be noticed that Sections 3 and 5 both can be made applicable to the cases where the relationship of the landlord and tenant exists between the parties. These sections do not apply to the cases where a lease has been determined and the relationship of landlord and tenant does not continue between the parties. The learned advocate of the defendant has argued that by virtue of Section 8 of the Rent Control Order, the tenancy should be deemed to have been continued after it had been determined by the service of a notice under Section 106 of the Transfer of Property Act. It may be pointed out that Section 8 of the Rent Control Order simply provides that even after the determination of the tenancy no landlord shall be entitled to eject a tenant without first obtaining a certificate of the Rent Controller on certain specified grounds mentioned in the order. In accordance with the provisions of Section 8, a landlord cannot eject a tenant even after the determination of the tenancy, but this does not mean that the relationship of landlord and tenant continues between the parties even after the determination of the tenancy. Once the tenancy has been determined by service of a notice under Section 106 of the Transfer of Property Act, the tenancy cannot be considered to be still existing between the parties, simply because the landlord is debarred from taking the possession of the property from the tenant, by Section 8 of the Rent Control Order. The position of the tenant after the determination of the tenancy in such a case would be that of a licensee or a trespasser. The licensee may be liable in such a case to pay damages to the landlord at a rate mentioned in the notice served upon the licensee and impliedly accepted by him. The defendant in

the present case is therefore, liable to pay damages to the plaintiff at the rates specified in the notice served by the plaintiff upon the defendant. This appeal succeeds and decree of the trial Court is restored and the decree of the first appellate Court is amended so as to increase the amount of the damages to Rs. 100/-. The plaintiff shall be entitled to costs of this appeal and of both the Courts.

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