

ALLAHABAD HIGH COURT

Munshi Lal

Vs.

Shambhu Nath Ram Kishan

S.A. No. 873 of 1956

(B. Upadhyaya, J.)

22.04.1958

JUDGMENT

B. Upadhyaya, J.

1. This is a Plaintiff's appeal arising out of a suit for ejection from a house, for arrears of rent and for mesne profits. The suit was brought on the allegation that the Plaintiffs are the owners of the house situate at Hatia Bazar, Kanpur and the Defendants were the tenants of the first and second floors of the house on a monthly rent of Rs. 22/8/- . It was alleged that the Plaintiff needed the house for his own occupation and obtained the permission of the Rent Control and Eviction Officer Kanpur, who was authorized by the District Magistrate to grant such permission, to evict the tenant. It was further alleged that the Defendant had caused damage to the premises and were therefore liable to eviction. A notice Under Section 106 of the Transfer of Property Act terminating the Defendants tenancy is also said to have been served on the Defendant. The suit was contested and it was pleaded inter alia that the permission granted by the District Magistrate was invalid and that in any event that permission ceased to have any legal force because it had been set aside by the Commissioner in revision. The main contention therefore which was raised at the trial and has survived up to this stage, is whether the suit which was instituted after obtaining the permission of the District Magistrate must fail because the permission granted by the District Magistrate Under Section 3 of the UP Control of Rent and Eviction Act had been set aside by the Commissioner in revision in exercise of the powers vested in him under that statute. The trial court decreed the suit. It took the view that the granting of the permission by the District Magistrate only removed the statutory obstacle to the Plaintiff filing a suit for eviction. Once the suit had been properly filed after obtaining the permission, the permission exhausted itself and subsequent reversal of the order of the District Magistrate was of no legal effect, the Plaintiff's suit was decreed. On appeal the lower appellate court took the view that the amendments made in S. 3 of the UP Control of Rent and Eviction Act in 1952 and 1954 made the order of the District Magistrate final subject to the orders that might be passed by the Commissioner of the State

Government Under Sub-Section (3) of S. 3 or Under Section 7F of Act III of 1947. The learned Judge therefore in a careful and well reasoned judgment expressed the opinion that the permission ceased to be a valid permission and the suit as instituted by the Plaintiff must be treated as one filed without any valid permission by the District Magistrate. He allowed the appeal and dismissed the Plaintiff's suit so far as ejection was concerned.

2. It appears necessary to set out briefly the relevant facts relating to the question now debated in this appeal. Permission was granted by the Rent Control and Eviction Officer on 3-11-1952 (Ex. 7). Notice was served on the Defendants Under Section 106 of the Transfer of Property Act on 26-11-1952. The Defendants sent a reply on 22-12-1952 (Ex. A 12). The suit was filed on 22-1-1953. In their reply Ex. A 12 the Defendants informed the Plaintiff that they did not admit the validity of the permission granted to them by the Rent Control Officer and that the Defendants had challenged that permission and had submitted a representation to the State Government Under Section 7F of Act III of 1947 and the permission was therefore not final. This revision to the State Government was preferred actually on 8-12-1952 and it was transferred to the Commissioner by the State Government on 18-12-1952. On 2-11-1953 the permission that had been granted on 3-11-1952 by the Rent Control Officer was revoked and the case was remanded by the Commissioner to the Rent Control and Eviction Officer who by an order dated 10-5-1954 passed an order refusing permission to the Plaintiff.

3. Learned Counsel for the Appellant argued the appeal on two grounds the first ground urged by him was that the subsequent revocation of the permission by the Commissioner was of no avail when the permission had already been acted upon and had exhausted itself as soon as the suit was instituted by the Plaintiff. UP Act 24 of 1952 amended the provisions of S. 3 (1) of Act III of 1947 and now the amended provision reads as follows:-

"3 (1) subject to any order passed Under Sub-Section (3) no suit shall, without the permission of the District Magistrate, be filed in any Civil Court against the tenant for his eviction from any accommodation except on one or more of the following grounds:

Sub-S. (3) referred to above reads as follows:-

The Commissioner shall as far as may be, hear the application within six weeks from the date of its making and if he is satisfied that the District Magistrate has acted illegally or with material irregularity or he has wrongfully refused to act he will set aside the order of the District Magistrate.

4. A perusal of these two provisions makes it clear that the suit may be filed with the permission of the District Magistrate and subject to an order passed Under Sub-Section (3). If an order passed by the Commissioner sets aside or modifies the order passed by the District Magistrate granting permission, the order of the Commissioner must prevail. The order passed by the

District Magistrate therefore cannot be said to be final and its finality is dependent on the fact whether the Commissioner has or has not interfered in the matter in exercise of the powers Under Sub-Section (3) quoted above. In the present case it has been found that the Commissioner by his order mentioned above cancelled the permission granted by the District Magistrate and this left no effective permission which could be relied on by the Plaintiff. When the language of the Statute plainly indicates that the permission of the District Magistrate is subject to such orders as may be passed by the Commissioner, it is hardly open to a Plaintiff to urge that having acted on the permission granted by the District Magistrate his position cannot be affected if the Commissioner subsequently reverses the order. The Plaintiff before instituting the suit should have realized that the permission, with which he was armed, was only provisionally given or that it was valid only until it was not cancelled by the Commissioner. In the present case the Defendants did draw the attention of the Plaintiff to the facts that they disputed the validity of the District Magistrate's permission in a representation made by them to the State Government. The Plaintiff was obviously not justified in hurriedly instituting the suit without awaiting the final decision by the State Government or by the Commissioner about the permission. In fact if the Appellant's contention be accepted the provisions authorizing the Commissioner and the State Government to cancel or reverse the order of the District Magistrate may be rendered absolutely ineffectual by the Plaintiff instituting a suit without waiting for their orders. The next contention raised by the Learned Counsel is that the permission was granted by the District Magistrate on 3-11-1952 and it was open to the Defendant to apply in revision to the Commissioner within 30 days which he did not do, instead he submitted his application to the State Government within 30 days and the Commissioner therefore had no jurisdiction to intervene in the matter. This argument also is without force. In the instant case no application was moved directly to the Commissioner and the provision relating to 30 days therefore is not relevant. The petition was referred to the State Government and it is the State Government which directed the Commissioner to look into the matter and to pass necessary orders. It cannot be denied that the State Government did have the jurisdiction to pass such orders as it thought fit and if in the exercise of the jurisdiction vested in it by law the State Government thought it fit to refer the matter for decision to the Commissioner and if the Commissioner acted in pursuance of that order passed by the State Government, it cannot be said that the Commissioner was acting beyond his powers.

5. In the light of the above observations this appeal must fail and is dismissed with costs. Leave to appeal is asked for and is refused.

Appeal dismissed.