Lakhmi Chand Khemani

Vs

Smt. Kauran Devi

Civil Appeal No. 641 of 1965

(A. K. Sarkar, J. R. Mudholkar, R. S. Bachawat JJ)

05.11.1965

JUDGMENT

SARKAR, J. –

This appeal was filed with special leave of this Court granted on August 14, 1964. Various interesting questions of law were sought to be raised on behalf of the appellant but in our view they do not arise at this stage. The appeal must be confined to the points decided in the courts below.

The case appears to us to be somewhat out of the ordinary. One Mehtab Singh was the owner of a certain building known as Akbar Building, situate in Mohalla Ganda Nala, Gali Rajan, Delhi. The appellant was a tenant under him in respect of certain accommodation in the building. On June 3, 1955, Mehtab Singh filed a suit under the Delhi and Ajmer Rent Control Act, 1952 against the appellant for his ejectment. On October 11, 1956 that suit was decreed. The appellant filed an appeal against that decree which, however, was dismissed on March 27, 1957. He thereafter moved the High Court of Punjab in revision but here also he was unsuccessful. The precise date of the dismissal of the application in revision does not appear on the record but it was sometime between March and September 1957.

On February 8, 1957 an Act called the Slum Areas (Improvement and Clearance) Act, 1956 came into force in Delhi. By a notification issued under s. 3 of this Act, the area in which the building with which we are concerned was situate, was declared a slum area for the purposes of the Act which meant that the buildings in that area were unfit for human habitation or that for various reasons they were detrimental to safety, health or morals of human beings. The date of this notification does not appear from the record but it is not in dispute that it was issued before September 1957.

Sub-section (1) of s. 19 of this Act which is the provision on which the appellant's case is principally based, is in these terms :

S. 19(1) - "Notwithstanding anything contained in any other law for the time being in force, on person who has obtained any decree or order for the eviction of a tenant form any building in a slum area shall be entitled to execute such decree, or order except with the previous permission in writing of the competent authority".

When after the dismissal of the revision petition against the ejectment decree Mehtab Singh sought to execute the decree, he was faced with the difficulty created by this provision. He there-upon applied to the specified authority for permission to execute the decree but this was refused on

September 12, 1957. He appealed to the appellate authority mentioned in that Act but that appeal was rejected on January 7, 1958.

Being thus baffled in his attempts to get possession of the accommodation occupied by the appellant, in execution of the ejectment decree, Mehtab Singh sold the building to the respondent on August 21, 1961. On or about March 28, 1962, the respondent filed a suit against the appellant for possession of the rooms in the latter's occupation. This suit was filed in the Court of a Sub-Judge of Delhi which was an ordinary civil Court. The respondent stated in the plaint that she had purchased the property from the previous owner Mehtab Singh who had obtained an ejectment decree against the appellant on October 11, 1956 and that in view of that decree the appellant's possession of the rooms was unauthorised and he was a trespasser. The respondent based her claim to recover possession of the rooms from the appellant on the aforesaid ground, namely, that he was a trespasser. In defence the appellant contended that s. 19 of the Slum Areas Act barred the suit and also that no civil court had jurisdiction to entertain it in view of s. 50 of the Delhi Rent Control Act, 1958 which had come into force on February 19, 1959 repealing the Delhi and Ajmer Rent Control Act, 1952 in so far as that Act applied to Delhi, as he continued to be a tenant of the rooms in spite of the decree in favour of Mehtab Singh of October 11, 1956.

The learned Subordinate Judge hearing the suit framed the following five issues :-

(1) Whether the plaintiff is the owner of the premises in suit ?

(2) Whether the defendant is in unauthorised occupation of the premises in dispute and is not a tenant in the same ?

(3) Whether the suit is barred under Section 19 of the Slum Area (Clearance & Improvement) Act, 1956 ?

(4) Whether the Civil Court has jurisdiction to try this suit ?

