

Lal Chand (dead) by L. Rs. and Others

Vs

Radha Krishan

Civil Appeal No. 636 of 1975

(Y.V. Chandrachud, P.K. Goswami JJ)

17.12.1976

JUDGMENT

CHANDRACHUD, J.-

1. The respondent Radha Krishan who owns house No. 142, Katra Mashru, Delhi let out a portion thereof consisting of five rooms on the ground floor and two rooms on the second floor to one Lal Chand. He filed suit No. 42 of 1958 in the Court of the sub-Judge, Delhi for evicting Lal Chand and four others : Kesho Ram, Jhangi Ram, Nand Lal and Smt. Kakibai, alleging that Lal Chand had sublet the premises to him. The eviction of these persons was sought by the respondent on the grounds that (1) he required the premises for his own use and occupation; (2) he wanted to provide certain essential amenities for himself necessitating re-construction; and (3) that the tenant was in arrears of rent. By his judgment dated June 6, 1959 the learned Sub-Judge, First Class, Delhi decreed the suit on the first ground only and rejected the other two contentions. In an appeal filed by the defendants, the learned Senior Sub-Judge, Delhi confirmed the finding of the trial Court that the accommodation at the disposal of the respondent was insufficient, but he thought that the needs of the respondent would be met adequately if he were given possession of the two rooms on the second floor only. Feeling however that there was no provision in the Delhi and Ajmer Rent Control Act, 1952, under which the suit was filed, for giving possession of a part of the demised premises to the landlord, the learned Judge confirmed the decree of the trial Court. The Circuit Bench of the Punjab High Court at Delhi upheld that judgment on February 6, 1962 in Civil Revision No. 609-D of 1960 on the ground that the landlord required the entire premises for his personal use and occupation.

2. Since the suit property is situated in a slum area, the respondent filed an application under Section 19(2) of the Slum Areas (Improvement and Clearance) Act, 1956, for permission of the competent authority to execute the decree for possession obtained by him against Lal Chand and others. The competent authority after taking into account the factors mentioned in Section 19(4) of that Act, passed an order permitting the respondent to execute the decree in respect of the two rooms situated on the second floor only. Respondent was expressly refused permission to execute the decree in regard to the premises situated on the ground floor.

3. Aggrieved by that order, the respondent filed an appeal to the Administrator under Section 20 of the Slum Clearance Act, 1956. The appeal was heard by the Chief Commissioner of Delhi who confirmed the order of the competent authority. Pursuant to his order, the defendants handed over possession of the two rooms on the second floor to the respondent.

4. This, however, was not the end of the matter. Having obtained possession of a part of the premises, the respondent embarked upon a fresh round of litigation giving rise to this appeal. He

filed a regular Civil Suit No. 435 of 1966 against Lal Chand, Kesho Ram and Jhangi Ram for possession of the remaining rooms on the ground floor. That suit was decreed by the trial Court on May 4, 1967. Nand Lal and Kakibai were not impleaded to the suit presumably because they had surrendered possession of the two rooms on the second floor in pursuance of the order passed in appeal under the Slum Clearance Act.

5. Aggrieved by the judgment of the trial Court, Lal Chand, Kesho Ram and Jhangi Ram filed Civil Appeal No. 35 of 1967 in the Court of the Additional Senior Sub-Judge, Delhi. During the pendency of that appeal Lal Chand died on June 13, 1967 whereupon, his widow Bhiranwan Bai and his son Khem Chand applied for being brought on the record of the appeal as his legal representatives. That application was contested by the respondent on the ground that by reason of the ejection decree Lal Chand had ceased to be a tenant and upon his death during the pendency of the appeal, the right to sue did not survive to his heirs. This contention was upheld by the learned appellate Judge who by his judgment dated November 18, 1967 dismissed the appeal as also the application filed by Lal Chand's widow and so for being brought on the record as his legal representatives.

