

ALLAHABAD HIGH COURT

Pahlad Das

Vs.

Ganga Saran

Letters Patent Appeal No. 1 of 1952. , against decree and judgment of Mustaq Ahmad, J.
reported in AIR 1952 Allahabad 32
(Raghubar Dayal, Ag. C.J. and A.P. Srivastava, J.)

26.07.1957

JUDGMENT

A.P. Srivastava, J.

1. This is a defendant's special appeal that arises out of an ejection suit. The plaintiff sued for the ejection of the defendant from a shop and also claimed arrears of rent. Before filing the suit he had obtained permission of the District Magistrate as required by Section 3 of the U. P. Rent Control and Eviction Act. The first suit which he filed in pursuance of the permission, however, failed on the ground that the notice of ejection was defective. Then he gave another notice of ejection and filed the suit out of which the present appeal has arisen. The suit was contested mainly on two grounds. The first was that the first suit having failed the permission obtained from the District Magistrate had exhausted itself, and the second suit could not be maintainable without a fresh permission. The second ground taken was that the notice of ejection was invalid as the period fixed in the notice to vacate the premises was not a period expiring with the end of the month of tenancy.

2. The trial Court accepted both the points taken by the defendant and dismissed the suit. In appeal the Civil Judge rejected both the points and allowing the appeal decreed the suit. A second appeal was then filed in this Court which came up before Hon'ble Mr. Justice Mushtaq Ahmad. He agreed with the learned Civil Judge on both the points in dispute and dismissed the appeal. He, however, granted permission to file a special appeal.

3. The defendant has filed this special appeal and both the points which did not find favor with the learned single Judge have been reiterated before us.

4. So far as the first point is concerned, Section 3, U. P. Rent Control and Eviction Act, 1947 only requires that if a suit for ejection is sought to be based on grounds other than those specifically mentioned in Clauses (a) to (g) of that section, the permission of the District Magistrate must be obtained before a suit is filed and without that permission no suit would lie.

The plaintiff obtained the requisite permission for suing to eject the defendant. His first suit, however, failed because the notice of ejectment was found to be defective. That being so the tenancy was not determined according to law and the defendant remained a tenant as before. The tenancy had, therefore, to be determined by a fresh notice and that notice having been given the plaintiff sued again for ejectment. The contention that for this second suit a fresh permission of the District Magistrate should have been obtained does not appear to us to be sound. The permission was required for the filing of the suit for ejectment. The obvious purpose of, the permission was to enable the plaintiff to evict the defendant from the premises. As long as that purpose was not fulfilled the permission could not obviously exhaust itself. It is not shown that the permission was granted to file a single suit or that it had been specified in it that a second suit could not be filed on its basis. The permission could not in the circumstance exhaust itself simply because the first suit filed on its basis was dismissed on some technical ground. The learned Single Judge was in our opinion quite justified in his view that the permission obtained could be availed of for filing the second suit for ejectment. The first point raised has, thus no substance.

5. The second contention about the invalidity of the notice is equally without force. The original notice or its copy was not formally proved in this case, but it is admitted that the notice required the defendant to vacate the shop 'on the 26th of the month or on any date on which the defendant considered that the month of his tenancy expired'. It was thus left entirely to the defendant to decide on which date the month of his tenancy expired and he could leave the shop on any date on which according to his own case the month expired. The defendant cannot in the circumstances say that he was prejudiced in any way by not getting sufficient notice to vacate the shop. The view taken by the learned Single Judge received support from the decision in the case of *Ganga Prasad v. Prem Kumar Kohli*¹, and if we may say so with respect we entirely agree with the view taken in that case. The plea that the notice of ejectment was bad was, therefore, not tenable. Both the points urged are thus without force. (6) The appeal is dismissed with costs.

Appeal dismissed.

¹ AIR 1949 All 173