(5) Relief.

On the first issue he held that the respondent had proved her ownership of the premises and this finding has not been challenged in any subsequent proceeding. He decided issues Nos. 2 and 3 together and held that the real question involved in them was whether the appellant was a tenant. He observed that s. 2(1) of the Delhi Rent Control Act, 1958 no doubt provided that a tenant for the purpose of the Act would 'not include any person against whom any order or decree for eviction has been made" but he held that the word "order or decree for eviction" in the provision meant an executable decree or order. He then said that as the prescribed authority under the Slum Areas Act had refused permission to Mehtab Singh to execute his decree in ejectment, that decree was not on executable decree and, therefore, it could not be said that the appellant was not a tenant although a decree for eviction had been passed against him. In this view of the matter he held that the appellant must be deemed to have continued to be a tenant under Mehtab Singh and the respondent who was a transferee from Mehtab Singh had no better rights in the properties than what Mehtab Singh had. Apparently, the learned Subordinate Judge held that after the respondent purchased the property, the appellant had become her tenant. He observed that if the contention of the respondent that the appellant had ceased to be a tenant as a result of the decree was accepted, s. 19 of the Slum Areas Act would be rendered nugatory. He was not prepared to accept a view which led to such a result. As it was not in dispute that if the appellant was a tenant he had no jurisdiction to entertain the suit

in view of s. 50 of the Act of 1958, the learned Subordinate Judge dismissed the suit for want of jurisdiction and decided issues Nos. 4 and 5 accordingly.

The respondent appealed against this judgment to the High Court of Punjab. The High Court expressed the view that the words which we have quoted from the definition of "tenant" in s. 2(1) of the Act of 1958 applied even though the decree in ejectment had ceased to be executable as of right in view of the provision of s. 19 of the Slum Areas Act. It held that s. 50 of the Act of 1958 which barred the jurisdiction of a civil court to entertain suits for ejectment against "tenants" did not take away the learned Subordinate Judge's jurisdiction to try the respondent's suit, for the appellant was no longer a tenant after the decree of October 11, 1956 directing his eviction. It appears also to have been argued before the learned Judges of the High Court that when an order in ejectment had once been made against a tenant, another order could not be passed against him irrespective of whether the earlier order was made inexecutable by a statute or not. Dealing with this argument, Dua J. who delivered the judgment of the Court, observed, "This broad proposition, in my opinion, may not always hold good, but, in any event, the institution of the suit and the jurisdiction of the civil court to try the same can scarcely be held barred on this ground. Whether or not to pass a decree or order for eviction on the ground that such an order had already been passed, may have to be determined on the merits of the particular controversy on its own circumstances, the question scarcely, affects the jurisdiction of the Court to entertain and try the suit." The High Court concluded by saying, "For the reasons foregoing, we are clearly of the view that the order of the Court below is erroneous and allowing the appeal we set aside the judgment and decree of the learned subordinate Judge and remit the case back to the trial court for further proceedings in accordance with law, in the light of the observations made above."

It would thus appear that the only point which the High Court decided was whether the Subordinate Judge had jurisdiction to try the suit. It refused to go into the question whether on the merits the suit would succeed and remitted the case back to the Subordinate Judge apparently because he had not considered those merits, that is to say, whether in view of the earlier ejectment decree a fresh ejectment decree could be passed. It is clear from what we have said about the judgment of the learned Subordinate Judge that he had not in fact gone into the merits of the case and had only held that in view of s. 19 of the Slum Areas Act he had no jurisdiction to entertain the suit as the appellant remained a "tenant" within the meaning of that word in the Act of 1958 notwithstanding the decree in ejectment against him.

