

## ALLAHABAD HIGH COURT

Ram Chandr

Vs.

Ram Saran

Second Appeal No. 652 of 1965

(J.M.L. Sinha, J.)

07.12.1977

### JUDGEMENT

**J.M.L. Sinha, J.**

1. This second appeal Arises out of the judgment and decree dated 25th Nov, 1964, passed by the Civil Judge. Deoria in Civil Appeal No. 109 of 1964.

2. The facts leading to this appeal can briefly be stated as under :-

Ram Chandra Singh and Ram Lakhan Singh, appellants, filed a suit for recovery of possession over the premises shown by letters A B C D in the site-plan attached to the plaint and for recovery of Rs. 628.20 as arrears of rent and damages for use and occupation. It was alleged that Jai Narain, defendant-respondent No. 1 as Karta of the defendant' s family took the house in question on rent about 20 years ago. The plaintiffs-appellants having half share in the house in suit got it partitioned by means of a partition suit No. 2 of 1955 and obtained separate possession over the same. By virtue of the partition decree, the plaintiffs-appellants became entitled to recover half of the rent which they demanded from the defendants-respondents, but the latter did not pay any heed. It was further alleged that the plaintiffs-appellants, therefore, served on them notice under Section 3 of the U. P. Control of Rent and Eviction Act and Section 106 of the T. P. Act to determine their tenancy. It was on this premise that the plaintiffs asked for the aforesaid relief. The suit was resisted by the respondents, *inter alia*, on the ground that the house in suit was let out to them by one Ram Padarath Khagi as landlord and that the plaintiffs-appellants were not their landlords and were not entitled to the decree asked for. The other issues framed in the case referred to questions of fact and the findings thereon were not assailed before me.

3. The trial Court on a consideration of the evidence on the record held that the plaintiffs-appellants became the landlords after the partition decree and that the defendants had committed default in payment of rent. In consequence of these findings, the trial Court decreed the suit.

4. Aggrieved against that decree passed by the trial Court, Ram Saran, defendant No. 1, filed an appeal in the Court of the District Judge, Deoria. The learned Civil Judge, who heard the appeal, held that the plaintiffs-appellants could not be the landlords and were not entitled to file a suit for ejectment. Having held that the plaintiffs-appellants were not the landlords, the lower appellate Court further held that the notice served by the appellants under Section 3 of the U. P. Control of Rent and Eviction Act and Section 106 of the T. P. Act was of no consequence. In consequence of these findings the lower appellate Court allowed the appeal and dismissed the plaintiffs' suit in to.

5. Feeling dissatisfied with the decree of the lower appellate Court, the plaintiffs have come up in appeal before this Court.

6. The sole question for consideration in this appeal is as to whether the plaintiffs-appellants became the landlords of that portion of the house on rent with the defendants which fell in their share in the partition suit and whether the plaintiffs-appellants were on that ground entitled to obtain a decree of ejectment of the defendants from that portion of the house.

7. The fact that a partition suit had taken place between the plaintiffs-appellants on the one side and Ram Padarath on the other has not been controverted before me. That fact also stands proved by the certified copies of the judgments and decree on record. It has also not been disputed before me that a final decree had been prepared in the partition suit and the portion of the house shown in the plaint map with letters A B C D fell in the share of the plaintiff-appellants and they obtained possession over the same. The respondents, however, contended in the lower appellate Court and reiterated before me that the partition decree could not carry the effect of splitting the tenancy and consequently the plaintiffs-appellants, who have been allotted only half share in the house, cannot sue for the ejectment of the respondents. The lower appellate Court has

accepted that argument and has in that connection placed reliance on a single Judge decision of the High Court of Patna in the case of *Nepur Kuer v. Bhan Pratap*<sup>1</sup> The relevant observation in the aforesaid case reads as follows :-

"The Civil Court partition is between landlords and by itself it does not constitute the breaking up of the holding. The holding is a unit for which a certain rent is payable to the landlord. The rent payable is not divisible being a lump rental in respect of the entire holding. The holding can be broken up and rents apportioned with the consent of all the parties concerned, namely, all the landlords and raiyats concerned."

