Tek Chand etc. v. Jati Ram etc.

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in suit by prescription. In this connection it has to be borne in mind that the plaintiffs and the defendants were co-sharers of the land in suit. That being so, to prove title by prescription defendants must prove some overt act amounting to the ouster of the plaintiffs for a period of more than twelve years prior to the institution of the suit. In the opinion of the District Judge ouster of the plaintiffs for a period of more than twelve years is not proved.

Finding as I do that Regular Second Appeal No. 638 of 1949 is concluded by findings of fact I dismiss the appeal.

Having regard to the circumstances of the case, I leave the parties to bear their own costs throughout.

APPELLATE CIVIL

Before Bhandari, C.J., and Khosla, J.

1953

Sept. 17th.

PANDIT RAJA RAM,—*Plaintiff-Appellant*

versus

SHAM LAL AND ANOTHER,—*Respondents*

Regular Second Appeal No. 388 of 1952

The East Punjab Urban Rent Restriction Act (II of 1949)—Section 4—Standard rent fixed by Rent Controller—No date specified from which it is to take effect—Date from which standard rent payable—Date of application or date of order—Nature of the order passed, explained—Separate suit to enforce the order, whether competent.

Tenants applied for fixation of rent on the 27th May, 1947, Controller fixed the rent at Rs. 5 per mensem on the 17th August, 1948. On appeal by the landlord, rent fixed at Rs. 25 per mensem on the 14th May 1949. No date mentioned from which this order was to take effect. Landlord's suit for recovery of arrears of rent at Rs. 25 per mensem filed on the 27th March 1950, with effect from the 27th May 1947. Suit resisted on the ground that rent at the rate of Rs. 25 was chargeable with effect from the 14th May 1949, the date of the appellate order. Rent Controller held that rent at Rs. 25 was payable from the date of the appellate order. This order was upheld in appeal. The landlord came up in second appeal to the High Court.

Held, that the Rent Controller has the power to fix the date from which his order shall take effect but this date cannot be antecedent to the filing of the application. He can, however, fix a subsequent date. He can even fix two separate dates as may well happen in a case where certain improvements or additions to the premises have been made by the landlord. But if there is no direction fixing the date from which the standard rent shall take effect the standard rent becomes payable from the date of the application because that is the date on which the landlord or tenant comes to court and prays that his rights be determined. The order passed by the Rent Controller is in the nature of a declaratory decree. It cannot be executed by itself and the landlord must file a separate suit for the recovery of the standard rent due to him.

Case referred to the above Division Bench by Hon'ble Mr. Justice Khosla, vide *his order, dated the 4th June 1953.*

Regular Second Appeal from the decree of Shri Dalip Singh, District Judge, Karnal, dated the 8th March 1952, affirming that of Shri Tirath Dass Sehgal, Senior Sub-Judge, Karnal, dated the 20th March 1951, granting the plaintiff a decree for Rs. 24/6/- with proportionate costs against the defendants, the appellate Court allowing costs of his Court.

H. L. SARIN, for Appellant.

C. L. AGGARWAL, for Respondents.

ORDER

KHOSLA, J. The point for decision in this second appeal is from what date the rent fixed by the Rent Controller takes effect. Does it take effect from the date upon which the rent was fixed by the Rent Controller or on appeal by the Appellate Authority or from the date on which the application for the fixation of the rent was made? The Madras High Court has in four different cases held that the date of the application is the relevant date. See *Rajammal* v. *The Chief Judge Court of Small Causes* (1), *Dr. G. V. Subba Rao* v. *Deviji Govindji* (2) *Messrs George Oakes Ltd.* v. *Chief Judge Small Causes Court.* (3), *Hari Rowji Gore Sastri* v. *The Malabar District Board* (4). I have also been re- Khosla, J.

(1) A.I.R. 1950 Mad. 185
(2) A.I.R. 1950 Mad. 555
(3) A.I.R. 1951 Mad. 222
(4) A.I.R. 1951 Mad. 493

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ferred to the decision of Kapur, J., in an unreported case, *Sheo Shanker* v. *G. D. Khanna* (1), and Mr. Chiranjiva Lal Aggarwal has drawn my attention to a decision of the Supreme Court which has some bearing on the facts of this case, *Brij Raj Krishana* v. *Shaw and Brothers* (2). This matter is likely to arise in other cases and I, therefore, feel, though somewhat reluctantly, that it should be considered by a larger Bench. I, therefore, direct that these papers be laid before my Lord the Chief Justice for the constitution of a Division Bench to hear this appeal.

JUDGMENT

Khosla, J.

