

ALLAHABAD HIGH COURT

Sardar Bahadur Mathur

Vs.

Kali Prasad Gupta

S.A. No. 3345 of 1958. (Second Appeal against the decree and judgement of Kamleshwar Nath Gupta, Additional Civil Judge, Allahabad dated 13th September 1958)

(A.P. Srivastava, J.)

31.10.1960

JUDGMENT

A.P. Srivastava, J.

1. This is a Defendant's appeal that arises out of a suit for ejectment and recovery of rent and damages. The Appellant is a tenant of the Respondent's house on a monthly rent of Rs. 45. The Respondent sued for the Appellant's ejectment from the house on the ground of unauthorized subletting and also on the ground that he had without the Respondent's permission made constructions in the house which had materially altered the accommodation and had diminished its value. He also claimed damages for use and occupation in respect of the period subsequent to the termination of the tenancy. The Appellant denied that he had sublet the premises. Though he admitted having made certain constructions he contended that they were of a minor nature and were not such as could entitle the Respondent to maintain suit for ejectment on their basis. In respect of the amount claimed he said that it was due as rent and that he had sent the amount by money order but the Respondent had not accepted the same. After the suit had been filed the amount had been deposited in court.

2. The trial court rejected the contention that there had been any subletting. It, however, found that certain constructions had been made which amounted to material alteration of the house and that the Respondent was on that account entitled to eject the Appellant Under Section 3(c) of the UP (Temporary) Control of Rent and Eviction Act, 1947. He found the claim for damages for use and occupation also to be established. He, therefore, decreed the suit for ejectment and for the recovery of Rs. 1222-8-0 as damages and for future damages for use and occupation at the rate of Rs. 45 per month.

3. An appeal was preferred against the decree by the Defendant and the Plaintiff filed a cross-

objection in respect of the finding on the question of subletting. Both the appeal and the cross objection were dealt with together. The finding that there was no unauthorized sub letting was upheld. The learned Civil Judge also agreed with the finding of the trial court that certain constructions had been made by the Defendant which amounted to material alteration of the accommodation though they did not diminish its value. He, therefore, upheld the decree for ejection. The decree for the amount claimed was not questioned before him.

4. The Defendant has now come up in second appeal and it is contended on his behalf that the view of the learned Civil Judge that the constructions which had been made amounted to a material alteration of the accommodation is not correct. The Plaintiff could not, therefore, maintain the suit for ejection without the permission of the District Magistrate Under Section 3 of the UP (Temporary) Control of Rent and Eviction Act.

5. The constructions which have been found by the appellate court to amount to material alteration of the accommodation were these:

1. In the bottom portion of the second floor there is a verandah which was enclosed on the eastern and western sides by walls. On the eastern side of the verandah there was an iron jangla. The tenant has built a brick wall 3" thick and 2' 9" high adjacent to the jangla. The entire jangla has, however, not been closed by this wall.

2. Above the iron rod of the jangla the tenant has constructed a wooden jali between the points P and P as shown in the Commissioner's map.

3. Another wall 3" thick and 7' 2" wide has been constructed in the verandah from east to west. This is a sort of partition wall which divides the verandah in two portions. The wall does not go up to the ceiling and some space has been left between the top of this partition wall and the ceiling.

4. On the 3rd floor there was originally a shed having walls on the eastern and northern sides and having pillars on the other two sides. The tenant constructed a brick jali from east to west. The height of the brick jali varied from 7' 2" to 16" 3' according to the slope of the roof of the shed. The jali constructed was 9" thick. A brick Jali has been constructed in the northern wall of the shed also.

5. The learned Civil Judge appears to have been of the opinion that on account of the constructions in the verandah it could not be held to have been converted into two rooms but it had certainly lost its character as a verandah and could be used as if there were two rooms in its place. The shed on the third floor had by the construction of the brick jalis been converted into a room. He was not prepared to accept the contention that these constructions had diminished the value of the premises but he thought that the constructions had materially altered the accommodation and the Plaintiff could on that account take advantage of Section 3(c) of the UP (Temporary) Control of Rent and Eviction Act. That the constructions found by the Civil Judge

to have been made had been made was not disputed by the Appellant. What he contended was that these constructions could not amount to a material alteration of the accommodation as contemplated by Section 3(c) of the Control of Rent and Eviction Act and a suit for ejection without the permission of the District Magistrate could not be maintained on their basis.

