Damadilal and Others

Vs

Parashram and Others

Civil Appeal No. 884 of 1968

(Y.V. Chandrachud, R.S. Sarkaria, A.C. Gupta JJ)

07.05.1976

JUDGMENT

GUPTA, J. -

1. Damadi Lal, Sheo Prasad and Tirath Prasad who were members of a Hindu joint family brought a suit for ejectment on July 31, 1962 against their tenants Begamal and Budharmal on the grounds mentioned in clauses (a) and (f) of section 12(1) of the Madhya Pradesh Accommodation Control Act, 1961. The relevant provisions are in these terms :

> Section 12. Restriction on eviction of tenants. - (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only, namely -
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> (a) That the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner :
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> (f) that the accommodation let for non-residential purposes is required bona fide by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned;
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> Plaintiffs' case under Section 12(1)(a) was that the defendant tenants had defaulted in paying rent for the period October 1, 1961 to May 31, 1962 and did not also pay or tender the amount in arrears within two months of the service of the notice of demand. Clause (f) of section 12(1) was invoked on the allegation that the accommodation let was required bona fide by the plaintiffs for the purpose of starting their own business. Before the suit was instituted the plaintiffs had determined the tenancy from May 31, 1962 by a notice dated May 7, 1962. The house in dispute which is in Bazar Chowk in district Satna was let out to the defendants at a monthly rent of Rs. 275 for the purpose of their business. The plaintiffs reside in village

Nadan, tahsil Maihar, where they carry on their business.

2. The trial Court by its judgment and decree dated November 11, 1964 dismissed the suit for eviction. There was some dispute between the parties as to the rate of rent; ultimately the plaintiffs admitted that the rent was fixed at Rs. 175 per months with effect from August 1, 1961 by the Rent Control Authority and a sum of Rs. 1200, which was the amount in arrears, had been tendered to plaintiffs by cheque on May 26, 1962 which the plaintiffs refused to accept. The trial Court was opinion that the refusal was valid because "tendering by cheque is no valid tender" unless there was an agreement that payment by cheque would be acceptable and that the defendants were therefore defaulters within the meaning of Section 12(1)(a). However, in view of the dispute as to the amount of rent payable by the tenants, which was not determined during the pendency of the suit as required by Section 13(2), the trial Court held that no order for eviction under Section 12(1)(a) could be made in this case and passed a decree for Rs. 1200 in favour of the plaintiffs.

3. On the question of the plaintiffs' requirement of the premises for their own business, the trial Court found itself unable to accept the evidence adduced on behalf of the plaintiffs. Of the witnesses examined by the plaintiffs on the point, the evidence of PWs 1, 3 and 4 was not relied on because none of them was considered to be an independent witness and, further, because it was apparent from their evidence that what they said was what they were tutored to say by the plaintiffs. The other three witnesses were plaintiffs Damadi Lal and Tirath Prasad (PW 2 and PW 6 respectively) and Radhey Sham (PW 5), a son of plaintiff Sheo Prasad. They were also disbelieved because of the following reasons. Damadi Lal tried to give the impression that plaintiffs had no business except the cloth business and the grocery shop at Nadan. He tried to conceal that they had a moneylending business and also agricultural lands. Tirath Prasad stated that the main source of income of the family was from the money-lending business. Tirath Prasad also disclosed that the plaintiffs had already a partnership business in cloth at Satna though Damadi Lal and PW 5 Radhey Sham did not admit this. It also appears in evidence that the plaintiffs had yet another cloth business at a place called Ramnagar which was managed by Radhey Sham. The plaintiffs claimed that they would start a business at Satna, but Damadi Lal's evidence is that they had no income or saving. Tirath Prasad also said that their income was not even sufficient for their maintenance. Admittedly, plaintiffs had in their possession one room in the house which was let out to the defendants. The plaintiffs did not adduce any evidence to show how the said accommodation was unsuitable or insufficient for them to start their own business. It was also admitted that the plaintiffs had filed a suit for ejectment on an earlier occasion, but the defendants having agreed to pay increased rent the suit was not proceeded with. According to the defendants the present suit was instituted on the defendants' refusal to increase the rent further to Rs. 500 a month.

4. For the above reasons the trial Court did not accept the case of bona fide requirement holding that PW 2, PW 5 and PW 6 were in the habit of suppressing the truth to suit their own purpose.