6. These legal representatives and the two other defendants, Kesho Ram and Jhangi Ram, filed second appeal No. 316 of 1967 in the High Court of Delhi against the judgment of the learned Additional Senior Sub-Judge. A learned Single Judge of the High Court held by his judgment dated September 30, 1974 that on the death of Lal Chand during the pendency of the first appeal, the cause of action did not survive to his legal representatives to continue the appeal and that therefore there was no one who could legitimately prosecute that appeal. The learned Judge, accordingly, confirmed the judgment of the first appellate Court and dismissed the second appeal. This appeal by special leave is filed by the legal representatives of Lal Chand as also by Kesho Ram and Jhangi Ram.

7. In taking the view that the legal representatives of Lal Chand had no right to continue the appeal after Lal Chand's death, the High Court relied on a decision of this Court in *Anand Nivas Private Ltd. v. Anandji Kalyanji Pedhi* (AIR 1965 SC 414 : (1964) 4 SCR 892). It was held in that case that on the determination of the contractual tenancy the tenant becomes a statutory tenant having no estate or interest in the premises occupied by him and that the right of the statutory tenant to remain in possession after the determination of the contractual tenancy being personal to him is not capable of being transferred or assigned and cannot devolve on his death on his heirs or legal representatives. While relying on this decision, the High Court overlooked an important consideration. The suit out of which the appeal before the High Court and this appeal arise was filed by the respondent not only against Lal Chand but against Kesho Ram and Jhangi Ram, also, who were all in possession of the ground floor premises. The case of the respondent in the earlier round of litigation that Lal Chand had sublet the premises to Kesho Ram, Jhangi Ram, Nand Lal and Kakibai remained in the realm of mere allegations and was not pursued. Naturally, the ejection decree did not rest on the ground of sub-letting and came to be passed on the sole ground that the respondent required the premises for his personal use and occupation. Since two out of the five defendants against whom the ejection decree was passed were impleaded as defendants in the present suit alongwith Lal Chand and since they had filed the appeal jointly with Lal Chand, they had the right of prosecuting the appeal no less than Lal Chand himself had. Kesho Ram and Jhangi Ram were as much aggrieved by the ejection decree as Lal Chand himself and they were entitled alongwith Lal Chand to an equal protection of the Slum Clearance Act. They were parties to the application which was filed by the respondent before the competent authority for permission to execute the decree for possession and the refusal of that authority to allow the respondent to execute

that decree in regard to the premises situated on the ground floor must necessarily ensure for their benefit as much as for the benefit of Lal Chand himself. Therefore, whether Lal Chand was a statutory tenant or not and whether the ratio in Anand Nivas's case would apply to the present proceedings which arise out of the Delhi Rent Control Act of 1958, the appeals could not have been dismissed by the first appellate Court and the High Court on the ground that Lal Chand had died without leaving a heritable interest and therefore his legal representatives had no right to continue the appeal. Assuming that Lal Chand, being a statutory tenant, left no surviving cause of action to his heirs, the two other appellants, Kesho Ram and Jhangi Ram, had a real and substantial interest in prosecuting the appeal in their own right, particularly in view of the findings of the Chief Commissioner of Delhi in the appeal filed under Section 20 of the Slum Clearance Act.

8. Not only was it erroneous to treat the appeal as having abated on the death of Lal Chand but the first appellate Court as well as the High Court ought to have applied the provisions of Order XLI, Rule 4, Code of Civil Procedure, under which where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or defendants may appeal from the whole decree, and thereupon the appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be. In the earlier suit for eviction filed by the respondent under the Delhi and Ajmer Rent Control Act, Lal Chand and his alleged sub-tenants were all impleaded to the suit as defendants. The decree for eviction was eventually passed in that suit in favour of the respondent and against the defendants jointly. All of these defendants contested the proceeding before the competent authority under the Slum Clearance Act and they succeeded in obtaining an order therein that it was not open to the respondent to execute the decree in respect of the premises on the ground floor. In order to overcome the effect of that order respondent brought the present suit and in the very nature of things he had to implead Kesho Ram and Jhangi Ram to that suit as party-defendants alongwith Lal Chand. On the death of Lal Chand during the pendency of the first appeal the other appellants, who were as much interested in the success of the appeal as Lal Chand, were before the Court and the appeal could not have been dismissed for the mere reason that Lal Chand had no longer any interest or estate in the property. The eviction decree being joint and indivisible, the dismissal of the appeal in so far as Lal Chand was concerned could conceivably result in inconsistent decrees being passed in the event of the appeal of Kesho Ram and Jhangi Ram being allowed. Therefore, the first appellate Court ought to have heard the appeal on merits and decided the question whether the provisions of the Slum Clearance Act operated as a bar to the maintainability of the suit brought by the respondent.

