
(1969) 10 AHC CK 0028
In the Allahabad High Court
Case No : S.A. No. 1014 of 1968

Smt. Shafiqah and Others

APPELLANT

Vs

Maqsood Ahmad Khan and Others

RESPONDENT

Date of Decision : 06-10-1969

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (1970) 40 AWR 100

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : V.K. Khannas, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Seth, J.—This is a Defendant's second appeal in a suit for recovery of rent and ejectment from a house.

2. Briefly stated the case of the Plaintiff was that at one time the disputed property was in possession of the Custodian. One Yudhishtar Lal purchased the house from the Custodian and later on sold it to the Plaintiffs on 10-4-1962. At that time one Sri Habib Khan was in possession of the house in dispute as a tenant on a monthly rent of Rs. 4/-. After the death of Habib Khan, Plaintiffs applied for permission under Act III of 1947, to file a suit for ejectment against Anis Khan son of Habib Khan. After obtaining permission he gave a notice to Anis Khan, determining his tenancy as required by Section 106 of the Transfer of Property Act. Thereafter the present suit was filed on the allegation that no rent had been paid since 10-8-1962.

3. Anis Khan contested the suit on the ground that he was living at Uttar Kashi and his younger brothers and mother were living in the house in dispute. He set up an agreement under which the Plaintiff agreed to treat the widow and other children of Habib Khan as his tenants and as such he had nothing to do with the tenancy. The Plaintiffs took steps to implead the widow and other children of

Habib Khan as Defendants Nos. 2 to 6. Defendants Nos. 2 to 6 contested the suit on the ground that they offered rent to the Plaintiff which they refused to accept. No permission had been obtained to file a suit for their ejectment nor was any notice u/s 106 TP Act served upon them and as such they were not liable to be ejected. It was contended on their behalf, that in an earlier suit, No. 516 of 1962, which was dismissed and the appeal No. 155 of 1964 filed from that decision was also dismissed, it had been held that Defendants Nos. 2 to 6 were also the tenants of the house in dispute.

4. The trial court came to the conclusion that the case set up by Anis Khan, that there was an agreement between him and the Plaintiffs that he would not be the tenant and only Defendants Nos. 2 to 6 would be the tenants, was not correct. Anis Khan continued to be a tenant along with Defendants Nos. 2 to 6. Permission to file a suit for ejectment had been granted against Anis Khan after due service of notice upon him and the same was not vitiated because no notice of the application to file a suit for ejectment had been given to Defendants Nos. 2 to 6. The trial court expressed the view that when Defendants Nos. 2 to 6 were no parties to the proceedings for permission to file a suit for ejectment no notice could have been issued to them and as such the permission granted against Anis Khan could not be invalid. The permission was not obtained fraudulently and was not illegal. It was perfectly valid and enforceable till set aside by a competent authority. Although the notice determining the tenancy was not addressed to the entire body of tenants, the court held that in view of the decision of the Supreme Court in the case of *Kanjimanji v. The Trustees of the Port of Bombay* AIR 1963 SC 68, service of notice on one of the tenants was sufficient to determine the tenancy of the entire body of the tenants. He did not accept the distinction sought to be drawn by the counsel for the Defendants on the ground that position of their clients was that of co-tenants and not of joint tenants and as such the decision of the Supreme Court had no application to the facts of the present case. He therefore held that the notice was not invalid on the ground that it was not addressed to all the Defendants.

5. While considering the question about validity of permission granted u/s 3 of the Rent Control and Eviction Act, the learned Munsif observed that if a suit for ejectment was maintainable against one of the joint tenants as held in the case of *Kanji Manji* (supra) which was purely a judicial proceeding he did not see any reason why in a quasi-judicial proceeding the permission granted against one of the tenants can be said to be invalid. He relied upon certain cases reported in *Moti Lal Vs. Basant Lal and Another*, , *Ram Kalap Vs. Banshi Dhar and Others*, and 1963 ALJ 198 : 1963 AWR 175 as supporting the contention raised on behalf of the Plaintiff that permission obtained against one of the tenants would enure against other tenants also. He therefore held that the permission obtained against Anis Ahmad was operative against entire body of tenants and the suit was maintainable against all the Defendants, even in the absence of specific permission against Defendants Nos. 2 to 6. He also recorded a finding that the Defendants tendered the rent which was not accepted by the Plaintiff. In the

result, he decreed the suit for recovery of Rs. 144/-. The learned Munsif, in the peculiar circumstances of the case, made certain orders as to costs which it is not necessary to mention here.

