

Mangat Ram and Another

Vs

Sardar Meharban Singh and Others

Civil Appeal No. 977 of 1987

(A. P. Sen, V. B. Eradi JJ)

29.04.1987

JUDGMENT

SEN, J. -

1. The only question involved in this appeal by special leave from the judgment and order of the Allahabad High Court dated February 3, 1986 is whether the appellants were liable to be evicted from the demised premises under sub-section (2) of Section 20 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. By the judgment a learned Single Judge has declined to interfere with the judgment and decree passed by the 8th Additional District Judge, Ghaziabad dated January 24, 1986, decreeing the suit brought by respondent 1 for eviction of the appellants under section 20(2) of the Act.

2. First as to the facts. The demised premises which comprises of a godown at Hapur Road, Ghaziabad was an asset belonging to partnership firm called Messrs Saggu Engineering Works. The firm consisted of three partners, namely Sardar Meharban Singh, Smt. Prakash Kaur and Sardar Dalip Singh. By a deed of dissolution dated April 1, 1971 executed by the partners, the partnership stood dissolved from that date and respondent 1 Sardar Meharban Singh and Sardar Dalip Singh retired from the firm and finally settled their accounts and in settlement of their accounts it was mutually agreed between the parties that two-thirds share in the land and building at Hapur Road, Ghaziabad from which the business of the firm was carried on shall belong to Smt. Prakash Kaur, the continuing partner, and the remaining one-third portion thereof to the share of respondent 1 and they would execute the necessary documents effecting such transfer. On October 30, 1973 respondent 1 purporting to act as landlord inducted the appellants as tenants of the godown at a rent of Rs. 450 per month. The appellants paid rent at that rate to him till March 1976 and thereafter at Rs. 600 per month till July 1976. In the meanwhile, Sardar Dalip Singh instituted Civil Suit No. 141/75 in the Court of Civil Judge, Ghaziabad for partition of his one-third share to which both respondent 1 and Smt. Prakash Kaur were impleaded as defendants. That suit of his was dismissed by the Civil Judge by his judgment dated May 23, 1979 holding that according to the agreement between the parties as evident by the aforesaid dissolution deed, Sardar Dalip Singh was paid Rs. 25,000 in lieu of his share. We are informed that Sardar Dalip Singh has preferred a first appeal in the High Court which is now pending.

3. In July 1976 Smt. Prakash Kaur lodged a complaint against the appellants and respondent 1 for criminal trespass, theft, etc. under Section 454 read with Section 380 and 506 of the Indian Penal Code, 1860 in the Court of the Special Judicial Magistrate, Ghaziabad. It was held that under the terms of the dissolution deed, the demised premises had been allotted to the share of Smt. Prakash Kaur. As a result of this, the appellants accepted Smt. Prakash Kaur to be their landlord w.e.f.

February 1, 1977 and executed a rent note dated February 14, 1977 agreeing to pay rent to her at the rate from July 1976 to July 1981. Shortly thereafter, Smt. Prakash Kaur filed Civil Suit No. 72/77 against the appellants and respondent 1 for recovery of Rs. 24,000 as damages. It was alleged that respondent 1 contrary to the terms of the dissolution deed had wrongfully let out the premises to the appellants and recovered rent thereof at Rs. 500 per month from October 1973 to June 1976 and therefore she had a right to recover Rs. 24,000 from them by way of damages. She however gave up her claim for damages for the period from October 1973 to February 1974 since the claim for that period had become barred by time and confined her claim for recovery of Rs. 21,000 for the period from March 1974 to June 1976. On April 2, 1977 respondent 1 also brought Civil Suit No. 43/77 in the Court of Additional Civil Judge, Ghaziabad claiming that he was entitled to recover Rs. 4500 towards arrears of rent from July 1976 to March 1977 i.e. the period for which the appellants had paid rent to Smt. Prakash Kaur. Although the suit brought by Smt. Prakash Kaur was prior in point of time, the Civil Judge, Ghaziabad by his order dated January 24, 1978 stayed the proceedings in the suit brought by her holding that though Section 10 of the Code of Civil Procedure, 1908 was not in terms applicable, it was expedient in the interests of justice to stay the proceedings in that suit since the right and title of Smt. Prakash Kaur had been challenged by respondent 1 in his suit. Smt. Prakash Kaur preferred a revision but the High Court by its order dated January 24, 1985 declined to interfere.