KHOSLA, J.. This second appeal arises out of a suit for the recovery of Rs. 725 on account of arrears of rent. The matter arose in the following way. The respondent who is a tenant of the premises in suit made an application to the Rent Controller for the fixation of rent on the 27th May 1947. The Controller fixed the rent at Rs. 5 per mensem on the 17th August 1948. The landlord appealed against this order and the Appellate Authority fixed the rent at Rs. 25 per mensem. This order was made on the 14th May 1949. The landlord then filed the present suit on the 27th March 1950 for the recovery of the arrears of rent on the basis that rent at Rs. 25 per mensem was payable from the date on which the tenant had made his application, namely 27th May 1947. It may be mentioned here that the contractual rate was Rs. 25 per mensem. The lease of the respondent began on 19th March 1944. Therefore the effect of the order of the Appellate Authority was that the contractual rent was recognised as the fair rent due from the tenant. The suit was resisted on the ground that the date from which rent at Rs. 25 per mensem must be computed is the date on which the Appellate Authority passed its order,

(1) C.R. No. 340 of 1948
(1) A.I.R. 1951 S.C. 115

more particularly because the Rent Controller had fixed the rent at a lower rate. While the suit was pending the landlord also made an application to the Rent Controller for the ejectment of the tenant. This application was made on the 19th June 1950. The Rent Controller took the view that under the provisions of the Punjab Rent Restriction Act the date on which the Appellate Authority passed this order was the relevant date for computing the fair rent and, therefore, there had been no non-payment of the rent by the tenant. The application for ejectment was, therefore, dismissed on the 20th March 1951. An appeal was filed against this order and was dismissed on the 8th March 1952 by the Appellate Authority.

The present suit was decided on the 20th March 1951 and the Senior Subordinate Judge took the view that the date of the order made by the Appellate Authority was the date from which the rent payable must be computed. He followed an unreported decision of Kapur, J., in *Sheo Shankar* v. *G. D. Khanna* (1), in which Kapur, J., held that the order of the Rent Controller fixing fair rent takes effect from the date of the order. There was an appeal. The District Judge followed that ruling and dismissed the appeal. It is to be observed that the District Judge who heard the appeal in the suit was also acting as the appellate authority under the Rent Restriction Act. The District Judge dismissed the appeal in the present suit on the 8th March 1952, i.e., the date upon which he dismissed the appeal in the ejectment matter.

Therefore the District Judge, following Kapur J.'s judgment, held that rent was payable from the date of the order made by the Appellate Authority and so there had been no non-payment of rent and the landlord was not entitled to an order of ejectment, nor could he recover the arrears claimed by him. The landlord came up in second appeal to

(1) C.R. 340 of 1948

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this Court and when the appeal came up before me sitting singly my attention was drawn to Kapur, J.'s decision. Although I have the greatest respect for the judgment of Kapur, J., I felt constrained to take a somewhat different view and so I considered it fit to have the matter placed before a larger Bench. The appeal has now been heard by my Lord the Chief Justice and by myself.

Mr. Sarin on behalf of the landlord has argued that the order fixing rent is a declaratory order and although the Rent Controller can fix a date from which his order should become effective, if he does not do so the order becomes effective from the date upon which the application for the fixing of rent is made. He relied upon four Division Bench decisions of the Madras High Court. He further contended that the object of the Rent Restriction Act is to make it impossible for landlords to demand excessive rents, and therefore any contract by which an excessive rent is made payable by the tenant can be set aside. This contract is set aside from the date upon which it was entered into but certain restrictions are placed by the Legislature, namely, that the tenant cannot demand back the excess amount paid by him except within certain limits. The landlord cannot recover any deficiency if the fair rent is higher than the contractual rent. Subject to these qualifications, which are set out in section 8 of the Act, the rent as fixed by the Rent Controller is to be deemed for all practical purposes the rent which was agreed upon between the parties. He further contended that the function of the Rent Controller is merely to fix rent and not to determine the rights of the parties *inter se*. On the other hand it is contended by Mr. Chiranjiva Lal that the Rent Controller has been given the exclusive jurisdiction in all matters connected with the fixation of fair rent and eviction from leased premises. The order of the Rent Controller cannot act retrospectively and it can only take effect from the date upon which it is made. From this Mr. Chiranjiva Lal deduced two conclusions. In the

first place the rent as fixed by the Appellate Authority is recoverable only from the date of the order of the Appellate Authority. In the second place, since the landlord's application for ejectment was dismissed on the ground that there was no non-payment, the landlord cannot by means of a separate suit recover arrears because the Rent Controller and the Appellate Authority have already held that no arrears are due to the landlord. Mr. Chiranjiva Lal relied upon a Supreme Court decision reported as *Brij Raj Krishana* v. *Shaw and Brothers* (1). Section 4 of the Punjab Act authorises the Rent Controller to fix fair rent after making enquiry. The Act does not contain an express provision authorising the Rent Controller to fix the date from which the standard rent fixed by him shall take effect There is such provision in the Delhi Ajmer-Merwara Act of which section 7 (5) is in the following terms:—

> "In every case in which the Court determines the standard rent of any premises under this section it shall appoint a date from which the standard rent so determined shall be deemed to have effect."