6. Defendants Nos. 2 to 6 went up in appeal, The lower appellate court held that in the earlier suit No. 516 of 1962 Defendants Nos. 2 to 6 were found to be tenants of the accommodation along with Anis Khan and although the Defendants were successors of the original tenant Habib Khan, they were in possession of the house as joint tenants. Once the position of Defendants Nos. 2 to 6 was held to be that of joint tenants notice to one of the joint tenants was sufficient to determine the tenancy of all the joint tenants. He also held that in case of joint tenants, if a suit is brought against one of them then the decree in that suit would have the effect of evicting the entire body of joint tenants. For this proposition the lower appellate court relied upon the case of Kanji Manji Vs. The Trustees of The Port of Bombay, . The lower appellate court therefore held that the notice for ejectment was not bad for want of service on Defendants Nos. 2 to 6. So far as the question about validity of the permission was concerned, the lower appellate court observed that even assuming that no opportunity was given to all the tenants yet the permission cannot be said to be invalid, as in the instant case it had been found that Anis Khan, one of the tenants, had been properly served and he had been afforded full opportunity to contest the application u/s 3. Another argument advanced before the lower appellate court was that as Anis Khan had applied for setting aside of the order of the permission and the application for restoration of the case was pending the permission did not continue to be operative. This argument was also repelled by the lower appellate court. As a result of these findings the appeal filed by Defendants Nos. 2 to 6 was dismissed.

7. The Defendants Nos. 2 to 6 have now come up in second appeal before this Court. It has been contended on their behalf that actually no permission was granted to file a suit for the ejectment of Defendants Nos. 2 to 6. If due to any reason it is held that the permission obtained against Anis Khan would operate against Defendants Nos. 2 to 6 also, the grant of permission would be invalid as the same had been given without following the principles of natural justice. It was also contended that the courts below wrongly applied the decision of the Supreme Court in the case of Kanji Manji Vs. The Trustees of The Port of Bombay, to the facts of the present case.

8. The learned Counsel for the Appellant also urged that the court below erred in holding that the tenancy of Defendants Nos. 2 to 6 stood terminated because of the notice given to Anis Khan.

9. Learned Counsel for the Plaintiff Respondent tried to support the decision of the lower appellate court. In addition he relied on the case of Janardan Swarup and Ors. v. Debi Prasad 1958 AWR 675, wherein it was held that if a permission is granted by the District Magistrate to the owner to file a suit for ejectment of the tenant, it is valid and enures to the benefit of the entire body of owners or

landlords against the entire body of the class designated as the tenants. It was therefore contended that it was not necessary for the Plaintiffs to have attempted to seek permission against the entire body of the tenants. The Plaintiff may seek permission against one of the tenants and that permission would enure against the entire body of tenants. The question of violation of principles of natural justice would not arise as due notice was given to the tenant against whom the permission was being sought. It was also contended that in view of the provisions of Section 16 of UP Act III of 1947 it was not open to the civil courts to look into the correctness of the permission granted by the District Magistrate under the Rent Control Act. After giving my anxious consideration the argument raised on behalf of the parties I have come to conclusion that neither the notice u/s 106 of the Transfer of Property Act nor the permission granted u/s 3 of the UP Act III of 1947 is operative against the Defendants Nos. 2 to 6.

10. Facts of the case of Kanji Manji Vs. The Trustees of The Port of Bombay, were that on 28-2-1967, Mureshwar Narain Dhobri and Dinshaw Rustami Ogra assigned their rights in the lease to Roopji Jai Raj and Kanji Manji. The deed of assignment provided that the tenants took the premises as joint tenants. This deed of assignment was approved and accepted by the Trustees of the port of Bombay and therefore, Roopji Jai Raj and Kanji Manji became joint tenants. On 25-1-1956 the Trustees of the Board of Port of Bombay sent a notice to Roopji Jai Raj and Kanji Manji requiring them to vacate the premises and deliver vacant and peaceful possession of the land on 29-2-1956. The notice was not complied with and suit for ejectment was filed. It appears that Roopji Jai Raj was dead and as such the plaint was amended by striking out his name. Kanji Manji as a Defendant raised number of pleas. His main contention was that the notice dated 25-1-1956 was invalid, inasmuch as it had been served on one of the lessees and not on heirs and legal representatives of Roopji Jai Raj. He also contended that the suit was bad for non joinder of heirs and legal representatives of Roopji Jai Raj who were necessary parties. Both these pleas were repelled by the Supreme Court which held that, as Roopji Jai Raj and Kanji Manji were joint tenants a notice to one of the tenants was sufficient and the suit for the same reason was also good. In order to understand the real effect of this decision, we have to keep in mind the real import of the words "joint tenant". In Mulla's Transfer of Property Act 5th Edition at page 63d, following passage clearly brings out the meaning and import of the words "joint tenant" as distinguished from the words "tenants in common".