4. During the pendency of the aforesaid Suit No. 43/77 filed by respondent 1, the appellants continued to pay rent for the period from July 1976 to July 1981 to Smt. Prakash Kaur. On October 4, 1980 the learned Civil Judge decreed Civil Suit No. 43/77 holding that the parties stood in the relation of landlord and tenant and the appellants were estoppel from challenging the status of respondent 1 as the landlord and accordingly decreed his claim for recovery of Rs. 4500 towards arrears of rent from July 1976 to March 1977. The appellants preferred a revision but the High Court dismissed the same by its order dated December 2, 1981 challenging the legality and propriety of the said orders and applied for interim stay but the High Court declined to grant stay. As a result, the appellants paid the decretal amount of Rs. 4500 by cheque to respondent 1 January 16, 1982 for the period from July 1976 to March 1977. They also paid Rs. 5250 to Smt. Prakash Kaur towards rent. Therefore, there was in reality double payment of rent.

5. After the decision of the aforesaid suit, the appellants started paying monthly rent at Rs. 500 by cheque to respondent 1 during the period August 1981 to January 1982. In view of the subsequent denial by respondent 1 of those payments, the appellants have placed on record a certificate issued by the Allahabad Bank, Delhi Gate Branch, Ghaziabad showing the said payments by cheque to respondent 1. Since they now started paying rent to respondent 1, no payment was made to Smt. Prakash Kaur after the payment made in July 1981. Consequently, she sent a registered notice of demand dated October 4, 1983 to the appellants alleging that they had defaulted in payment of rent to her. Placed in that predicament, the appellants on October 10, 1983 moved an application under sub-section (2) of Section 30 of the Act in the Court of the Munsif, Ghaziabad for permission to deposit the rent in Court. The learned Munsif by his order dated February 25, 1984 allowed the application holding that there was a bona fide dispute as to title between the parties and accordingly permitted the appellants to deposit the rent in Court. In accordance therewith, the appellants have till March 1986 deposited more or less Rs. 35,000 in Court towards rent, apart from the rents paid to respondent 1 and Smt. Prakash Kaur from time to time.

6. The suit out of which the present appeal arises was brought by respondent 1, Sardar Meharban Singh in September 1983 for eviction of the appellants under Section 20(2)(a) of the Act in the Court of Additional District Judge, Ghaziabad and for recovery of rent for the period from October

1980 to October 1983. It was alleged that the appellants were in arrears of rent since June 1979 and had been served with a notice under Section 106 of the Transfer of Property Act, 1882, but despite the notice they had failed to pay the arrears of rent due and also vacate the premises. The appellants contested the claim of respondent 1 on the ground inter alia that he was not entitled to bring the suit for their eviction under Section 20(2)(a) of the Act inasmuch as he was not the landlord in relation to the premises and also because they were not in arrears of rent for the period in question. Incidentally, the appellants in their reply notice referred to notice dated October 4, 1983 served by Smt. Prakash Kaur and pointed out that in view of the dispute between the parties, making conflicting claims of right to recover rent, the appellants had no option but to deposit the amount of rent fallen due in Court in pursuance of the order passed by the learned Munsif, Ghaziabad under Section 30(2) of the Act. The learned Single Judge agreeing with the learned Additional District Judge decreed the suit brought by respondent 1 mainly on the ground that the appellants having been inducted into the premises as tenants by respondent 1, they were estopped from challenging his status as a landlord under Section 116, of the Evidence Act, 1872, and therefore their failure to comply with the notice of demand dated September 12, 1983 must entail their eviction under Section 20(2)(a) of the Act. The learned Single Judge seems to think the fact that the demised premises which was an asset belonging to the partnership firm styled Messrs Saggu Engineering Works had fallen to the share of Smt. Prakash Kaur in terms of the dissolution deed dated April 1, 1971 and also that the appellants had accepted her to be their landlord by executing the rent note dated February 14, 1977 were of little consequence. He also disallowed the applications made by the appellants to place on record certain documents, viz., cheque counterfoils etc. showing that they were not in arrears of rent right from October 1972 till date and observed that the total amount paid by them fell short of the rent due for the period in question from October 1980 to October 1983.

