

PATNA HIGH COURT

Babu Jagtanand

Vs

Sri Satyanarayanji

A.F.A.D. No. 1314 of 1956

(V. Ramaswami, C.J. and Kanhaiya Singh, J.)

01.12.1960

JUDGMENT

V. Ramaswami, C.J.

1. In the suit out of which this appeal arises the plaintiffs claimed that they had let out the disputed house bearing holding No. 71 of Ward No. 4, Mahal No. 1, situated within the Dinapur Cantonment, to the defendant for a period of one year from the 1st September, 1952, to the 31st August, 1953, at a monthly rent of Rs. 30/- on the basis of a kiryanama dated the 31st August, 1952. As the defendant did not vacate the house in spite of two registered notices after the expiry of the period of the lease, the plaintiffs instituted the present suit for ejectment of the defendant. The suit was contested by the defendant on the 'ground that there was no yearly tenancy and he was not liable to be evicted under any of the provisions of the Bihar Buildings (Lease, Rent and "Eviction) Control Act, 1947. Both the lower Courts have held that there was a valid lease for a period of one year Created by the kiryanama and the defendant was liable to be evicted after the fixed period of the tenancy in pursuance of the provisions of Section 11 of Bihar Act 3 of 1947. Both the lower Courts have accordingly granted a decree in favour of the plaintiffs for ejectment of the defendant.

2. The first argument put forward by the learned Government Advocate on behalf of the defendant-appellant is that the lower appellate Court was wrong in holding that Bihar Act 3 of 1947, before its amendment by Bihar Act 16 of 1955, was unconstitutional and ultra vires. In support of his argument the learned Government Advocate referred to a decision of the Bombay High Court in *Darukhana Walla v. Khemchand Lalchand*¹, It was held in that Case by Chagla, C.J. and Shah, J. that a similar provision in Bombay Rents, Hotel and Lodging House Rates Control Act (Bombay Act 5 of 1947) was constitutionally valid and the legislation did not come within the ambit of Entry No. 2 in List I of the Government of India Act, 1935. In our opinion the argument of the learned Government Advocate is well founded and the Bihar Legislature is competent to legislate with regard to control of house accommodation and control of rents even with regard to a cantonment. Entry No. 2 in the Seventh Schedule of the Government of India Act is in the following terms :-

"2. Naval, Military and Air Force works; local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas, and the delimitation of such areas."

The corresponding entry is Entry No. 3 in List I of the Seventh Schedule of the Constitution, which is in the following terms :-

"3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas."

Bihar Act 3 of 1947 was enacted by the State Legislature in exercise of its legislative power Conferred by item No. 21 of List II of the Government of India Act, which is in identical terms with Item No. 18 of the State List of the Seventh Schedule of the Constitution, This item reads as follows :

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation or agricultural land; and improvement and agricultural loans; colonization,"

It is a well settled principle of interpretation of various entries in the Seventh Schedule of the Constitution that as far as possible an attempt must be made to reconcile entries in the Union List, the State List and the Concurrent List and the court must avoid attributing to the Constituent Assembly an intention to bring a Conflict between the powers of the State Legislature and Parliament. Applying this principle of construction to the various entries it appears to us that the expression "including the control of rents" in Entry No. 3 of List I means that the control of rents contemplated by this entry is in relation to "the house accommodation" which expression immediately precedes the expression "including the control of rents".

The meaning of Entry No. 3 of List I, therefore, is that additional power is given to the Parliament not only to regulate house accommodation in the sense of acquiring, requisitioning or allocating houses in the cantonment areas but the Parliament may also in respect of the houses so acquired, requisitioned' or allocated provide for the control of rents. It is also clear that Entry No, 3 of List I cannot be Construed to mean that Parliament was given the power to control rents between private landlords and tenants. It is manifest that that power was left by the constituent Assembly to the State Legislature under Item No. 18 of List II. This view is supported by the reasoning of a Division Bench of the Bombay High Court in AIR 1954 Bombay 254 and we respectfully agree with that reasoning and hold that the provisions of Bihar Act 3 of 1947, as it stood before its amendment by Bihar Act 16 of 1955, so far as it relates to cantonment areas, is constitutionally valid and operative.

3. The next question argued in this case was whether the kiryanamia executed on the 31st August, 1952, legally created a valid lease for one year between the parties. It was submitted on behalf of the appellant that the document required registration, and in the absence of registration it cannot be taken into evidence under the provisions of Section 49 of the Registration Act. In our opinion this argument is well founded and must be accepted as correct. Section 107 of the

Transfer of Property Act states that a lease of immovable property from year to year, or for any term exceeding one year, can be made only by a registered instrument and that all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. In the present case the statement of the plaintiff-respondents is that the lease was created on the basis of the kirayanama dated the 31st August, 1952. It is not the case of the plaintiff-respondents that there was an oral agreement for the lease accompanied by delivery of possession. On the contrary their specific case is that the lease was created on the basis of a kirayanama dated the 31st August, 1952. In the circumstances it is clear that the document required registration under Section 49 of the Registration Act, which reads as follows :-

"49. No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall -

(a) affect any immovable property comprised therein, o

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

X X X X"

It is important to notice that Section 4 of the Transfer of Property Act provides that "Section 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act". For these reasons we hold that the unregistered Kirayanama dated the 31st August, 1952, did not create a valid lease for one year and the plaintiff respondents are not entitled to eject the appellant on the assumption that there was a fixed tenancy for one year and the defendant-appellant is liable to be evicted on the expiry of the fixed term of tenancy within the meaning of Section 11, clause (e) of Bihar Act 3 of 1947.