Joint tenants have unity of title. A lease by joint tenants operates as a lease by each and by all. On the death of any one of the joint tenants the lessee holds under the survivors. Tenants in common have unity of possession but not of title.

Similarly at p. 639 there is a passage which runs as follows:

Leases may be granted to any person who is competent to contract on the date of execution. A lease may be granted to several persons who may take as tenants in common or as joint tenants. In the case of joint tenants the interest of

each person passes upon death to the survivor. In the case of tenants in common the interest of a deceased lessee passes at his death to his representatives.

11. It will thus be seen that the words "joint tenant" can be used both in respect of lessees and lessors who have unity of title and in case of the death of one of such title holders his title passes to the survivors. In a case where on the death of one of the lessees or one of the lessors the title passes to the heirs of the deceased, it cannot be said that there is a unity of title amongst the various title holders. In such an event, they would not be "joint tenants", but they will be "tenants in common". In the Supreme Court case, terms of the deed of assignment made it clear that position of Roopji Jairaj and Kanji Manji was that of "joint tenants". The result was that on the death of Roopji Jairaj his interest did not pass to his heirs and legal representatives but passed to Kanji Manji. As the interest of Roopji Jairaj passed to Kanji Manji, the notice given to Kanji Manji and the suit filed against him for ejection were perfectly valid. It was under these circumstances that it was observed by the Supreme Court that once it was held that tenancy was joint notice to one of the joint tenants was sufficient and the suit for the same reason is also good. It is obvious, that the principle on which, notice given to one of the joint tenants may be considered to be notice to the entire body of joint tenants, cannot apply to a case of co-tenants. Co-tenants have no unity of title. Each one of the co-tenants is the owner of specific interest in the property and therefore, notice given to one of them cannot have the effect of determining the interest of other interest holder.

12. In the present case the interest of Habib Khan in the lessee rights devolved upon Anis Khan and Defendants 2 to 6 in specific shares. After the death of any of these shareholders his or her interest is not to go to the survivors but it would devolve upon his or her heir. Although there is a unity of possession but there is no unity of title amongst various tenants. In the circumstances, after the death of Habib Khan, various Defendants acquired the tenancy rights as "tenants in common". The Courts below, therefore, were not right, in proceeding on the footing that the position of the Defendants was that of joint tenants and in applying the decision of the Supreme Court in the case of Kanji Manji Vs. The Trustees of The Port of Bombay, to the facts of the present case.

13. What would be the consequence of not serving some of the tenants in common with the notice u/s 106 of the Transfer of Property Act was considered in the case of Jogendra Krishna Banerji and Others Vs. Administrator-General and Others, . After discussing that a month to month tenancy was heritable the Court at p. 91 column 2 observed as follows:

The notice served on the Defendants not having been admittedly served on the heirs of some of the tenants who are dead, it cannot be taken to be valid and sufficient in law to determine the tenancy. The suit therefore must fail on this ground.

14. In this view of the matter the findings recorded by the courts below that the

determination of the tenancy of one of the tenants would have the effect of determining the tenancy of the entire body of tenants does not appear to be correct. The tenancy of Defendants Nos. 2 to 6 having not been terminated no suit for their ejectment lies.

15. According to Section 3 of the Control of Rent and Eviction Act 1947 no suit, without the permission of the District Magistrate, can be filed in any civil court against a tenant for his eviction from any accommodation. It is clear from this provision that before a suit for ejecting a tenant can be filed permission of the District Magistrate has to be obtained for this purpose. Defendants 2 to 6 were the tenants in their own rights and not through Anis Khan. Before any suit for their ejectment can be filed, it has to be shown that District Magistrate has granted permission to file a suit for their ejectment. In the present case permission has been obtained for filing the suit for ejectment of Anis Khan. It cannot be said that while granting permission to file a suit for ejectment of Anis Khan the District Magistrate permitted the filing of a suit for ejectment against Defendants Nos. 2 to 6 as well. As such also no decree for the ejectment of Defendants Nos. 2 to 6 can be passed.

