

ALLAHABAD HIGH COURT

Bitti Kuer

Vs

Banarsi Baboo

(Agarwala, J.)

31.01.1949

JUDGMENT

Agarwala, J.

1. This is a plaintiff's appeal arising out of a suit for ejectment. The plaintiff claimed that she was the owner of the bottle which was being occupied by the defendant as a tenant from month to month, that he was in arrears and so she took the permission of the Town Rationing Officer for his ejectment in view of the provisions of the orders promulgated under the Defence of India Rules, that the arrears had been paid prior to the suit, but the house had not been vacated and that, therefore, the suit for ejectment had to be brought. The defence was that the rent having been paid and accepted by the plaintiff prior to the institution of the suit, there was a waiver and the Town Rationing Officer's permission lapsed and could not be given effect to and that, therefore, the plaintiff was not entitled to maintain the suit, The trial Court decreed the suit. The lower appellate Court dismissed it. The plaintiff has come up in second appeal to this Court.

2. The only point urged on her behalf is that the learned Judge of the Court below was wrong in holding that the Town Rationing Officer's permission to sue had lapsed.

3. It appears that the rent for June and July 1945 had not been paid by the defendant. The Town Rationing Officer appears to have given permission to sue on account of the default in payment of the rent for those two months. After the permission, but before the suit was brought, the defendant paid all the rent that was due from her, as is clearly admitted in para. 2 of the plaint. The question is whether this acceptance of the rent by the plaintiff-appellant prior to the suit deprived her of the right to maintain the suit for ejectment.

4. The basis of the permission granted by the Town Rationing Officer was that the rent was in arrears. By the time that the permission was granted the rent had not been paid. The permission, therefore, conferred a privilege upon the plain. tiff-appellant to bring a suit for ejectment of the defendant in conformity with that permission, on the ground that the defendant had defaulted in

payment of the rent. This privilege the plain-tiff- appellant could waive, if she so desired. It appears to us that, if she accepted the rent due from the defendant-respondent before she utilised the privilege obtained by her under the permission of the Town Rationing Officer, she waived that privilege because when she came to Court and filed the present suit, she could no longer maintain that the defendant was in arrears. There is nothing to show that she accepted the rent under protest or that in accepting the rent she reserved her right to bring the suit for defendant's ejection. In the circumstances, it must be held that she clearly waived her right to bring the suit for ejection of the defendant, Section 112, Transfer of Property Act embodies a general principle of law which can be applied to the facts of the present case.

5. We think that the view taken by the lower Court was correct. There is no force in this appeal and we dismiss it. But, as no one appears on behalf of the respondent, we make no order as to costs.