7. In support of the appeal, Shri S. N. Kacker, learned counsel for the appellants put forth a twofold contention namely, (1) It could not be said on the facts and circumstances of the case that the appellants were in arrears of rent within the meaning of Section 20(2) of the Act and therefore the decree for eviction was wholly illegal and without jurisdiction; and (2) by reason of the order passed under Section 30(2) of the Act by the Munsif, the appellants were protected from eviction inasmuch as the deposit of rent by them in Court had to be taken into account. The learned counsel has also filed consolidated chart showing payment of rent from time to time. It is evident therefrom that the appellants have practically paid twice the amount of rent taking into account the sum of Rs. 35,000 deposited by them in court towards rent. Thus it is contended that the decree for eviction passed by the courts below under Section 20(2)(a) of the Act cannot be supported.

8. The contention to the contrary of Shri Shanti Bhushan, learned counsel for respondent 1 was that the so-called dissolution deed was a fabricated document, that the signatures of respondent 1 had been obtained on a blank paper, and that the demised premises had fallen to the share of respondent 1. We are not inclined to accept the contention in view of the admission made by respondent 1 in his statement that two-thirds share had fallen to the share of Smt. Prakash Kaur and the demised premises forms part of it. In view of this admission, the conclusion is irresistible that respondent 1 had no right to recover any rent much less bring a suit for eviction.

9. Sub-section (2) of section 20 of the Act insofar as relevant read as follows :

20. Bar of suit for eviction of tenant except on specified grounds. - ... (2) A suit for the eviction of a tenant from a building after determination of his tenancy may be instituted in one or more of the following grounds, namely -

(a) that the tenant is in arrears of rent for not less than four months, and has failed to pay the same to the landlord within one month from the date of service upon him of a notice of demand :

According to the plain terms of the section, no suit for eviction on the ground of default in payment of rent lies unless it is established (a) that the tenant was in arrears of rent for not less than four months; and (b) that he had failed to pay the sum to the landlord within one month from the date of service upon him of the notice of demand. Neither of these two conditions which are prerequisite for the maintainability of a suit based on the ground specified in Section 20(2)(b) of the Act is satisfied in the instant case.

10. We have set out the facts in detail to bring out that the appellant was not in arrears of rent within the meaning of clause (a) of sub-section (2) of Section 20 of the Act. On the contrary, it is quite evident from the consolidated chart which was filed by learned counsel for the appellants that the appellants have made payments of rent from time to time which fact is amply borne out by the facts on record. Indeed, the appellants have paid much more than the amount of rent due and taking into account the sum of Rs. 35,000 deposited by them in court in pursuance of the order passed by the learned Munsif under Section 30(2) of the Act, they have paid twice the amount of rent due. The words "is in arrears of rent" used in Section 20(2) of the Act must in the context in which they appear be interested to mean "is in arrears of rent to the landlord". After the appellants were inducted into the demised premises they paid rent at Rs. 450 per month to respondent 1 from October 1973 till March 1976 and thereafter at Rs. 500 per month till July 1976. In July 1976 Smt. Prakash Kaur lodged a complaint against the appellants and respondent 1 for criminal trespass, theft etc. under Section 454 read with Section 380 and 506 of the Indian Penal Code, 1860. Faced with a criminal prosecution at the instance of complainant Smt. Prakash Kaur and being confronted with that terms of the dissolution deed which showed that the demised premises had fallen to her share, the appellants were constrained to execute the rent note dated February 14, 1977 accepting her to be the landlord and agreeing to pay an enhanced amount of Rs. 750 per month w.e.f. July 1976. As a result of this, the appellants paid her rent at that rate from July 1976 to July 1981. Thereafter, on January 16, 1982 the appellants paid by cheque the decretal amount of Rs. 4500 to respondent 1 towards rent for the period from July 1976 to March 1977 despite the fact that they had during this period also paid Smt. Prakash Kaur Rs. 5250. After the decision of the suit brought by respondent 1, the appellants continued paying monthly rent of Rs. 500 by cheque to respondent 1 during the period from August 1981 to January 1982. In view of the conflicting claims made by respondent 1 and Smt. Prakash Kaur as to the right to recover rent, the appellants were permitted by the learned Munsif by his order dated February 25, 1984 to deposit the rents in court under sub-section (2) of Section 30 of the Act. In accordance therewith, the appellants deposited by cheque more or less Rs. 35,000 in court towards rent, apart from the rents paid by them to respondent 1 and Smt. Prakash Kaur.