There can be no doubt that the aforesaid observation lends support to the respondent's case. That does not, however, appear to be the consensus. In the case of *Korapalu v. Narayana*,<sup>2</sup> a Division Bench of the Madras High Court observed :

"As regards joint leases, the judgment pronounced in *Sri Raja Simhadri Appa Rao v. Prattipati Ramayya*<sup>3</sup> contains very instructive observations. There the plaintiffs and defendant 3 were joint owners of certain lands, but afterwards became by a partition decree common owners of the said lands. Subramania Iyer, J. held that the plaintiff (tenant-in-common) may have ejectment as against the lessees of the land to the extent of the plaintiff's interest and he relied upon the English cases of *Cutting v. Derby*<sup>4</sup> and *Doe v. Chaplin*<sup>5</sup> Sankaran Nair J., relying on certain Indian cases, hesitated to follow the English law as regards the right of a tenant-in-common to eject the common lessee from the former's particular share of the leased lands. But he considered it unnecessary to give a final opinion on that question as on other grounds he concurred in the conclusion of Subramania Iyer, J. He held that under the principles of law embodied in Sections 37 and 109. T. P. Act, a joint owner who has by division become the owner of a specific share is entitled to enforce separately all the rights appertaining to the particular land which fell to his share as against the lessee, just as if he had given a separate lease of his own share alone originally to the lessee. Sankaran Nair, J. in effect held that even though Sections 37 and 109 may not directly apply to agricultural leases in the Madras Presidency, the principles embodied in those sections ought to be followed by Indian Courts."

The Division Bench thereafter expressed its agreement with the view that one of

the joint lessors can, after partition, sue for possession over his share of the leased property.

8. In case of *Badri Prasad v. Shyam Lal Jaiswal* <sup>6</sup> again a question arose whether one of the co-owners of a cinema building after partition can file a suit for his share of profit against the tenant. The Division Bench after making reference to Sections 37 and 109 of the T. P. Act observed;

"The principle of this section also applies to the present cases. The effect of the partition decree is that there is surrender of a portion of a joint right in exchange for a similar right of a co-sharer. In other words, the single obligation of the lessee to pay rent to the lessors under the lease is converted into several obligations to pay rent to the lessors individually, that is, to the petitioner and defendant No. 4."

Now, if one of the co-owners after partition can sue the tenant for his share of the rent, there is no reason why he can also not sue for the ejection of the tenant from his portion of the house. The decision in the case of *Badri Prasad v. Shyam Lal Jaiswal* (*AIR 1963 Patna 85*) (*supra*) also being of the High Court of Patna and of a later date as compared to the decision in the case of *Nepur Kuer v. Bhan Pratap* (*AIR 1935 Patna 227*) (*supra*), I feel inclined to accept it. In fact, if the view expressed in the case of *Nepur Kuer* is accepted, it can lead to an anomalous situation. Let us imagine of a case where a lease is jointly executed by two persons in favour of another. Later on the two joint lessors fall out and get the property partitioned between them. On account of the differences having arisen between them, they may never agree to serve a joint notice on the tenant for determining his tenancy and for filing the suit. The tenant in such a case can never be evicted. It is well settled that, if there are two views possible, one furthering the ends of justice and the other frustrating it, the former should prevail. It may not be out of place, to add that, on their own showing, the respondents by their conduct had accepted the appellants to be their landlords. It was pleaded by them in para 6 of the Written Statement that on receipt of the notice sent by the appellants, they sent the rent to them but they refused to accept it. Now unless the respondents accepted the appellants to be their landlord, there was no occasion for them to send rent to them. Thus on facts also the present case is distinguishable from the case of *Nepur Kuer v.*

*Bhan Pratap*. Therefore, agreeing with the view expressed in the cases of *Korapalu v. Narayana* (supra) and *Badri Prasad v. Shyam Lal Jaiswal* (supra) I hold that the plaintiffs-appellants could file a suit for ejection of the respondents from their share of the house and for recovery of its rent.

9. This appeal is, accordingly, allowed, the judgment and decree dated 25th of Nov. 1964, passed by the lower appellate court are set aside and the judgment and decree passed by the trial court are restored. In view of the particular circumstances of this case, however, I make the costs in the appeal easy.

Appeal allowed.

Cases Referred.

1. (AIR 1935 Pat 227)
2. (AIR 1915 Mad 813)
3. ((1906) ILR 29 Mad 29)
4. ((1776) 96 ER 633)
5. ((1810) 128 ER 49)
6. (AIR 1963 Pat 85)