9. The High Court observes in its judgment that Kesho Ram and Jhangi Ram were sub-tenants and they had therefore no independent right to continue the appeal. We see no justification for this observation because in the earlier suit, though the respondent had alleged that Lal Chand had sublet the premises to the other defendants including Kesho Ram and Jhangi Ram, the ejection decree was passed on the sole ground that the respondent required the premises for his personal use and occupation. In fact, in that suit the allegation of sub-tenancy though made in the plaint was at no stage pursued and the judgment of the trial Court did not deal with that allegation at all. No issue was framed and no finding recorded on the question of subletting.

10. The High Court seems to have been impressed by the contention that the suit was not maintainable by reason of the provisions of Section 37A of the Slum Clearance Act, but it thought that Lal Chand having died there was no one before the Court who could legitimately contend that the suit was not maintainable. As stated before this was an erroneous approach to the problem, which makes it necessary for us to examine the merits of the contention as regards the

maintainability of the suit.

11. The main contentions raised by Lal Chand, Kesho Ram and Jhangi Ram by their written statements in the present suit are that they are tenants within the meaning of the Slum Clearance Act despite the passing of the ejectment decree against them, that the suit brought by the respondent was not maintainable in view of the provisions of the Slum Clearance Act and that the respondent was estopped from bringing the suit since he had already obtained possession of the two rooms on the second floor in pursuance of the permission granted by the competent authority. The first two of these contentions have to be answered in the light of the relevant provisions of the Slum Clearance Act to which we must now turn.

12. Section 19(1) of the Slum Clearance Act reads thus :

19. Proceedings for eviction of tenants not to be taken without permission of the competent authority. - (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, except with the previous permission in writing of the competent authority, -

(a) institute, after the commencement of the Slum Areas (Improvement and Clearance) Amendment Act, 1964, any suit or proceeding for obtaining any decree or order for the eviction of a tenant from any building or land in a slum area; or

(b) where any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of a tenant from any building or land in such area, execute such decree or order.

Arising out of this provision the question for decision is whether the present suit is barred for the reason that before instituting it, respondent has not obtained permission of the competent authority. It being common ground that such a permission was not obtained and that the building in question is situated in a slum area, the decision of this question turns on the consideration whether in spite of the fact that an ejectment decree was passed against Lal Chand in the earlier suit, he continued to be a 'tenant' for the purposes of the Slum Clearance Act, especially within the meaning of Section 19(1)(a) thereof. The trial Court held that Lal Chand ceased to be a tenant after the passing of the ejectment decree and therefore the jurisdiction of the Civil Court to entertain the suit for possession against him was not barred under any of the provisions of the Slum Clearance Act. This question, as stated earlier, had not been dealt with either by the first appellate Court or by the High Court in second appeal since they took the view that on Lal Chand's death during the pendency of the first appeal, the proceedings had abated.

13. The word 'tenant' has not been defined in the Slum Clearance Act but Section 2(1) of the Delhi Rent Control Act, 59 of 1958, defines it thus :

2. (1) "tenant" means any person by whom or on whose account or behalf the rent of any premises is, or but for a special contract would be payable and includes a sub-tenant and also any person continuing in possession after the termination of his tenancy but shall not include any person against whom any order or decree for eviction has been made;

This definition has been amended by Act 18 of 1976 but the amended definition also provides by Section 2(1)(A) that the word 'tenant' shall not include any person against whom an order or decree for eviction has been made, except where such

decree or order for eviction is liable to be re-opened under the proviso to Section 3 of the Amending Act of 1976. It is thus clear that in so far as the Delhi Rent Control Act is concerned, a person against whom an order or a decree for eviction has been passed cannot, generally, be regarded as a tenant. The question which requires consideration is whether the definition of 'tenant' contained in the Delhi Rent Control Act can be extended to proceedings under the Slum Clearance Act, or, in other words, whether the word 'tenant' which occurs in clause (a) of Section 19(1) of the Slum Clearance Act bears the same meaning which it has under the Delhi Rent Control Act.

