

**(1974) 01 AHC CK 0002**  
**In the Allahabad High Court**  
**Case No : Second Civil Appeal No. 231 of 1971**

Syed Mohd. Ibne Ali

APPELLANT

Vs

Smt. Zanak Begum and Others

RESPONDENT

**Date of Decision :** 01-01-1974

**Acts Referred:**

Uttar Pradesh (Temporary) Control of Rent and Eviction Act, 1947 — Section 3

**Citation :** AIR 1974 All 195

**Hon'ble Judges :** S.K. Kaul, J

**Bench :** Single Bench

**Advocate :** S. Rahman, for the Appellant; Akhilesh Sahai, for the Respondent

**Final Decision :** Dismissed

## Judgement

S.K. Kaul, J.—This is a defendant's appeal and it arises out of a suit brought by the plaintiff-respondents for ejectment as well as for recovery of rent and damages. The allegations of the plaintiff-respondents were that defendant-appellant was tenant of the house in suit paying a monthly rent of Rs. 25/-. Permission u/s 3 of the U. P. (Temporary) Control of Rent and Eviction Act had been obtained on 10th September. 1962 by the original landlord who was plaintiff in the suit. The landlord needed the house for his personal residence and on that account he had obtained permission. The defendant was given a notice of ejectment on 1st of October, 1962, but he did not vacate. Thereafter again a notice on 5th February. 1964 for ejectment was given which was served upon the defendant on 6th February, 1964. The defendant, however, did not vacate the premises. On these allegations the suit for ejectment as well as for arrears of rent to the tune of Rs. 72.50 n.p. together with damages for use and occupation at Rs. 400/- was filed. The plaintiff died during the pendency of the suit. His heirs were duly brought on record who are now respondents in this case The suit was contested on the grounds which gave rise to the following issues:--

1. Whether the permission granted u/s 3 of U. P. Act III of 1947 is invalid as alleged in W. S.?

2. Whether the notice dated 5-2-1964 is invalid ?
3. Whether the above mentioned notice stands waived?
4. Whether the defendants paid Rs. 38/- towards taxes ? If so, is he entitled to get it adjusted ?
5. Whether the plaintiff refused to accept the rent? If so, its effect?
6. To what relief, if any, is the plain-tiff entitled ?

The findings of the learned Munsif were that permission granted u/s 3 of U. P. Act III of 1947 was valid. He, however, held that notice dated 5th February, 1964 stood waived and as such tenancy of the defendant could not be said to have been terminated. On issue No. 4 the finding was that defendant had deposited only Rs. 38/- as Nagar Mahapalika Tax and adjusting this amount the plaintiff was held to be entitled to recover Rs. 434.50 p. as arrears of rent. The suit for ejectment was dismissed. An appeal was preferred by the plaintiff-respondents. The learned Civil and Sessions Judge allowed the appeal and decreed the suit for ejectment as well. Feeling aggrieved the defendant has come up in appeal to this Court.

2. Three points were urged before me. The first point was that actually notice for ejectment relied upon in the plaint was of 1962 and, therefore, the Civil Judge was not right in holding that notice of 1964 was a valid notice of ejectment. The other contention was that notice for ejectment of 1964 also was invalid as nowhere intention to terminate the tenancy appeared. The third point was that permission u/s 3 of the U. P. (Temporary) Control of Rent and Eviction Act did not hold good inasmuch as once the original landlord died and the need was personal his heirs could not take advantage of the same.

3. I have heard learned counsel for the appellant Sri S. Rahman and the learned counsel for the respondents Sri Akhilesh Sahai. So far as the first point is concerned I find that no doubt in paragraph 4 of the plaint it was mentioned that tenancy was terminated by means of giving a notice. It was mentioned that tenancy was terminated by giving a notice of 1st of October, 1962 and that in para. 8 of the plaint it was mentioned that cause of action arose on 10th of January, 1963, but I find that it was also mentioned in paragraph 5 of the plaint that the plaintiff again served a notice of termination on 5th Feb., 1964 which was served on 6th February. 1964 on the defendant and in spite of that notice of termination which gave 30 days clear notice the defendant had not vacated the house. What is more I find that on the date of issues, namely, 8th February. 1966 not only a clear statement was given by the learned counsel appearing for the plaintiff that he was basing the suit on the notice dated 5th February, 1964, but issue No. 2 was also framed to that effect. No objection was taken by the defendant to the framing of Issue No. 2 nor did he press that this issue should be struck off. It is, Therefore too late a stage to argue that suit was based on the notice of 1962. It may be that in paragraph 8 of the plaint cause of action was