In this appeal the only question that we have to consider is whether the High Court was right in passing the order remanding the case to the learned Subordinate Judge for trial on the merits. That would depend on whether the High Court was right in its view that notwithstanding s. 19 of the Slum Areas Act rendering the decree against him inexecutable, the appellant ceased to be a tenant within the meaning off the Act of 1958 because of that decree. Before proceeding to discuss the question, we think it proper to observe that if the High Court was right in its view about the appellant ceased to be a tenant, it was fully justified in passing the order of remand. It was not called upon to decide whether the suit might succeed on the merits. That question had not been decided by the learned Subordinate Judge and it did not strictly arise in the appeal before the High Court. The High Court was certainly entitled to the views of the learned Subordinate Judge on it.

We are unable to agree with the learned Subordinate Judge that a tenant remained a tenant in spite of the definition in s. 2(1) of the Act of 1958 and notwithstanding a decree in ejectment earlier passed against him, because, in view of the refusal of the authority concerned to grant sanction to execute the decree under s. 19 of the Slum Areas Act, that decree was for the moment inexecutable. The Act

of 1958 quite clearly excluded from the definition of "tenant" a person against whom any order or decree for eviction had been made, that is to say, under it a tenant who had suffered a decree in ejectment was no more a tenant. Section 50 of this Act says, "No Civil Court shall entertain any suit or proceeding in so far as it relates..... to eviction of any tenant under s. 14". Section 14 provides for an order in ejectment being made by the Controller appointed under the Act on any of the grounds mentioned in it but not otherwise. Section 50, therefore, bars the jurisdiction of a civil court to try a suit for the eviction of a tenant, that is to say, a tenant as defined in the Act. It would not bar a suit for eviction against a person who is not a tenant as so defined. Under the ordinary law applicable to landlords and tenants, a tenant who has suffered an ejectment decree is not considered a tenant any more; he has after the decree none of the rights which as tenant he earlier possessed.

We find no justification for changing the definition of tenant in the Act of 1958 by drawing upon the provisions of the Slum Areas Act as the learned Subordinate Judge did. The last mentioned Act is not concerned with relations between landlords and tenants as such; it does not purport to interfere directly with the ordinary contractual rights of landlords and tenants either as to rent or as to recovery of possession. However, that may be, we find nothing in s. 19 of the Slum Areas Act to which alone we were referred by learned counsel for the appellant for the purpose, to warrant the view suggested that a tenant within the Act of 1958 would include a tenant against whom a decree in ejectment has been passed. Section 19 only says that a person who has obtained a decree in ejectment against a tenant shall not be entitled to execute it without the previous permission of the prescribed authority. It does not say that a tenant suffering the decree still continues to be a tenant for any purpose. The section does not purport to define the word 'tenant' in any way. It assumes that a decree for eviction has been passed against a tenant. The expression "decree or order for the eviction of a tenant" in s. 19 necessarily contemplates a person who was prior to the decree a tenant within the meaning of the Rent Act of 1958 or any of its predecessors. The section is not in any way concerned with the question whether the tenants suffering a decree in ejectment still continue to be such tenants within the meaning of the Rent Act. It is of some importance to point out in this connection that the Slum Areas act making ejectment decrees against tenants inexecutable without the requisite permission came into existence before the Act of 1958. It is pertinent to observe that notwithstanding this, the latter Act excluded from the definition of "tenant" one who had suffered an ejectment decree. Obviously, the Act of 1958 did not contemplate that the Slum Areas Act would in any way affect the definition of tenant contained in it. No question as to what the rights of a tenant against whom a decree in ejectment has been passed in view of s. 19 of the Slum Areas Act are, arises in this appeal, the only point being whether he is a tenant within the Act of 1958 so as to oust the jurisdiction of a civil court to entertain the suit. We think he is not, for s. 2(1) of the Act of 1958 must be read by itself and its meaning cannot be affected by any consideration derived form s. 19 of the Slum Areas Act.