5. On appeal by the plaintiffs, the first appellate Court reversed the decision of the trial Court and decreed the suit. The appellate Court agreed with trial Court that Court that sending a cheque did not amount to a valid tender of rent and, as the tenants did not apply under Section 13(2), they were not entitled to protection against eviction on the ground of default. As regards the plaintiffs' cease of requirement, the court found that the criticism of the plaintiffs' witness was not justified. The appellate Court thought that the fact the Tirath Prasad was carrying on a cloth business at Satna which Damadi Lal had kept back from court was irrelevant in view of the plaintiffs' claim that some members of the family wanted to start a new business at Satna. According to the appellate Court the further fact that PW 5 Radhey Sham was running a cloth business at Ramnagar was indicative of the

growing need of the plaintiffs family. The room in the plaintiffs' possession in the disputed house was not found suitable or sufficient for a wholesale business that the plaintiffs intended to start. Referring to the trial court's finding that the plaintiffs had no money to start a new business at Satna, the Court found that the evidence did not support this. The appellate Court therefore held that the plaintiffs required the premises for their own business.

6. Dissatisfied with this decision, the defendants preferred a second appeal to the High Court. During the pendency of the second appeal in High Court both the defendants died. Budharmal died on or about January 27, 1966 and his legal representatives were brought on record and substituted in his place without objection. Begamal died on March 2, 1967 and his heirs applied for being brought on record in his place as appellants. The plaintiffs made an application praying for an order that the appeal had abated as a consequence of the death of both the defendants. In this application the plaintiffs contended that Budharmal and Begamal were "merely statutory tenants and their right to resist ejectment on the basis of Madhya Pradesh Accommodation Control Act was merely a personal right" which was not heritable and had "not devolved upon their heirs." By its order dated July 26, 1967 the High Court allowed the application for substitution made by Begamal's heirs overruling the plaintiffs' objection.

7. Ultimately on November 6, 1967 the High Court allowed the appeal setting aside the decree of the lower appellate Court and restoring that of the trial Court dismissing the suit. The High Court found that the defendants were not in arrears of rent. Differing from both the courts below the High Court held that the cheque which the defendants had sent to the plaintiffs in payment of the amount in arrears within a month of the service of the writ of summons on him, amounted to a valid tender of rent as acquired by Section 13, and in view of Section 12(3) no order for eviction could be made. Section 12(3) provides that no order for eviction of a tenant shall be made on the ground of default if the tenant makes payment or deposits rent as required by Section 13. This is what the high Court held on the validity of tender of rent by cheque :

> The question is as to whether, instead of presenting the cash, if a cheque is sent to the landlord, that is sufficient tender of the arrears of rent or not ..... In the highly developed society, payment by cheque has become more convenient mode of discharging one's obligation. If a cheque is an instrument which represents and produces cash and is treated as such by businessmen, there is no reason why the archaic principle of the common law should be followed in deciding the question as to whether the handing over of the cheque is not a sufficient tender of the arrears of rent if the cheque is drawn for that amount. It is no doubt true that the issuance of the cheque does not operate as a discharge of the obligation unless it is encased, and it is treated as a conditional payment, yet, in my view, this is a sufficient tender of the arrears if the cheque is not dishonoured. In the present day society, I am of the view, an implied agreement should be inferred that if the payment is made by a cheque, that mode of payment would be accepted.

On the ground of bona fide requirement, the High Court found that there was no evidence to show that the plaintiffs had sufficient funds to start the wholesale business for which they sought to get possession of the disputed premises. This is a point which has a bearing on the genuineness of the plaintiffs' claim. The High Court took note of the fact that the plaintiffs made an attempt to keep back from the court that they were carrying on business at two more places, one at Satna, and another at Ramnagar. In this connection the High Court also referred to the defendants' case that the plaintiffs sought to increase the rent from Rs. 275 to Rs. 500 a month and that when the defendants

had the rent reduced by the Rent Controller to Rs. 175 per month, the present suit was filed. The High Court found that these circumstances which the trial Court took into consideration were ignored by the lower appellate Court. The High Court accordingly held that the plaintiffs had failed to prove their case of bona fide requirement, set aside the decree of the appellate Court, and restored that of the trial Court dismissing the suit.

8. Before us, Mr. Gupte for the plaintiff-appellants raised three contentions : (1) Begamal and Budharmal both of whom were statutory tenants had no heritable interest in the demised premises and, on their death, the right to prosecute the appeal in the High Court did not survive to their heirs and legal representatives; (2) payment by cheque was not a valid tender of rent and accordingly the suit should have been decreed on the ground of default; and (3) the High Court had no jurisdiction in second appeal to reverse the finding of the first appellate Court on the question of reasonable requirement which was a finding of fact.

