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**(1977) 03 AHC CK 0009**  
**In the Allahabad High Court**  
**Case No : Second Appeal No. 2746 of 1965**

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|---------------------------------|----|------------|
| L. Deep Chandra                 | Vs | APPELLANT  |
| Lala Raghuraj Swarup and Others |    | RESPONDENT |

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**Date of Decision :** 24-03-1977

**Acts Referred:**

Constitution of India, 1950 — Article 133, 141  
Uttar Pradesh Tenancy Act, 1939 — Section 175, 180, 47(1), 47(4)

**Citation :** AIR 1977 All 370

**Hon'ble Judges :** R.B. Misra, J; M.P. Mehrotra, J; J.M.L. Sinha, J

**Bench :** Full Bench

**Advocate :** N.C. Gupta and Shanti Bhushan, for the Appellant; G.N. Verma, for the Respondent

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## Judgement

R.B. Misra, J.—The present second appeal is directed against the judgment and decree of the 2nd Additional Civil Judge, Muzaffarnagar, dated 5th Aug., 1965. It came up for hearing before a learned Single Judge, but as a question of law of general importance was involved in this case, the learned Single Judge referred it to a larger Bench. This is how the present appeal has come before us.

2. The material facts to bring out the point involved in the case are as follows:--

The dispute between the parties centres round ten plots, situate in village Yusufpur Mahal Rustam Ali Khan, pargana, tahsil and district Muzaffarnagar. Admittedly, Rai Mal and Bhartu were the tenants-in-chief of the said plots, owned by the present appellant, They executed a sub-lease on 10th March, 1950, in favour of Raghuraj Swarup, the respondent, for a period at five years, commencing from 1st January, 1950, to 31st December, 1954. The tenants -in-chief, however, surrendered the disputed land in favour of the appellant on 14th September, 1954. The appellant gave a notice to the respondent on 2nd Nov. 1954, asking him not to cultivate the disputed land after the expiry of the sub-lease in his favour. He, however, did not give possession and the appellant was, therefore, obliged to file a suit for his ejectment u/s 180 of the U. P. Tenancy Act.

He also claimed Rs. 212/- by way of damages from the defendant.

3. The claim was resisted by the respondent on various grounds, but it is not necessary to refer to those various pleas, as we are concerned, in the present appeal, only with one point, namely, whether a suit u/s 180 of the U. P. Tenancy Act, in the present case, was maintainable or the proper remedy for the plaintiff was to file an application u/s 175 of the U. P. Tenancy Act.

4. On the pleadings of the parties, as many as eight issues were framed and the trial court decided all the issues, except issue No. 3, in favour of the appellant. On issue No. 3, however, the trial court held that the respondent was not a trespasser and his status was only that of a sub-tenant and, therefore the suit u/s 180 of the U. P. Tenancy Act was not maintainable. In the result, the trial court dismissed the suit on the sole ground that the suit u/s 180 of the U. P. Tenancy Act was not maintainable.

5. Feeling aggrieved by the judgment and decree of the Assistant Collector 1st Class, Muzaffarnagar, dated 24th April, 1964, the plaintiff went up in appeal and the 2nd Additional Civil judge confirmed the finding of the trial court, that the status of the defendant was that of a non-occupancy tenancy and he should not be treated as a trespasser and, therefore, the suit u/s 180 of the U. P. Tenancy Act was not maintainable. The plaintiff has now come up in second appeal to this court and the only contention raised in this appeal is that the suit u/s 180 of the U. P. Tenancy Act (hereinafter referred to as the Act) was maintainable and the courts below have committed an error of law in holding to the contrary.