We may now refer to Jyoti Pershad v. The Administrator for the Union Territory of Delhi ([1962] 2 S.C.R. 125.) to which our attention was drawn. That case is, in our view, of no assistance. It deals with the contention whether the Slum Areas Act was unconstitutional as it affected fundamental rights of landlords. That is not a question that arises in this appeal. This Court in its judgment on doubt stated that to buildings in slum areas both the Slum Areas Act and the Act of 1958 would apply and also that the former Act afforded some protection to tenants against eviction. As we have earlier stated, we are not concerned in this appeal with any question as to the protection given by the Slum Areas Act to tenants, nor as to the result of the application of both the Acts to a particular case. This Court did not say that the result of applying both the Acts to a case was to make part of the definition of "tenant" in the Act of 1958 nugatory; that was not a question that arose. All that the Court said was that a tenant was entitled to all such benefits as each Act independently conferred on

him. Again, when the judgment stated that the Slum Areas Act protected tenants, it did not purport to define the word "tenant" for purpose of the Acts. This Court certainly did not say that notwithstanding the definition in s. 2(1) of the Act of 1958 a person would remain a tenant within the meaning of that Act in spite of the order of eviction. That question did not arise for decision. This case does not help the appellant at all.

It was then pointed out that s. 50 of the Act of 1958 also provided that "no civil court shall entertain..... any proceeding in so far as it relates..... to any..... matter which the Controller is empowered by or under this Act to decide....." It was said that s. 25 of that Act provided that when an order has been made by the Controller for recovery of possession of premises from a tenant, he will give vacant possession of the premises to the landlord by removing all persons in possession thereof. It was contended that in view of these two provisions the learned Subordinate Judge had no jurisdiction to entertain the respondent's suit. This argument seems to us to proceed on a misapprehension. First, we do not think that the argument correctly states the effect of s. 25. It seems to us that all that the section does is to state who shall be bound by an order of eviction passed by the Controller and how effect shall be given to it. It is unnecessary, however, to express a final opinion on the effect of s. 25, for, in any event, clearly s. 42 of the Act provides that the Controller shall have power to execute orders made under the Act. If the Controller has the power to execute orders made under the Act including orders for eviction - and that is all that learned counsel for the appellant now contends - all that will happen in view of that part of s. 50 of the Act of 1958 on which reliance is now placed is that a civil court will not be able to execute an order for eviction. This however has nothing to do with the point before us. The learned Subordinate Judge was not asked to execute any decree for eviction. He was asked to decide whether the appellant was a trespasser and so liable to eviction. It does not follow that because a civil court cannot execute a decree for eviction passed by the Controller, it cannot also decide the question whether a tenant against whom such an order has been passed has ceased to be a tenant and become a trespasser. The present contention, therefore, must be rejected.

We are told that after the High Court had passed its order of May 12, 1964 remanding the case to the Subordinate Judge for trial on the merits, the Subordinate Judge heard the suit and passed a decree in favour of the respondent on August 12, 1964. This, if correct, must have happened because no order for stay of the proceedings pursuant to the order of remand had been obtained form the High Court. A plain copy of the judgment of the learned Subordinate Judge of August 12, 1964 was handed over to us by learned counsel for the appellant and from that it appears that he thought that since the High Court had held that the appellant was not a tenant within the meaning of the Act of 1958 after the decree in ejectment of October 11, 1956, it must be held that the respondent's contention that the appellant's possession of the rooms was unauthorised was correct. It is for this reason that the learned Subordinate Judge appears to have passed his decree for eviction of the appellant of August 12, 1964. We wish, however, to observe that we are not aware that the copy of the judgment is a correct copy. We have referred to it only to say that even if correct, it does not affect the question which we have to decide. We are also informed that the appellant has filed an appeal in the High Court from this judgment of the learned Subordinate Judge and that appeal is pending. It will be for the High Court now to decide the correctness of the decree of the learned Subordinate Judge of August 12, 1964 and it is not right that we should express any opinion on that question and we do not so.

The result, therefore, is that this appeal fails and it is dismissed with costs.

Appeal dismissed.

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