7. Relying on the words of Section 3(c) of the Control of Rent and Eviction Act Learned Counsel for the Respondent urged that what the Appellant was seeking to challenge was essentially a finding of fact to which he could not take exception in second appeal.

8. Cl. (c) of Section 3 reads like this:-

"Subject to any order passed under Sub-section (3) without the permission of the District Magistrate be filed in any civil court against a tenant for his eviction from any accommodation except on one or more of the following grounds:

(c) that the tenant has, without the permission in writing of the landlord, made or permitted to be made any such construction as, in the opinion of the court, has materially altered the accommodation or is likely substantially to diminish its value."

9. The argument is that in the present case the tenant has admittedly made certain constructions without the permission in writing of the landlord. The constructions have altered the accommodation. Whether they have done so materially is a question of degree and on that question the opinion of the final court of facts must be held to be final. It is, therefore not permissible for the Appellant to question that finding in second appeal.

10. It is difficult to accept this contention. The only finding of fact which has been recorded by the learned Civil Judge is the finding that certain constructions have been made by the tenant in the accommodation. The finding is not being questioned. Whether the constructions amounted to "a material alteration in the accommodation" really depends on the interpretation that is to be put on these words as used in Section 3 Clause (c). That is really a question of law. It is true that the alterations made must be material in the opinion of the court but as the question involved is not a pure question of fact the court referred to cannot be the final court of facts. The alteration must be material in the opinion of the court which is the final court for determining what the words 'materially altered' mean as a matter of law.

11. The real question to be decided, therefore, is what the words 'materially altered' as used in Section 3(c) mean & whether the constructions in dispute have 'materially altered' the accommodation in that sense.

13. Neither the word 'materially' nor the word altered' have been defined in the Act. There appears to be no reported case also in which these words have been interpreted by this Court. Turning to the dictionary, according to the Concise Oxford Dictionary the word 'alter' as a verb

means 'change in character, position etc,' and 'materially' as an adverb means 'important, essentially, concerned with matter not with form.' Attributing these meanings to these two words the expression 'materially altered' must be held to mean 'a change in the character or position of the accommodation which is essential or important. Some light on the point is also available from some English cases in which the word 'alteration' has been interpreted in connection with breaches

of covenants in leases. Thus in *Bickmore v. Dimmer*¹, a shop had been leased to a jeweller and watchmaker. He had undertaken to make some alterations in the shop fronts on the ground floor but had at the same time 'agreed not to make or suffer to be made any alteration to the said premises' except as herein expressly provided without the consent in writing of the lessors first had and obtained". A breach of the covenant entitled the landlord to re-enter. The tenant without the consent of the landlord placed at a height of 30 feet about the ground a big clock with two faces one towards the east and the other towards the west. The clock was lighted at the night by electricity, and was fixed to the stone wall of the house by means of six iron bolts, which were bored into the stone to a depth of six inches. If the clock was taken down the restoration of the building towards the original state would have cost between #15 to #20 and it would also have been necessary to take out the necessary stones in which the holes were bored and to put in new stones. The landlord contended that the constructions amounted to a breach of the covenant and claimed an injunction to restrain the tenant from erecting the clock and directing him to restore the premises to their original condition. The question arose as to how the word 'alteration' in the covenant was to be construed. It was held by Vaughan Williams, L.J. with whom the other two learned Judges concurred that:

"I feel very strongly that it would be really impossible to hold that every addition to the premises, whether it does or does not alter the form or structure of the premises, is within the meaning of the word 'alteration' in the covenant."

It was also observed by Stirling L.J. that the permissible alterations should be allowed.

"To extend to all things fixed to the premises and convenient for the carrying on the business in a reasonable, ordinary, and proper way."