9. In support of his first contention Mr. Gupte relied on two decisions of this Court, Anand Nivas (Private) Ltd. v. Anandji Kalyanji Pedhi ((1964) 4 SCR 892 : AIR 1965 SC 414) and Jagdish Chander Chatterjee v. Sri Kishan ((1973) 1 SCR 850 : (1972) 2 SCC 461). The statute considered in Anand Nivas case was Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 as amended in 1959. The question there was, whether a tenant whose tenancy had been terminated had any right to sublet the premises. Of the three learned Judges composing the Bench that heard the appeal, Hidayatullah and Shah, JJ. held that a statutory tenant, meaning a tenant whose tenancy has determined but who continues in possession, has no power of subletting. Sarkar, J. delivered a dissenting opinion. Shah, J. who spoke for himself and Hidayatullah, J. observed in the course of their judgment :

> A statutory tenant has no interest in the premises occupied by him, and he has no estate to assign or transfer ... A statutory tenant is, as we have already observed, a person who on determination of his contractual right, is permitted to remain in occupation so long as he observes and perform the conditions of the tenancy and pays the standard rent and permitted increases. His personal right of occupation is incapable of being transferred or assigned, and he having no interest in the property there is no estate on which subletting may operate.

It appears from the judgment of Shah, J. that "the Bombay Act merely grants conditional protection to a statutory tenant and does not invest him with the right to enforce the benefit of any of terms and conditions of the original tenancy". Sarkar, J. dissenting held that the word 'tenant' as defined in the Act included both a contractual tenant - a tenant whose lease is subsisting - as also a statutory tenant, and the latter has the same power to sublet as the former. According to Sarkar, J. even if a statutory tenant had no estate or property in the demised premises, the Act had undoubtedly created right in such a tenant in respect of the property which he could transfer. Jagdish Chander Chatterjee's case dealt with the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, and the question for decision was whether on the death of a statutory tenant his heirs succeed to the tenancy so as to claim protection of the Act. In this case it was held by Grover and Palekar, JJ., relying on Anand Nivas case, that after the termination of contractual tenancy, a statutory tenant enjoys only a personal right to continue in possession and on his death his heirs do not inherit any estate or interest in the original tenancy.

10. Both these cases, Anand Nivas and Jagdish Chander Chatterjee, proceed on the basis that tenant whose tenancy has been terminated, described as statutory tenant, has no estate or interest in the

premises but only a personal right to remain in occupation. It would seem as if there is a distinct category of tenants called statutory tenants having separate and fixed incidents of tenancy. The terms 'statutory tenancy' is borrowed from the English Rent Acts. This may be a convenient expression for referring to a tenant whose tenancy has been terminated and who would be liable to be evicted but for the protecting statute, but courts in this country have sometimes borrowed along with the expression certain notions regarding such tenancy from the decisions of the English courts. In our opinion it has to be ascertained how far these notions are reconcilable with the provisions of the statute under consideration in any particular case. The expression 'statutory tenancy' was used in England in several judgments under the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, to refer to a tenant protected under that Act, but the term got currency from the marginal note to Section 15 of the Rent and Mortgage Interest (Restrictions) Act, 1920. That section which provided inter alia that a tenant who by virtue of that Act retained possession of any dwelling house to which the Act applied, so long as he retained possession, must observe and would be entitled to the benefit of all the terms and conditions of the original contract of tenancy which were consistent with the provisions of the Act, carried the description in the margin "conditions of statutory tenancy".' Since then the term has been used in England to describe a tenant protected under the subsequent statutes until Section 49(1) of the Housing Repairs and Rent Act, 1954 for the first time defined 'statutory tenant' and 'statutory tenancy'. 'Statutory tenant'was defined as a tenant "who retains possession by virtue of the Rent Acts and not as being entitled to a tenancy, and", it was added, "'statutory tenancy'shall be construed accordingly". This definition of 'statutory tenancy' has been incorporated in the Rent Acts of 1957 and 1965. In England "statutory tenancy" does not appear to have had any clear and fixed incidents; the concept was developed over the years from the provisions of the successive Rent Restrictions Acts which did not contain a clear indication as to the character of such tenancy. That a statutory tenant is entitled to the benefit of the terms and conditions of the original contract of tenancy so far as they were consistent with the provisions of the statute, did not, as Scrutton, L. J. observed in Roe v. Russell ((1928) 2 KB 117), "help very much when one came to the practical facts life"; according to him citizens are entitled to complain that their legislators did not add their minds to the probable events that might happen in cases of statutory tenancy, and consider how the legal interest they were granting was affected by those probable events.