16. Learned Counsel for the Plaintiff-Respondent relied on the case of Moti Lal Vs. Basant Lal and Another, . In this case it was held that where permission to sue has been obtained u/s 3 it will automatically enure not only to the benefit of the person who obtained it but also to the benefit of others who were interested in filing the suit. Where it is manifest that both the Plaintiffs (landlords) were brothers and both of them had served a notice on the tenant to vacate the premises in suit and thereafter both of them brought the suit to eject the Defendant, in these circumstances the Plaintiff who obtained the permission will be deemed to have acted as agent on behalf of other Plaintiffs. It may be noticed that this was a case in which a question arose whether permission granted in favour of one of the landlords enures for the benefit of other landlords. Decision in this case also implies that as a rule there should be a permission in favour of all the landlords before they can file a suit for ejectment against a tenant. In the circumstances of the case however it was held that the permission obtained by one landlord was on behalf of the other landlord and as such both the landlords had been authorised to file the suit for ejectment.

17. The other case relied upon by the Respondents was Janardan Swarup v. Lala Debi Prasad 1958 AWR 675. In this case an application was made on behalf of the landlords in which it was stated that L. Debi Prasad etc. had been occupying the accommodation in dispute as tenants. Lala Janardan Swarup requested the District Magistrate to grant him the permission to file a civil suit against the occupiers for their eviction. The District Magistrate granted the permission which was conveyed by the Rent Control and Eviction Officer of Muzaffarnagar to Lala Janardan Swarup. The communication was in the following words:

Please refer to your application dated 1-9-1950 addressed to the District Magistrate. I have the honour to communicate the order of the District

Magistrate given below:

I have perused the report of the DSO and Cinema Officer. The tenant had made unauthorised alterations in the cinema hall. The consent of the owner has not been established. Due to the impending Zamindari Abolition Legislation the personal need of the owner is genuine. Permission will be awarded to the owner to file a civil suit for the ejectment of the tenant.

Hence under the orders of the District Magistrate you are hereby accorded permission to file a suit against your tenant Sri Debi Prasad u/s 7 of the Rent Control and Eviction Act.

18. It may be seen that in this case the permission was specifically sought by the landlord to file a suit for the ejectment of the occupiers. Communication of the Rent Control Officer read with the application made by the landlord shows that the District Magistrate authorised the ejectment of all the occupiers of the premises. No doubt the Rent Control and Eviction Officer observed that under the orders of the District Magistrate landlord was being accorded permission to file a civil suit against the tenant Debi Prasad u/s 7 of the Rent Control and Eviction Act. This court considering the entire circumstances of the case observed as follows:

We are further of opinion that where an order of the nature covered by the present suit has been brought by one of the Plaintiffs who will be deemed to have acted as agent on behalf of the other Plaintiffs for the ejectment-of "the tenant" and the order specifies only one such person as tenant the order will be deemed to cover the entire body of tenants and not simply one out of them whose name was specified, not by the District Magistrate but by the Rent Control Officer. We have quoted the order of the Distt. Magistrate and in that order the Distt. Magistrate granted permission to "the owner" to file a civil suit for ejectment of the "tenant". Such a permission was, therefore, valid and it automatically ensured to the benefit of the entire body of owners or landlords against the entire body of the class designated as "the tenant".

A reading of this decision shows that the court was conscious of the fact that before a suit for ejectment of a tenant can be filed there should be a permission for his ejectment. Under the particular circumstances of that case where permission was sought against the entire body of tenants, the Distt. Magistrate granted permission for ejectment of the entire body of tenants, but by mistake, in the order communicated to the landlord the name of only one of the tenants was mentioned, it was held that the permission to file a suit for ejectment of one of the tenants, ensured as a permission to file a suit against the entire body of tenants.

19. There are no special circumstances in our case, because of which, it can be construed that permission granted against Anis Khan was intended to be permission against entire body of tenants. In the first place the Plaintiffs sought permission treating Anis Khan alone as the tenant. They never wanted to obtain

permission for the ejectment of the Defendants 2 to 6. They were under the impression that Anis Khan was the only tenant and if a decree for his ejectment was obtained the persons living with him would automatically be thrown out. This is fortified by the fact, that to start with, the Plaintiff filed a suit only against Anis Khan. It was only after objection was raised that Defendants Nos. 2 to 6 were impleaded as Defendants. When the Plaintiff wanted to seek permission for ejectment of Anis Khan alone, it will be difficult to accept that the District Magistrate granted permission for the ejectment of other tenants also. Under the circumstances it is not possible to construe the order of the District Magistrate as an order granting permission for the ejectment of Defendants Nos. 2 to 6.