said to have arisen with effect from 10th January, 1963 but then giving a wrong date would not take away the cause of action. The cause of action arose on the basis of bundle of facts and once we find that notice of 1964 was specifically pleaded in paragraph 5. it cannot be argued that the plaintiff was not treating this notice of 1964 as valid notice of ejectment. This point, therefore, in my view has no substance.

4. Coming to the second point we find that Exhibit 5 is the notice dated 5th February, 1964. In this notice it is clearly mentioned that "Mera Muvakkil aapko kirayadar naheen rakhna chahta hai Kiunke usko apne rahayas ke hetu makan ki avashyakta hai. Lihaza notice miadi 30 yom aapko di jati hai ki tareekh tamil hone notice se andaj 30 yom tak app makan ka takhlia kar den aur makan par kabza mere Muvakkil ko de den. Majid bari 14-8-1962 se aapne mere muvakkil ko ek habba bhi naheen ada kiya chunacha kul rakam bakaya kiraya ta takhlia makan mere Muvakkil ko ada kar dijiyae varna bad gujarne miyad notice aapke khilaf babat takhlia makan va "jar bakaya kiraya dava adalat majaz men dakhili karega aur aap mere Muvakkil Ke jumla harza va Kharcha ke jimmedar hoonge." In my view this phrase clearly shows intention to terminate the tenancy. In *Mangilal Vs. Suganchand Rathi*, their Lordships of the Supreme Court were also concerned with interpretation of a notice of termination. There as well a similar ground was taken, namely, that the notice did not purport to determine the tenancy. Their Lordships observed at page 104 "it has to be observed that the plaintiffs after requiring the defendant to pay the rental arrears due UP to the end of March, 1959 within one month from the date of service of the notice, proceed-ed to say failing which suit for ejectment will be filed (I have underlined these portions as these were stressed by their Lordships of the Supreme Court). These recitals clearly indicate the intention of the landlord to terminate the tenancy of the defendant." The notice Exhibit 5 in question, in my view, clearly terminates the tenancy of the defendant and it cannot be said to be invalid. This point also, therefore, has no substance.

5. Coming to the last point I find that this ground was not taken in the grounds of appeal. However. Sri S. Rahman urged that since it was a legal ground, he may be allowed to argue. He relied upon the case of *Phul Rani and Others Vs. Sh. Naubat Rai Ahluwalia*, . In my view this ruling does not apply to the facts of the case. In that case the plaintiff had moved an application under the Delhi Rent Control Act seeking permission against the tenant for ejectment of certain premises on the ground of personal requirement. The plaintiff died during the pendency of the application. The question involved was whether cause of action would survive to the legal representatives or whether the application abated. Their Lordships observed at page 2114, that "we have referred to some of the decisions in the three categories, not with a view to determining their correctness but only in order to show that they rest on different principles or could be explained in reference to such principles. We are concerned with a matter not involving the application of any of those principles. For reasons already stated, we are of the view that considering the nature of the claim made

in the Instant case"and the bundle of facts which constitute the plaintiff"s cause of action, his right to sue will not survive to his legal representatives." In the case before me permission to sue had already been obtained by the deceased plaintiff and after obtaining such permission he had filed a suit for ejectment. He died during the pendency of the suit. Here the two proceedings are entirely different, namely, there was one stage when permission proceedings were pending before the Rent Control and Eviction Officer. That stage had passed and permission had been granted to the landlord. Without obtaining that permission suit at that time could not have been filed for ejectment. Having obtained that permission the suit was filed and in this second stage, namely, when suit for ejectment was pending the plaintiff died. Obviously in such a case right to sue survived to the heirs of the landlord.

6. As a result of the discussion I am of the view that this point has also no substance.

7. No other point has been argued before me.

8. In the result this appeal fails and it is hereby dismissed with costs.

9. The stay order dated 9-10-1972 is vacated.