6. Before dealing with the point involved in this case, it would be appropriate to refer to the material provisions of the Act. The term "sub-tenant" has been defined in Section 3 (22) of the Act. It reads:

"3 (22). "sub-tenant" means a person who holds land from the tenant thereof other than a permanent tenure-holder, or from a grove-holder or from a rent-free grantee or from a grantee at a favourable rate of rent and by whom rent is, or but for a contract express or implied would be, payable;"

7. The term "tenant" has been defined in Section 3 (23) of the Act as under;

"3 (23) "tenant" means the person by whom rent is, or but for a contract express or implied would be payable and, except when the contrary intention appears, includes a sub-tenant, but does not include a mortgagee of proprietary or under-proprietary rights, a grove-holder, a rent free grantee, a grantee at a favourable rate or rent or except as otherwise expressly provided by this Act, an under-proprietor, a permanent lessee or a thekadar;"

8. Section 31 of the Act deals with non-occupancy tenants. It reads:

"31. All tenants other than permanent tenure-holders, fixed rate tenants, tenants holding on special terms in Oudh, exproprietary tenants, occupancy tenants and hereditary tenants are non-occupancy tenants."

9. Section 40 deals with restriction on sub-letting. It provides that no occupancy tenant in Agra, or exproprietary tenant or hereditary tenant shall sub-let the whole or any portion of his holding for a term exceeding five years, or within three years of any portion of such holding being held by a subtenant.

10. Sub-section (2) of Section 40 stipulates that no non-occupancy tenant shall sub-let the whole or any portion of his holding for a term exceeding one year or within one year of any portion of such holding being held by a sub-tenant.

11. Section 45 of the Act provides for the extinction of tenancies, It reads:

"45. The interest of a tenant shall be extinguished--

(a) when he dies leaving no heir entitled to inherit in accordance with the provisions of this Act:

(b) in land which has been sold in execution of a decree for arrears of rent or from which he has been ejected in execution of a decree or order of a court;

(c) subject to the provisions of Sections 82 to 88 by surrender, or by abandonment;

(d) in land which has been acquired under the provisions of the Land Acquisition Act, 1894;

(e) subject to the proviso to Section 46, by merger;

(f) where the tenant has been deprived of possession and his right to recover possession is barred by limitation."

12. Section 48 of the Act deals with the rights and liabilities of sub-tenants on extinction of sub-tenancy. It contemplates that:

"48. When the interest of a sub-tenant is extinguished he shall vacate his holding but shall have in respect of the removal of standing crops and other products of the earth the same rights as the tenant would have upon ejectment in accordance with the provisions of this Act."

13. Section 175 deals with the ejectment of non-occupancy tenants. It reads:--

"175, Subject to the provisions of Section 19 a non-occupancy tenant shall also be liable to ejectment on the application of the landholder on any of the following grounds, namely;

(a) that he is a tenant holding from year to year;

(b) that he is a tenant holding under a lease or for a period which has expired or will expire before the end of the current agricultural year."

14. Section 180 of the Act deals with the ejectment of a person occupying land without consent. In so far as it is material for the purposes of this case, it reads:

"180. (1) A person taking or retaining possession of a plot of land without the

consent of the person entitled to admit him to occupy such plot and otherwise than in accordance with the provisions of the law for the time being in force, shall be liable to ejectment under this section on the suit of the person so entitled, and also to pay damages which may extend to four times the annual rental value ....."

15. In the ordinary course, the question whether a suit should have been filed u/s 175 or 180 of the Act would not have mattered much in view of the provisions of Section 244 of the Act, inasmuch as the appropriate relief could have been granted irrespective of the fact whether the suit was filed u/s 180 or 175, but as the suits u/s 175 had been stayed, therefore, the question assumed importance. According to the respondent, the plaintiff chose to file the suit u/s 180 of the Act only because he found that the suit u/s 175, which was the only proper suit, that could be brought against the defendant, had been stayed. Whether the suit should have been filed u/s 180 or 175 of the Act would depend on the status of the respondent on the date of the suit. If the defendant respondent had the status of a non-occupancy tenant, the proper remedy for the plaintiff was to file an application u/s 175 of the Act.