Under the Punjab Act, too, the Rent Controller has power to fix the date from which his order shall take effect but this date cannot be antecedent to the filing of the application. He can, however, fix a subsequent date. He can even fix two separate dates as may well happen in a case where certain improvements or additions to the premises have been made by the landlord. But it seems to me that if there is no direction fixing the date from which the standard rent shall take effect the standard rent becomes payable from the date of the application because that is the date on which the landlord or the tenant comes to Court and prays that his rights be determined. It is quite clear that the order passed by the Rent Controller is in the nature of a declaratory decree. It cannot be executed by itself and the landlord must file a separate suit for the recovery of the standard rent due to him. Mr. Chiranjiva Lal tried to argue

(2) A.I.R. 1951 S.C. 115

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that this order is analogous to the order passed by a civil Court in a partition suit or a suit for accounts or a suit for dissolution of partnership. In my view, however, there is no analogy between the two cases. The decree in a partition suit is executable *per se*. So are decrees in suits for rendition of accounts and suits for dissolution of partnership. In the case of a declaratory decree the decree-holder has to go to the civil Court to get the benefit of the decree and the same is the case when the Rent Controller fixes standard rent. From this it follows that it is not the date of the order but the date of the application with effect from which the rights of the parties are determined. This is the view clearly expressed by the Madras High Court in no less than four cases. In *Rajammal* v. *The Chief Judge, Court of Small Causes* (1), a Division Bench of the Madras High Court considered the case of a landlord who applied for the fixation of fair rent and the fair rent was fixed at a figure higher than the contractual rent. The Madras High Court held that the date from which the order became effective was the date of his application and the landlord could recover the additional amount due to him from the date of his application. In *Dr. G. V. Subba Rao* v. *Deviji Govindji* (2), the same view was expressed and Rajamannar, C. J., observed:—

> "On an application under section 4 of theAct, the only jurisdiction which the Appellate Authority and the Rent Controller have is to fix the fair rent. What rights accrue to the landlord and the tenant is not within their province on an application under section 4."

This merely means that the Rent Controller gives a declaration to the effect that this shall be the fair rent payable by the tenant. In that case the Appellate Authority after fixing the fair rent held that it should come into operation only from the date of its order. The Madras High Court held

(1) A.I.R. 1950 Mad. 185
(2) A.I.R. 1950 Mad. 555

that this view was entirely erroneous. In Messrs. *George Oakes Ltd* v. *The Chief Judge, Small Causes* (1) and *Hari Rowji Gore Sastri v. the Malabar District Board* (2), the same view was expressed in clear terms.

Our attention has also been drawn to a Division Bench decision of this Court given by Harnam Singh and Kapur, JJ., in *Janeshwar Das* v. *Bishambar Nath* (3), in which Kapur, J., observed :—

> The words 'when the Controller has fixed the fair rent' as occurring in section 6 of the East Punjab Urban Rent Restriction Act, 1949, do not connote time but they refer to a case where the Controller has fixed a fair rent and do not refer to the date on which the fair rent is fixed."

The view taken in that case was that the date of the application was the date from which the fair rent must be deemed to have been payable. The question now before us was not considered directly by Kapur, J., in that case, but his remarks are more consistent with the view I am inclined to take, namely the date upon which the application is made is the date from which the fair rent becomes payable.

I now come to the second argument of Mr. Chiranjiva Lal that the dismissal of the application for ejectment is conclusive between the parties and that the landlord cannot by means of a suit challenge that decision which implies that no arrears of rent are due to the landlord. I have already mentioned the dates upon which the various applications before the Rent Controller were made and the date upon which the present suit was filed. The object of the present suit was not to challenge any finding of the Rent Controller. Indeed its object was to implement it. On the 27th March 1950, when the suit was filed, the order of the Appellate

(1) A.I.R. 1951 Mad. 222
(2) A.I.R. 1951 Mad. 493
(3) (1953) 55 P.L.R. 116

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Authority allowing rent at Rs. 25 per mensem was in force and the plaintiff merely wanted to recover arrears due to him on the basis of this order. Subsequently he also filed a suit for ejectment. The Rent Controller did not interpret the statute correctly and held that no arrears were due because the amount became payable at the date on which the Appellate Authority passed its order. In doing this the Rent Controller appears to have followed the decision of Kapur, *J.*, in *Sheo Shankar* v. *G. D. Khanna* (1). The District Judge acting as the Appellate Authority, also followed the same decision and dismissed the application for ejectment. The Supreme Court ruling cited by Mr. Chiranjiva Lal *Brij Raj Krishana* v. *Shaw & Brothers* (2), has, therefore, no application to the facts of the present case. In that case the plaintiff brought a suit to challenge collaterally a decision of the Rent Controller. In the present case the suit was intended to implement rather than challenge the orders passed under the Rent Restriction Act. The landlord's subsequent application for ejectment had nothing whatsoever to do with his suit.

The result, therefore, is that the landlord is entitled to recover rent at the rate of Rs. 25 per mensem from the 1st February 1947 because the contractual rent has been found to be the fair rent and the landlord can claim rent at the rate of Rs. 25 per mensem from the date upon which the tenant made the application because fair rent was fixed on his application and from the 1st February 1947, because the contractual rate has not been found to be excessive. The plaintiff is, therefore, entitled to recover the entire amount of Rs. 725 claimed by him. I would, therefore, allow this appeal and modifying the orders of the Courts below grant the plaintiff a decree for Rs. 725 and costs throughout.

Bhandari, C. J.

BHANDARI, C.J. I agree.

(1) C.R. 340 of 1948

(2) A.I.R. 1951 S.C. 115