4. It was, however, urged on behalf of the respondents that Bihar Act 3 of 1947 was not made applicable to cantonment areas by virtue of the amendment made by Bihar Act 16 of 1955. Section 22 of the Amending Act provides that the words and brackets "(excluding the local areas comprised within the Dinapore Cantonment)" and "(excluding the local areas comprised within the Ramgarh Cantonment)" shall be inserted in column 3 of serial Nos. 1 and 13 of the Schedule to Bihar Act 3 of 1947.

The effect of this amendment was that the Act ceased to be applicable to the local area of Dinapore Cantonment with effect from the 19th July, 1955, when the Amending Act came into force.*The argument on behalf of the respondents is that at the time the suit was heard by the learned Munsif the Amending Act had already come into force and the rights of the parties were, therefore, governed by the Transfer of Property Act and not by the provisions of Bihar Act 3 of 1947 as subsequently amended.

* 19th July 1955, is the date on which the Act was published in the Gazette. But the Act was brought into force on 16th August, 1955 by a ratification published in Bihar Gazette, Extra, dated 8-8-1955 -Ed.

We do not think there is any substance in this argument. It is the admitted position that the plaintiff-respondents had given notice to quit on the 8th September, 1953, and a second such

notice was served on the 8th March, 1954. It is also admitted that on the basis of these notices the plaintiff-respondents filed a suit for ejectment of the appellant on the 29th March, 1955. On that date the appellant had a complete defence to the suit, namely, that the suit was not governed by the provisions of the Transfer of Property Act but by the provisions of Bihar Act 3 of 1947, which was then in force in the Dinapore Cantonment area. In view of Section 11 of Bihar Act 3 of 1947, the respondents would not have been entitled to a decree for ejectment against the appellant because none of the conditions for such ejectment mentioned in Sec. H of the Act has been fulfilled. It is true that during the course of the hearing of the suit the Amending Act, namely, Act No. 16 of 1955 came into force on 19-7-1955. But that Act has not been made expressly retrospective from any particular date. The principle is well established that the vested right of a litigant cannot be taken away by legislation in the course of a pending action unless the amending legislation is expressly made retrospective so as to affect such right or that it takes away by necessary implication such a vested right. That is the view expressed by the Privy Council in the *Colonial Sugar Refining Co. Ltd. v. Irving*² and that case has been expressly approved by the Supreme Court in *G. Veeraya v. N. Subbiah Choudhry*³, where it was held that a vested right of appeal of a litigant can be taken away only by a subsequent enactment if it so provides expressly or by necessary intendment and not otherwise. In *Appasami Odayar v. Subramanya Odayar*⁴, also it was decided by the Judicial Committee that a suit to recover a share of joint family property not brought within twelve years from the date of the last participation in the profits of it was barred by Section 1, Clause 13, of Act 14 of 1859; and once barred, the right to sue would not be affected by the later Acts of limitation. There is also a similar decision in a subsequent case, *Khunni Lal v. Gobind Krishna Narain*⁵; It is, therefore, well established that the presumption against retrospective operation of a statute as regards vested rights applies not merely to substantive rights but applies equally to remedial rights, like rights of action including rights of appeal etc. The principle is clearly stated by the Judicial Committee in *Delhi Cloth and General Mills Company v. Commissioner of Income-tax, Delhi*⁶, as follows :-

"...While provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively, in the absence of express enactment or necessary intendment. Their Lordships can have no doubt that provisions which, if applied retrospectively would deprive of their existing finality orders, which, when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force it must be clearly so provided. Their Lordships cannot find in the section even an indication to that effect."

In *Sardar Lakhmir Singh v. Commissioner of Income-tax*⁷, it was again held by a Division Bench of this Court that although limitation is a matter of procedural law and it is open to the Legislature to extend the period of limitation by an amendment, the amending law cannot be applied to a case where the right is already barred by the previous law of limitation. Applying the principle to the present case, we hold that the rights of the parties in the present case are governed not by Bihar Act 3 of 1947, as subsequently amended by Bihar Act 16 of 1955. but by the law as it stood before the amendment - Ed made by Bihar Act 16 of 1955. If that is the correct legal position, it follows that the plaintiff-respondents in the present case cannot be

granted a decree¹ for ejection as against the defendant-appellant on the basis of the two notices to quit, dated the 8th September, 1933, and the 8th March, 1954, and the suit of the plaintiffs must be dismissed.

5. For these reasons we hold that this appeal must be allowed and the decree granted in favor of the plaintiffs by the lower Courts must be set aside and there should be an order that the suit brought by the plaintiffs for ejection of the defendant should be dismissed.

6. We accordingly allow this appeal, but the parties will bear their costs throughout.
Appeal allowed.

Cases Referred.

¹ AIR 1954 Bom 254

² 1905 AC 369

³ AIR 1957 SC 540

⁴ 15 Ind App 167 (PC)

⁵ ILR 33 All 356 (PC)

⁶ 54 Ind App 421 at p. 425 : (AIR 1927 PC 242 at p. 244)

⁷ B and O. : 1958-33 ITR856 : (AIR 1957 Pat 538)