20. Learned Counsel for the Appellant contended that even if it was possible to construe the permission granted against Anis Khan to be operative against Defendants Nos. 2 to 6 also, the permission was defective inasmuch as the same had been obtained in violation of principles of natural justice. Admittedly, no notice of the application for permission was given to Defendants Nos. 2 to 6. They were not heard before their rights were sought to be affected. The learned Counsel for the Appellant sought to meet this challenge on the ground that the permission granted cannot be questioned in the civil court u/s 16 of the Rent Control Act. At any rate the permission was obtained against Anis Khan and he was given full opportunity of being heard.

21. In the case of Ram Swarup and Ors. v. Shekhar Chand and others 1966 AWR 77 SC it was held by the Supreme Court that the bar created by the relevant provisions of the Rent Control Act excluding the jurisdiction of the Civil Court cannot operate in cases where the plea raised before the Civil Court goes to the root of the matter and would, if upheld lead to the conclusion that the impugned order is a nullity. Their Lordships enumerated certain circumstances in which the order of the Rent Control and Eviction Officer could be declared to be a nullity. One of the illustrations given by their Lordships was in the following words:

If Section 3 had provided that before District Magistrate grants permission to the landlord to sue his tenant, he shall issue notice to the tenant and give him an opportunity to represent his case before the application of the landlord is dealt with on the merits and in the face such a statutory provision the District Magistrate grants permission *ex parte* without issuing notice to the tenant, in such a case, the failure of the District Magistrate to comply with the mandatory provision prescribed in that behalf, would render the order passed by him completely invalid and a plea that an order has been passed by the District Magistrate without complying with the mandatory provision of the Act would be open for examination before a civil court. Likewise, in the absence of such a statutory provision, if it is held that the proceedings before the appropriate authorities contemplated u/s 3 are in the nature of quasi judicial proceedings and they must be tried in accordance with the principles of natural justice and if it is shown that in a given case, an order has been passed without notice to the party affected by such order, it would be open to the said party to contend that an

order passed in violation of the principles of natural justice is a nullity and its existence should be ignored by the civil Court. Such a plea cannot in our opinion, be excluded by reason of the provisions contained in Section 3(4) and Section 16 of the Act.

22. Now it is settled law that proceedings u/s 3 of the Rent Control Act, for granting permission to file a suit for ejectment against a tenant, are quasijudicial proceedings. See the case of Lala Sri Bhagwan v. Ram Chandra 1965 AWR 304 SC. In view of this decision it is clear that a party, affected by an order granting permission to file suit for ejectment, can claim before a civil court that the order is a nullity inasmuch as the same had been passed without affording him an opportunity to show cause. If it is assumed, that in law permission to file suit for ejectment against one tenant operates as permission against entire body of tenants and therefore, permission granted against Defendant No. 1 was operative against Defendant No. 2 to 6 as well, it would not be doubted that Defendants 2 to 6 were the parties who were affected by its grant. An order made against them without giving them an opportunity to be heard would be in violation of principles of natural justice and invalid. In my opinion, it will not be correct to argue that even though no effective opportunity was given to the other tenants, by a fiction of law it can be resumed that such an opportunity was given and the principles of natural justice were complied with. I am, therefore, of opinion that the permission given by the District Magistrate to file a suit for ejectment against Anis Khan was not and cannot be operative against Defendants 2 to 6.

23. In view of the aforesaid discussion, I feel that as no notice u/s 106 was given to Defendants 2 to 6, their tenancy did not determine. In the circumstances of the case, permission granted by the District Magistrate, to file a suit for ejectment of Anis Khan, does not operate as a permission to file a suit for the ejectment of Defendants Nos. 2 to 6. Even if it was possible to construe that permission could be operative as against Defendants Nos. 2 to 6, it would be open to these Defendants to challenge it on the ground that the same has been given without following the principles of natural justice. Since in this case it is admitted that no notice was issued to Defendants 2 to 6 before granting the permission, it is clear that it was granted without following the principles of natural justice and as such it was invalid in law. In view of aforementioned discussion this second appeal has got to be allowed and the decree for ejectment of the Appellants set aside.

24. I, therefore, allow the appeal, set aside the decree for ejectment passed by the courts below. Rest of the decree passed by the learned Munsif for recovery of Rs. 144/- will however stand. The Appellants are entitled to their costs of this appeal.