16. There is no dispute that the subtenant is a non-occupancy tenant. On the other hand, if the defendant respondent was only a trespasser on the date of the suit, the proper remedy for him was to file a suit u/s 180 of the Act. It is therefore, necessary to determine the status of the defendant on the date when the cause of action arose. As the defendant respondent was holding the land from the tenant-in-chief on the basis of a lease for five years, to start with, his status was that of a sub-tenant in view of the definition of "sub-tenant" given in Section 3 (22) of the Act. The tenant-in-chief, however, surrendered the disputed land in favour of the plaintiff appellant on 14th Sep., 1954. Section 47 of the Act deals with the rights of sub-tenant on the extinction of the tenant's interest. Section 47 of the Act is very important for the purposes of the decision of the question involved in this case. In so far it is relevant for the purposes of this case, it reads:--

"47. (1) Except as otherwise provided in Sub-section (3) and Sub-section (4) the extinction of the interest of a tenant, other than a permanent tenure-holder or a fixed rate tenant shall operate to extinguish the interest of any tenant holding under him.

(2) .....

(3) .....

(4) Where, at the time of the extinction by surrender or abandonment, or by death without any heir entitled to inherit such interest, or the interest in a holding of a tenant other than a permanent tenure-holder or fixed rate tenant, there is in existence a valid sub-lease of the whole or of a portion of the holding executed on or after the first day of January, 1902, all covenants, binding and enforceable as between the tenant and the sub-tenant shall, subject to the

provision of Sub-section (5), be binding and enforceable as between the tenant's landholder and the sub-tenant for the remainder of the term of the sub-lease or for five years, whichever period may be the shorter.

(5) In the cases referred to in Sub-section (3) and Sub-section (4), if the rent payable by the sub-tenant is less than that hitherto payable by the tenant, the sub-tenant shall have the option of vacating the holding, but shall, if he continues in possession be liable to pay rent at the rate hitherto payable by the tenant,"

17. Sub-clause (1) of Section 47 of the Act clearly stipulates that the extinction of the interest of a tenant shall operate to extinguish the interest of a tenant holding under him. Sub-section (4) of Section 47 of the Act, however, contemplates a situation where there is in existence a valid sublease at the time of the surrender by the tenant-in-chief. In that case, all covenants binding and enforceable as between the tenant and the sub-tenant be binding and enforceable as between the tenant's landholder and the sub-tenant for the remainder of the term of the sub-lease or for five years, whichever period may be the shorter. Thus, with the surrender of the tenancy rights, the sub-tenancy automatically comes to an end. If Sub-section (4) of Section 47 of the Act was not there, the interest of the sub-tenant would have come to an end on 14th Sept., 1954, when the tenant-in-chief surrendered his right in favour of the plaintiff. It is only because of Section 47 (4) of the Act that the covenants binding and enforceable as between the tenant and the sub-tenant shall be binding and enforceable as between the tenant's land-holder and the sub-tenant for the remainder of the term of the sublease or for five years.

18. The contention of Sri Shanti Bhu-shan, appearing for the appellant, is that by virtue of Section 47 (4) of the Act, the extinction of the interest of the sub-tenant was postponed till the expiry of the remainder of the term of sub-lease, but for Sub-section (4) of Section 47 of the Act, the sub-tenancy of the defendant respondent would have come to an end with the surrender of the tenancy rights by the tenant-in-chief in favour of the plaintiff on 14th Sept. 1954.

19. The contention of Sri G. N. Verma, on the other hand, is that there is no provision in the Act for the extinction of the tenancy rights, which includes sub-tenancy rights, by efflux of time and the interest of a tenant or sub-tenant can be extinguished only in the manner provided by the Act. Sri G. N. Verma referred to Section 157 of the Act, which provides that no tenant shall be ejected from his holding otherwise than in accordance with the provisions of this Act, He also relied upon Section 45 of the Act, which deals with various situations in which the interest of a tenant shall be extinguished, but none of the sub-sections of Section 45 of the Act contemplates the extinction of the tenancy or sub-tenancy rights by efflux of time. In short, his contention is that if a person is a sub-tenant, his status as a subtenant will continue till a suit for his eviction is filed and he is actually ejected in execution of a decree.