In *Rose v. Spiter and Rose v. Hyman*², a piece of ground and the chapel under construction on it were leased out and the lessors covenanted to complete the chapel and to maintain it in substantial repairs. The premises were to be used for certain specified purposes. The lease was subsequently sold by the lessees and the premises were adapted for a theatre. For this purpose some iron railing which separated the accommodation from the adjoining street were removed. A new door was opened in the western wall of the building. Two stair cases were removed and two new stair cases were built at the opposite end of the building. The question arose whether the alterations amounted to a breach of the covenant which could be restrained by an injunction. Two

of the learned Judges who heard the cases were of opinion that the alterations amounted to a breach and could be prevented. Buckley, L.J. was, however, of the contrary opinion. He was of the view that the purposes for which the premises could be used under the lease had to be taken into consideration and that the alterations could amount to a breach of covenant only if the structure of the premises was altered substantially. The case was taken up to the House of Lords in appeal the decision being reported in *Hyman and another v. Rose*³. The opinion of Buckley, L.J. was upheld, Earl Loreburn, L.C. who delivered the main opinion in the case, with

¹1903 1 Ch Div.158 ³1912 Appeal Cases 623

²1911-2 K.B. Div. 234

which the other Lords agreed, observed

that the alterations made could not be regarded as prohibited by the covenant. The test which he applied was whether any harm had been done to any one and the reversion had in any way been injured. He also took into consideration whether the alteration had changed the nature of the things demised regard being had to the user of the demised premises permissible under the lease.

14. The question whether the accommodation in a particular case is materially altered by some constructions made by a tenant must depend naturally on the facts and circumstances of each case. Some or the considerations which must be kept in mind while deciding the question, however, appear to be these.

1. Whether the constructions have in substantial manner changed the form or structure of the building.
2. Whether the constructions are consistent or inconsistent with the reasonable user of the premises for the purposes permissible under the lease.
3. Whether any harm has been done to the building, if so to what extent? Is the injury irreparable? At what cost can the premises be restored to its former construction?
4. Whether the premises have been rendered unfit in any way for being used for the purposes for which they were intended to be used.
5. Whether the constructions are separable and removable and if removed, can be removed without in any way affecting the premises prejudicially.
6. Whether the landlord could prevent the building of the constructions by an injunction and claim damages if they were constructed.

15. The constructions complained of in the present case cannot be said to have affected the form or structures of the building in any way. The form and structure are fully intact and have not been touched. The building was let out for residential and business purposes. The constructions are in no way inconsistent with those purposes. In fact they have been built to enable the tenant to use the premises for those purpose with greater convenience. By making the constructions the tenant has not attempted to use the building in any unreasonable manner. The constructions can be easily removed. NO harm has been done to the building by their being made. Nor is it suggested

that the building will be damaged in any way if these constructions are removed. The verandah on the second floor is still there and so is the jangla. The only thing which has been done is to erect a wall 3" thick to cover a portion of the jangla. The upper portion of the jangla has been left in the form of a window or a sky-light. In the middle of the verandah a sort of partition wall has been erected which does not go up to the ceiling. I do not think the landlord could have objected if these very things had been done with the help of wooden planks or with a piece of canvas fitted in frames. It could not, in my opinion, matter any difference if bricks have been used instead. The bricks are as easily removable as the wooden planks and the canvas and after they are removed the original structure would be left as it was. Similarly on the third floor the shed is still there. Only the space between the pillars has been filled with brick jali which can also be removed whenever wanted leaving the shed in its original condition. The brick jali erected is certainly 9" thick but that does not appear to make any difference. The jali in the northern wall can be easily filled to restore the wall to its former condition. The constructions do not appear to be such as could be prevented by an injunction. Nor could any damages be claimed for their erection. In the circumstances I am unable to accept the contention of the Learned Counsel for the Respondent that the constructions amount to a material alteration of the accommodation so as to entitle the landlord to eject the tenant without obtaining the permission of the District Magistrate. The suit for ejectment appears to have been decreed without having any regard to the correct meaning of the words 'materially altered' as used in Section 3(c) of the Control of Rent and Eviction Act. The Appellant's objection to the decree for ejectment is, therefore, well founded.

16. The appeal in the result succeeds and is allowed. The suit so far as it related to the relief of ejectment of the Appellant from the premises shall stand dismissed with proportionate costs in all the courts.

17. Leave to file a special appeal is granted.
Appeal allowed.