He added :

> ... it is pretty evident that the Legislature never considered as a whole the effect on the statutory tenancy of such ordinary incidents as death, bankruptcy, voluntary assignment, either inter vivos or by will, a total or partial subletting; but from time to time put into one of the series of Acts a provision as to one of the incidents without considering how it fitted in with the general nature of the tenancy which those incidents might affect.

On the provisions which gave no clear and comprehensive idea of the nature of a statutory tenancy, the courts in England had been slowly "trying to frame a consistent theory" (Scrutton, L. J. in Haskins v. Lewis, (1931) 2 KB 1, 9), "making bricks with very insufficient statutory straw" (Scrutton, L. J. in Keeves v. Dean, (1923) 93 LJKB 203, 207 : (1924) 1 KB 685 : 40 TLR 211). Evershed, M. R. in Boyer v. Warbey ((1953) 2 QB 234) said :

> The character of the statutory tenancy, I have already said, is a very special one. It has earned many epithets, including "monstrum horrendum" and perhaps it has never been fully thought out by Parliament.

Courts in England have held that a statutory tenant has no estate or property in the premises he occupies because he retains possession by virtue of the Rent Acts and not as being entitled to a tenancy; it has been said that he has only a personal right to remain in occupation, the statutory right of "irremovability", and nothing more.

11. We find it difficult to appreciate how in this country we can proceed on the basis that a tenant whose contractual tenancy has determined but who is protected against eviction by the statute, has no right of property but only a personal right to remain in occupation, without ascertaining what his rights are under the statute. The concept of a statutory tenant having no estate or property in the premises which he occupies is derived from the provisions of the English Rent Acts. But it is not clear how it can be assumed that the position is the same in this country without any reference to the provisions of the relevant statute. Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the subject-matter of the tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the tenancy the estate must necessarily disappear and the statute can only preserve his status of irremovability and not the estate he had in the premises in his occupation. It is not possible to claim that the "sanctity" of contract cannot be touched by legislation. It is therefore necessary to examine the provisions of the Madhya Pradesh Accommodation Control Act, 1961 to find out whether the respondents' predecessors-in-interest retained a heritable interest in the disputed premises even after the termination of their tenancy.

12. Section 2(i) of the Madhya Pradesh Accommodation Control Act, 1961 defines 'tenant' to mean, unless the context otherwise requires, a person by whom or on whose account or behalf the rent of any accommodation is, or, but for a contract express or implied, would be payable for any accommodation and includes any person occupying the accommodation as a sub-tenant and also any person continuing in possession after the termination of his tenancy whether before or after the commencement of this Act; but shall not include any person against whom any order or decree for eviction has been made.

The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists. The incidents of such tenancy and a contractual tenancy must therefore be the same unless any provision of the Act conveyed a contrary intention. That under this Act such a tenant retains an interest in the premises, not merely a personal right of occupation, will also appear from Section 14 which contains provisions restricting the tenant's power of subletting. Section 14 is in these terms :

> Section 14. Restrictions on sub-letting.- (1) No tenant shall, without the previous consent in writing of the landlord -
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> (a) sub-let the whole or any part of the accommodation held by him as a tenant; or
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> (b) transfer or assign his rights in the tenancy or in any part thereof.
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> (2) No landlord shall claim or receive the payment of any sum as premium or pugree or claim or receive any consideration whatsoever in cash of in kind for giving his consent to the sub-letting of the whole or any part of the accommodation held by the tenant.

There is nothing to suggest that this section does not apply to all tenants as defined in Section 2(i). A contractual tenant has an estate or interest in premises from which he carves out what he gives to the sub-tenant. Section 14 read with Section 2(i) makes it clear that the so-called statutory tenant has the right to sublet in common with a contractual tenant and this is because he also has an interest in the premises occupied by him. Considering the position of the sub-tenant of a statutory tenant in England, Lord Denning said in Soloman v. Orwell ((1954) 1 All ER 874) :

> When a statutory tenant sublets a part of the premises, he does not thereby confer any estate or interest on the sub-tenant. A statutory tenant has no estate or interest himself, and he cannot carve something out of nothing. The sub-tenant, like the statutory tenant, has only a personal right or privilege.