20. Sri G. N. Verma relied upon Ram Dular Singh and Another Vs. Babu Sukhu Ram and Others, . In that case, a Full Bench of this Court took the view that:

"notwithstanding the expiry of the term of quabuliat on 13-5-1951, the defendants continued to be the sub-tenants of the plots in suit till the commencement of U. P. Zamindari Abolition and Land Reforms Act because of the enforcement of Section 295-A of the U. P. Tenancy Act till 7th June, 1952 and their sub-tenancy had not been extinguished, as required by Section 45 of the U. P. Tenancy Act."

21. Sri G. N. Verma also referred to another Full Bench decision of this Court in Prem Singh and Others Vs. Hukam Singh and Others, , in which one of us was a Member: one of the questions referred to the Full Bench was whether the person declared to be a sub-tenant under the Proviso to Sub-section (3) of Section 27 of the Act holds that land from year to year or for a fixed period within the meaning of Section 202 (b) of the U. P. Zamindari Abolition and Land Reforms Act, and the question was decided by the Full Bench in the affirmative. The Full Bench referred to Section 190 of the U. P. Zamindari Abolition and Land Reforms Act which provides for the extinction of the interest of an asami. It does not provide that the interest of an asami can be extinguished by giving of a notice by the land holder. On the other hand, Clause (e) provides that the interest of an asami shall be extinguished when he is ejected under the provisions of this Act. Till he is evicted by executing a decree obtained in a suit filed u/s 202 of the U. P. Zamindari Abolition and Land Reforms Act, he continues to be an asami.

22. Sri Shanti Bhushan, however, referred to Birendra Pratap Singh and Another Vs. Gulwant Singh and Others, . In that case, the Supreme Court had the occasion to consider the effect of the provisions of Section 47 (4) of the Act. In Para 8 of the judgment the Supreme Court distinguished Ram Dular Singh v. Babu Sukhu Ram (Supra) and observed as follows:--

"Learned counsel for the appellants relying on a decision of the Full Bench of the Allahabad High Court in Ram Dular Singh and Another Vs. Babu Sukhu Ram and Others, urged that, in any case, we should hold that when the appellants continued in possession of the disputed land after 30th June, 1951, they did so in exercise of the same right which they possessed on 30th June, 1951, as that right was not extinguished by their eviction from the land. The principle laid down by the Allahabad High Court in that case does not apply, because the decision in that case depended on the circumstance that, under the Tenancy Act the rights of a tenant continuing in possession after the expiry of the period of lease did not extinguish u/s 45 or 47 of the Tenancy Act which were the only sections which deal with the extinction of the rights of tenants. So far as the right granted by Section 47 (4) is concerned, it is granted by the statute itself for a limited period and once that period expires, it cannot be held that the right continues thereafter. There is no requirement in law that, after the expiry of that period, there must be eviction from the land in order to extinguish the right granted by Section 47 (4). The possession subsequent to 30th June, 1951

cannot, therefore, be held to be in pursuance of a right conferred on a sub-tenant referred to in Section 47 (4) of the Tenancy Act and, consequently, the land was not held by the appellants thereafter in the capacity mentioned in Section 19 (vii) of the Act."

