

# ALLAHABAD HIGH COURT

Narayan Chand Dass

Vs.

Panna Lal

Second Appeal No. 459 of 1966

Satish Chandra, J.

03.12.1968

## JUDGMENT

**Satish Chandra, J.**

1. This is a defendant's appeal arising out of a suit for ejection and recovery of arrears of rent.
2. On 19th December, 1946, Nand Kishore Lal, plaintiff no. 1's father, demised an open piece of land bearing municipal number B-20/86, Mohalla Bhelupura, Varanasi, to the defendant, on a monthly rent of ₹ 15/- for a period of 15 years beginning from 1st January, 1947. On the expiry of the lease, the plaintiffs wanted possession and consequently instituted the present suit. One of the pleas taken in defence was that the suit was barred by the provisions of the U. P. (Temporary) Control of Rent and Eviction Act because the subject-matter of the tenancy was an accommodation. The lower appellate court has decreed the suit. It found inter alia that the subject-matter of the tenancy in the present case was not an accommodation within the meaning of the Rent Control and Eviction Act and consequently that Act was not attracted. This finding has been challenged in the present second appeal.
3. On facts it has been found that an open piece of land was let out to the defendant. The document of lease permitted the defendant to build tin-shed etc on the land for the protection of the articles of business of the defendant. It was also provided that the defendant would be entitled to take away the material of the constructions at the time when he left the land. The trial court found that in pursuance of this permission the defendant made some tin-shed etc on the land in dispute. The Question is, would the land become an accommodation within meaning of the Control of Rent and Eviction Act because of the construction of the tin-shed by the defendant-tenant. Under the definition of an "accommodation" an open piece of land is not, but land with a building is an accommodation.
4. In view of the terms of the lease the tin-shed constructed by the defendant could not vest in the landlord. It would remain the property of the tenant. The tenant was entitled to take it away while vacating the land. It cannot, therefore, be said that the tin-shed ever became the subject-matter of the contract of tenancy. It could not be treated to be an accretion to the tenancy between the

parties. It was an addition made by the defendant under an express agreement with the plaintiffs for his own benefit and enjoyment. If the construction did not constitute the subject-matter of the tenancy, it could not be said that the defendant was a tenant thereof. If the defendant was not a tenant of the construction, he could not be deemed to be a tenant of an accommodation by including that construction as if it were the subject-matter of the tenancy, and thereafter applying the definition of the term "accommodation" as given in the Control of Rent and Eviction Act.

5. The Control of Rent and Eviction Act defines an accommodation with reference to a building. I am doubtful if a tin-shed would be a building within meaning of that word in the Control of Rent and Eviction Act. That would be another reason for which the Control of Rent and Eviction Act would not apply to this case.

6. For the appellant reliance was placed upon the decision of Dhavan, J. in *Abdul Aziz v. Mst. Ali Jan*<sup>1</sup>, There his Lordship expressed a doubt on the view taken by another single Judge of this Court in *Mohd. Sami v. Smt. Savitri Devi*<sup>2</sup>, He observed that he was inclined to the view that the question whether the tenant is entitled to the protection of Section 3 depends upon whether the subject-matter of the tenancy was an accommodation at the time when the tenant was sought to be evicted from it. But he did not express a concluded opinion on the point because the case was decided on another point. The decision is not helpful at all. It does not contain a definite expression of an opinion. The earlier view of this Court in the case of *Mohd. Sami* could not be deemed to have been over-ruled by this judgment. Further, according to this judgment the court would have to see as to what was the subject-matter of the tenancy on the date of the suit. Was an accommodation the subject-matter of the tenancy ? As seen above, in the present case it cannot be said that the constructions made by the defendant were the subject-matter of the tenancy. The tenancy commenced in respect of an open piece of land and continued to be so till the date of the institution of the suit. The constructions made were outside the domain of the contract of tenancy between the parties. They would be irrelevant when the question for consideration is whether the subject-matter of the tenancy was an accommodation within the meaning of the Control of Rent and Eviction Act.

In my opinion the lower appellate court took a correct view of the law in deciding that the subject-matter of tenancy in the present case was not an accommodation within meaning of the Control of Rent and Eviction Act.

No other point was raised. In the result, the appeal fails and is accordingly dismissed with costs. The stay order is vacated.

Appeal dismissed.

<sup>1</sup> Second Appeal No. 580 of 1963 D/d. 11.8.1965

<sup>2</sup>1957 A.L.J. 435