14. Section 19 of the Slum Clearance Act furnishes intrinsic evidence to show that the definition of the word 'tenant' as contained in the Delhi Rent Control Act cannot be extended for construing its provisions. By clause (b) of Section 19(1) no person can, except with the previous permission in writing of the competent authority, execute any decree or order obtained in any suit or proceeding instituted before the amending Act of 1964 for the eviction of a "tenant" from any building or land in a slum area. Sub-section (2) of Section 19 provides that a person desiring to obtain permission of the competent authority shall make an application in the prescribed form. By sub-section (4), the competent authority is required to take into account certain factors while granting or refusing to grant the permission asked for. The first of such factors which is mentioned in clause (a) of sub-section (4) is "whether alternative accommodation within the means of the tenant would be available to him if he were evicted". It is evident that the word 'tenant' is used in Section 19(4)(a) to include a person against whom a decree or order for eviction has already been passed because, that provision applies as much to the permission sought for executing a decree or order of eviction referred to in Section 19(1)(b) as to the institution of a suit or proceeding for obtaining a decree or order for eviction referred to in Section 19(1)(a). If a person against whom a decree or order of eviction has been passed is not to be included within the meaning of the word 'tenant', Section 19(4)(a) could not have used the language which it uses, namely, whether alternative accommodation within the means of the 'tenant' would be available to him if he were evicted. In the absence of compelling circumstances and in order to better effectuate the object of the Slum Clearance Act, we see no reason why the word 'tenant' should not bear the same meaning in Section 19(1)(a) as in Section 19(4)(a). The rule is well settled that where the same expression is used in the same statute at different places the same meaning ought to be given to that expression, as far as possible. In the instant case the word 'tenant' has been used at more than one place in Section 19 itself and it is only reasonable to construe it in the same sense throughout.

15. The Slum Clearance Act was passed, inter alia, for the protection of tenants in slum areas from eviction. As observed by this Court in *Jyoti Pershad v. The Administrator for the Union Territory of Delhi* ([1962] 2 SCR 125 : AIR 1961 SC 1602), the Slum Clearance Act looks at the problem of eviction of tenants from slum areas not from the point of view of the landlord and his needs but from the point of view of tenants who have no alternative accommodation and who would be stranded in the open if they were evicted. The policy of the Slum Clearance Act being that the Slum dweller should not be evicted unless alternative accommodation is available to him, we are of the view that the word 'tenant' which occurs in Section 19(1)(a) must for the purpose of advancing the remedy provided by the statute be construed to include a person against whom a decree or order for eviction has been passed. We might mention that a Full Bench of the Delhi High Court in *Bardu Ram Dhanna Ram v. Ram Chander Khibru* (AIR 1972 Delhi 34) has taken the same view, namely, that the word 'tenant' in Section 19 of the Slum Clearance Act includes a person against whom a decree or order of eviction has been passed.

16. Learned counsel for the respondent relied very strongly on a decision of this Court in *Lakhmi Chand Khemani v. Kauran Devi* ([1966] 2 SCR 544 : AIR 1966 SC 1003) in support of his submission that the word 'tenant' must bear the same meaning in the Slum Clearance Act as in the Delhi Rent Control Act. We are unable to appreciate how the judgment in that case supports the contention of the respondent. All that was decided therein was that a person against whom an order for eviction is passed cannot be a tenant within the meaning of the Delhi Rent Control Act and that the definition of the word 'tenant' as contained in that Act would not be affected by anything contained in Section 19 of the Slum Clearance Act. The question which arose in that case was whether Section 50 of the Delhi Rent Control Act barred the jurisdiction of the civil court to entertain a suit in relation to any premises to which that Act applied, for eviction or a 'tenant' therefrom. Not only that no question arose in that case as to whether the definition of tenant as contained in the Delhi Rent Control Act should be extended to the Slum Clearance Act, but the Court observed expressly that :

No question as to what the rights of a tenant against whom a decree in ejectment has been passed in view of Section 19 of the Slum Areas Act are, arises in this appeal and that the Court was not concerned in the appeal before it with any question as to the protection given by the Slum Areas Act to tenants. . . .