23. Sri G. N. Verma sought to argue that the observation made by the Supreme Court was obiter and it was not necessary to make any observation for the decision of the question involved in that case. It is now well settled by two Full Bench decisions of this Court in *Ram Manohar Lohia and Others Vs. State of U.P. and Others*, and *Chobey Sunder Lal Vs. Sonu alias Sonpal and Another*, that even an obiter of the Supreme Court is binding on this Court. The only requirement is that the observation made by the Supreme Court was not a stray observation but it was the considered opinion of the Supreme Court. From Para 8 of the judgment in the Supreme Court decision, it is quite evident that the Supreme Court had applied its mind to the question and then had made the observation after considering the points urged before it,

24. The Full Bench decision in *Prem Singh and Others Vs. Hukum Singh and Others*, was dealing with the provisions of the U. P. Zamindari Abolition and Land Reforms Act whereunder the interest of an asami would come to an end. The Supreme Court on the other hand, was directly concerned with the provisions of Section 47 (4) of the U. P. Tenancy Act with which we are concerned in the present case. In view of the law laid down by the Supreme Court, there is not the slightest manner of doubt that with the surrender of the tenancy rights- the sub-tenancy was extinguished. Of course by Section 47 (4), it was postponed till the expiry of the remainder period of the sub-lease but after the expiry of that period, it cannot be argued with any force that the status of the defendant respondent continued thereafter as a sub-tenant. The wordings of Section 27 of the U. P. Tenancy (Amendment) Act, referred to in the Full Bench decision in the case of *Prem Singh v. Hukum Singh* (supra) are quite different from the wordings of Section 47 (4) of the Act

25. It is true that in view of Section 157 of the Act, no person can be evicted otherwise than in accordance with law, but this section does not contemplate that the right of a tenant or sub-tenant cannot come to an end in accordance with the provisions of this Act. Section 47 is a part of the Act and if it contemplates that with the surrender of the rights of a tenant-in-chief, the interest of the sub-tenant would come to an end, it cannot be argued with any force that despite the extinction of the sub-tenant's right, his status as a sub-tenant continues.

26. Sri G. N. Verma, alternatively, argued that even if the status of the defendant respondent as a sub-tenant came to an end with the surrender of the tenancy rights by the tenant-in-chief in favour of the plaintiff, a fresh contract of tenancy came into existence between the plaintiff appellant on the one hand and the defendant respondent on the other in view of the provisions of Sub-section (4) of Section 47 of the Act because the same covenant which was between the tenant-

in-chief on the one hand and the defendant respondent on the other would continue as between the plaintiff landlord and the defendant respondent and, therefore, according to Sri Verma, a fresh tenancy came into existence which would be no other tenancy except non-occupancy tenancy u/s 31 of the Act and if once the defendant respondent became a non-occupancy tenant, he could be ejected only in accordance with the provisions of the Act and not otherwise.

27. Whatever the status was conferred by Section 47 (4) of the Act, it was to last only for the remainder period of the sub-lease or for five years whichever was shorter. If the statute itself provides that the right or interest of the defendant respondent would come to an end on the expiry of the remainder term of the sub-lease, it will be idle to argue that the right as a sub-tenant or non-occupancy tenant still continues. If any right was conferred by Section 47 (4) of the Act, it came to an end after the expiry of the remainder term of the sub-lease by the same provision. It cannot possibly be argued that the defendant respondent would get the benefit conferred by Section 47 (4) of the Act, but would not incur the liability contemplated by that provision. Heading Sub-sections (1) and (4) of Section 47 of the Act, the right and interest of the defendant respondent could come to an end, as contemplated by the section and it cannot be said that the right of the defendant respondent had been extinguished otherwise than in accordance with the provisions of the Act Section 175 of the Act, in this view of the matter, does not stand in the way of the plaintiff.

28. Sri G. N. Verma referred to Section 111 of the Transfer of Property Act which contemplates that a tenancy could come to an end by efflux of time, but there is no corresponding provision in the U. P. Tenancy Act whereby the tenancy or sub-tenancy could come to an end by efflux of time. He also referred to Paras 14 to 18 of the Halsbury's Laws of England, 3rd Edition, Vol. 23, and, therefore, the tenancy has to be extinguished, as contemplated by the Act. The Act contemplates ejectment under various provisions viz. under Sections 169 and 170 in connection with the arrears of rent. Section 171 contemplates the ejectment of a tenant for illegal letting, Section 172 contemplates the ejectment of a tenant for doing some detrimental act and Section 175 of the Act contemplates ejectment of a non-occupancy tenant and Section 180 contemplates for the ejectment of a person holding otherwise than in accordance with law and without the consent of the person entitled to admit him as a tenant.