In England the statutory tenant's right to sublet is derived from specific provisions of the Act conceding this right to him; in the Act we are concerned with in this appeal, the right flows from his status as a tenant. This is the basic difference between the English Rent Restrictions Acts and the Act under consideration and similar other Indian status. In a Special Bench decision of the Calcutta High Court, Krishna Prasad Bose v. Sm. Sarajubala Dasi (65 Cal WN 293, 297-298), Bachawat, J., considering the question whether a statutory tenant continuing in occupation by virtue of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 could sublet the premises let to him, said :

> The Rent Control and Tenancy Acts create a special world of their own. They speak of life after death. The statutory tenancy arises phoenix-like out of the ashes of the contractual tenancy. The contractual tenant may die but the statutory tenant may live long thereafter. The statutory tenant is an ex-tenant and yet he is a tenant.

The concept of statutory tenancy under the English Rent Acts and under the Indian statutes like the one we are concerned with in this appeal rests on different foundations. It must therefore be held that the predecessors-in-interest of the present respondents had a heritable interest in the premises and consequently the respondents had the right to prosecute the appeal in the High Court. Mr. Gupte's first submission thus fails.

13. On the ground of default, it is not disputed that the defendants tendered the amount in arrears by cheque within the prescribed time. The question is whether this was a lawful tender. It is well-established that a cheque sent in payment of a debt on the request of the creditor, unless dishonoured, operates as valid discharge of the debt and, if the cheque was sent by post and was met on presentation, the date of payment is the date when the cheque was posted. The question however still remains whether in the absence of an agreement between the parties the tender of rent by cheque amounts to a valid discharge of the obligation. Earlier, we have extracted a passage from the High court judgment on this aspect of the case. We agree with the view taken by the High Court on the point. Rent is payable in the same manner as any other debt and the debtor has to pay his creditor in cash or other legal tender, but there can be no dispute that the mode of payment can be altered by agreement. In the contemporary society it is reasonable to suppose such agreement as implied unless the circumstances of a case indicate otherwise. In the circumstance of this case, the High Court in our opinion, rightly held that the cheque sent to the plaintiffs amounted to valid tender of rent. The second contention urged on behalf of the appellants must also be rejected.

14. Mr. Gupte's last contention relates to the plaintiffs' bona fide requirement of the premises. The trial Court found on the evidence that the plaintiffs claim was unjustified. The first court of appeal

reversed that finding and held that the plaintiffs' requirement was bona fide. The High Court in second appeal agreed with the trial Court in holding that the landlords had no bona fide requirement. Mr. Gupte contended that the High Court in second appeal to upset the finding of the lower appellate Court on this issue which, according to him, was a finding of fact. Mr. Nariman for the respondent relied on the decision of this Court in Madan Lal Puri v. Sain Das Berry (AIR 1973 SC 585 : (1971) 2 SCC 535) to argue that the question was a mixed question of law and fact and that it was within the jurisdiction of the High Court in second appeal to examine the correctness of the finding. In answer Mr. Gupte referred to another decision of this Court Mattulal v. Radhey Lal (AIR 1974 SC 1596 : (1974) 2 SCC 365) which, relying on an earlier decision of this Court in Sarvate T. B. v. Nemi Chand (1966 MPLJ 26 (SC)), held that such a finding was one of fact and not a finding on a mixed question of law and fact. We do not think that for the purpose of this case we need express any opinion on the apparent conflict between these two decisions. Plaintiffs case was that they had cloth and grocery business at village Nadan and that they desired to start a wholesale cloth and grocery business at Satna. The trial Court's finding was based inter alia on the evidence that the plaintiffs had not adequate funds to start a new wholesale business. The lower appellate Court reversed the finding of the trial Court on the ground that there was no evidence that the plaintiff had no money to start a new business; the lower appellate Court's finding rests mainly on this consideration. The High Court pointed out that plaintiff Damadidas alias Damadi Lal (PW 2) stated in his evidence that their income from the business at Nadan was sufficient "only for meeting the expenses of livelihood;" A plaintiff Tirath Prasad (PW 6) also admitted that "our present income is not sufficient even for our maintenance because there are many members in the family". It thus appears that the lower appellate Court overlooked a very material part of the evidence bearing on the question. It is well established that if a finding of fact is arrived at ignoring important and relevant evidence, the finding is bad in law. (See Radha Nath Seal v. Haripada Jana (AIR 1971 SC 1049)). We therefore think that the High Court was within its jurisdiction in setting aside the finding of the lower appellate Court and restoring that of the trial Court on this point.

15. In the result the appeal fails and is dismissed but in the circumstances of the case we make no order as to costs.

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