The question before us is not whether a person against whom a decree for eviction is passed is a tenant for the purposes of the Delhi Rent Control Act but whether he is a tenant for the purposes of Section 19 of the Slum Clearance Act. *Lakhmi Chand's* case does not deal with this problem at all.

17. Since the respondent had not obtained permission of the competent authority for instituting the present suit for obtaining a decree for eviction of Lal Chand from a building situated in the slum area and since Lal Chand must be held to be a tenant for the purpose of Section 19(1)(a) it must follow that the suit is incompetent and cannot be entertained.

18. The suit is also barred under Section 37A of the Slum Clearance Act which reads thus :

37A. Bar of jurisdiction. - Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the competent authority or any other person is empowered by or under this Act, to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

The competent authority is empowered under Section 19(3) to determine the question whether permission should be granted or refused for instituting a suit for obtaining a decree or order for the eviction of a tenant from any building in a slum area. Consequently, no civil court can have jurisdiction in respect of that matter, namely, in respect of the question whether a tenant of a building in a slum area should or should not be permitted to be evicted therefrom. As a result of the combined operation of Section 19(3) and Section 37A of the Slum Clearance Act, that jurisdiction is exclusively vested in the competent authority and the jurisdiction in that behalf of civil courts is expressly taken away.

19. Only one more aspect of the matter needs to be adverted to. The respondent after obtaining a decree for eviction against Lal Chand and his alleged sub-tenants applied for permission of the competent authority to execute that decree. Permission was granted to him to execute the decree in respect only of the two rooms on the second floor and in pursuance of that permission he obtained

possession of those two rooms. We are unable to understand how after working out his remedy under the Delhi Rent Control Act as modified by the Slum Clearance Act, it is competent to the respondent to bring a fresh suit for evicting the appellants from the premises on the ground floor. The authorities under the Slum Clearance Act who are exclusively invested with the power to determine whether a decree for eviction should be permitted to be executed and, if, so, to what extent, had finally decided that question, refusing to allow the respondent to execute the decree in respect of the ground floor premises. By the present suit, the respondent is once again asking for the relief which was included in the larger relief sought by him in the application filed under the Slum Clearance Act and which was expressly denied to him. In the circumstances, the present suit is also barred by the principle of res judicata. The fact that Section 11 of the Code of Civil Procedure cannot apply on its terms, the earlier proceedings before the competent authority not being a suit, is no answer to the extension of the principle underlying that section to the instant case. Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, those issues arise as between the same parties and thirdly, the issue now sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue. Were it permissible to bring suits of the present nature, the beneficial jurisdiction conferred on the competent authority by the Slum Clearance Act would become illusory and meaningless for, whether the competent authority grants or refuses permission to execute a decree for eviction, it would always be open to the landlord to enforce the ejection decree by filing a substantive suit for possession. Verily, the respondent is executing the eviction decree by instalments, now under the garb of a suit. Apart from the fact that the suit is barred on account of principles analogous to res judicata, it is plainly in violation of the injunction contained in Section 19(1)(b) of the Slum Clearance Act, if regard is to be had to the substance and not for the form of the proceedings.

20. Lal Chand's widow died after the decision of the second appeal by the High Court and before the filing of this appeal. Learned counsel for the respondent wants to utilise that event to highlight his argument that the cause of action cannot survive at least after her death, in view of the limited protection granted to the heirs of the original tenant by the amendment made to Section 2(1) of the Delhi Rent Control Act by Amending Act 18 of 1976. We cannot accept this argument either. The suit filed by the respondent being incompetent and the Civil Court not having jurisdiction to entertain it, the decree passed by it is non-est. The nullity of that decree can be set up at least by Kesho Ram and Jhangi Ram who are entitled to defend and protect their possession by invoking the provisions of the Slum Clearance Act.

21. In the result we allow the appeal, set aside the judgment of the High Court and direct that the respondent's suit for possession shall stand dismissed. The respondent shall pay to the appellants the costs of this appeal.

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