Thus, the U. P. Tenancy Act, according to Sri Verma, contemplates the ejectment of a tenant or sub-tenant under various situations, but Section 180 of the Act can be invoked only when a person has taken or retained possession otherwise than in accordance with law and without the consent of the land holder. The plaintiff appellant has to satisfy that the ingredients of Section 180 of the Act were satisfied before he could file a suit u/s 180 of the Act, According to Sri Verma, the status of the defendant respondent continued that of a non-occupancy tenant and, therefore, the only proper section under which the suit could be filed against him for his ejectment is a suit u/s 175 of the Act and not one u/s 180.

29. As observed earlier, the decision of the question depends upon the status of the defendant respondent on the date of the cause of action. If the status of the defendant respondent was that of a non-occupancy tenant or sub-tenant, the suit could be filed for ejectment only u/s 175 of the Act. If, on the other hand, the defendant respondent was taking or retaining possession of the disputed land otherwise than in accordance with law, and without the consent of the landholder, Section 180 of the Act would be attracted. Admittedly, the tenant-in-chief had surrendered the plots in favour of the plaintiff appellant, the land holder, and, therefore, the sub-tenancy came to an end, but the extinction of the sub-tenancy was postponed for the remainder period of the sub-lease. But after the expiry of that period, the sub-tenancy or non-occupancy tenancy, whatever rights the defendant respondent had, came to an end and his possession thereafter was otherwise than in accordance with law. Therefore, in our opinion, the suit was rightly filed u/s 180 of the Act, Section 175 of the U. P. Tenancy Act has no application to the facts of the present case.

30. Other issues had been decided by the trial court in favour of the plaintiff and the findings on those issues were not challenged before the lower appellate court, as would be clear from the following observations of the lower appellate court:--

"The findings of the learned Assistant Collector on the points that the plaintiff was a land holder on 14-9-1954 and also on the date of the suit, about non-joinder of the tenants-in-chief as necessary parties and the bar of estopped are not challenged before me..... The finding on the point that a valid surrender was made by the tenant-in-chief on 14-9-1954 is also not challenged ..... Thus, the only point to be considered in this case is as to whether the defendant was a trespasser on the date of the suit."

31. The findings on those issues have not been challenged before this Court as well. Therefore, the findings on the remaining issues recorded by the trial Court stand confirmed and it is not necessary to deal with them.

32. In view of the finding that the suit u/s 180 of the Act was not maintainable, the courts below did not think it necessary to record a definite finding on the quantum of damages. In the view that we have taken on the maintainability of the suit u/s 180 of the Act, the question that arises is whether the appellant is entitled to any damages. On a perusal of the record, we find that no cogent and satisfactory evidence has been adduced by the appellant in order to prove the damages. We, accordingly, hold that the appellant is not entitled to any damages.

33. For the reasons stated, this appeal is allowed to this extent that the judgment and decree passed by the court below are set aside and the plaintiff's suit for possession over the property in dispute is decreed. The claim for damages is, however, disallowed. The appellant shall get proportionate costs of this suit and the courts below.

34. An oral request was made by Sri G. N. Verma in view of Order 45 Rule 2, C.

P. C, as amended by U. P. Civil Laws Land Reforms (Amendment) Act, 1976, for a Certificate for appeal to the Supreme Court against this decision. We have heard Sri Verma and we are not satisfied that the question of law involved in this case is of such general importance as meriting decision by the Supreme Court, as we have decided the question involved in this case on the basis of the Supreme Court decision itself. The prayer for leave is, accordingly, refused.