11. In the promises, the High Court as well as the learned Additional District Judge were clearly in error in decreeing the suit brought by respondent 1 under Section 20(2)(a) of the Act by relying on the rule of estoppel embodied in Section 116 of the Evidence Act, 1872. the estoppel contemplated by Section 116 is restricted to the denial of title at the commencement of the tenancy and by implication it follows that a tenant is not estopped from contending that the title of the lessor had since come to an end. The failure of the High Court to deal with the legal implications flowing from the terms of the dissolution deed and the execution of the rent note by the appellants accepting Smt. Prakash Kaur to be their landlord, coupled with the admission of respondent 1 that two-thirds share of the partnership assets consisting of the land and building at hapur Road, Ghaziabad from which

the business of the partnership firm was being carried on of which the demised premises forms a portion, has resulted in complete miscarriage of justice. The contention of Shri Shanti Bhushan, learned counsel for respondent 1 that the said dissolution deed was not acted upon or that it was a fabricated document cannot be accepted. It appears that the learned Civil Judge while dismissing the suit brought by Sardar Dalip Singh for partition of his one-third share held that under the terms of the dissolution deed he was paid Rs. 25,000 in lieu of his share. We are informed that Dalip Singh has preferred a first appeal which is now pending. Even so, the judgment delivered by the learned Single Judge was a judgment inter parties and it shows that the dissolution deed had been acted upon. The learned Single Judge also failed to appreciate the legal implications arising out of the order passed by the learned Munsif holding that there was a bona fide dispute as to title between the parties permitting the appellants under sub-section (2) of Section 30 of the Act to deposit the rent in court and they have till March 1986 deposited about Rs. 35,000 which partly covers the period in question i.e. October 1980 to October 1983. As stated above the appellants had paid rent from August 1981 to January 1982 to respondent 1. As shown in the tabular chart, from February 1982 to July 1983 they made monthly payments by cheque to respondent 1. On October 12, 1983 they deposited in cash Rs. 1500 in the Court of Munsif, Ghaziabad towards rent from August 1983 to September 1983. Likewise, on March 2, 1984 they deposited Rs. 4500 in Bank through court towards rent from October 1983 to March 1984. The tabular chart gives further particulars of payments through Bank right up to March 1986. In view of the denial of payments through Bank right up to March 1986. In view of the denial of respondents 1 of these payments, the appellants have produced the requisite certificates from the Bank showing the various payments made from February 1982 onwards. In view of these facts, the judgment passed by the learned Single Judge upholding the decree passed by the learned Additional District Judge cannot be sustained. Furthermore, the second condition of Section 20(2)(a) of the Act is also not complied with. Admittedly, there was no notice in terms of the section i.e. from October 1980 to October 1983. The contention of Shri Shanti Bhushan, learned counsel for respondent 1 that the appellants were served with a notice under Section 106 of the Transfer of Property Act, 1882, and that it was a composite notice making a demand does not satisfy the requirements of Section 20(2)(a) of the Act. The quit notice served by respondent 1 merely asserted that the rent of the disputed premises was due from June 1, 1979. It follows that there being no notice of demand in terms of Section 20(2)(a) of the Act, the suit as framed must fail.

12. For these reasons, the appeal must succeed and is allowed with costs. The judgment of the High Court as well as the judgment and decree passed by the 8th Additional District Judge, Ghaziabad are set aside and the suit brought by respondent 1 for eviction of the appellants under Section 20(2) of the U. P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 as also for arrears of rent is dismissed.

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