

(1996) 02 AHC CK 0125

Allahabad High Court

Case No: Second Appeal No. 2013 of 1988

Atma Prakash

APPELLANT

Vs

Raghubir Prasad Goel

RESPONDENT

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**Date of Decision:** Feb. 22, 1996**Acts Referred:**

- Specific Relief Act, 1963 - Section 38(2)(3)(d)
- Uttar Pradesh Nagar Mahapalika Act, 1959 - Section 293, 296
- Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 - Section 12, 13

**Hon'ble Judges:** G.S.N. Tripathi, J**Bench:** Single Bench**Advocate:** Subodh Kumar, for the Appellant; G.P. Misra, S.K. Tyagi, Ravi Kant, Anurag Pathak and U.K. Mishra, for the Respondent**Final Decision:** Disposed Of

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**Judgement**

G.S.N. Tripathi, J.

This is an appeal by the Plaintiff against the concurrent judgment of the courts below holding that the Plaintiff was a licensee, whose licence has been revoked by filing a suit. It has been further held that since the licence has been revoked, the Plaintiff can be evicted without adopting due process of law as he is a mere trespasser.

2. The Plaintiff, Atma Prakash filed D.S. No. 90 of 1986 Atma Prakash v. Raahubir Prasad Goel in the Court of Munsif, Roorkee, Distt. Hardwar for a permanent injunction to restrain the Defendant from evicting him except in accordance with law and not in an unauthorised manner. The Plaintiff alleged that he was a tenant from the days of Rishipal. Rishipal had transferred the property to the Defendant on 16.10.85 and now the Defendant wants to evict him unauthorisedly and unlawfully. Therefore, he prayed that he should be evicted, if at all, only through the adoption

of due process of law.

3. The defence mainly was that the Plaintiff was not a tenant. He was simply a licensee/care taker on behalf of Rishipal, from whom the Defendant has purchased the property. The Plaintiff had also agreed to hand over the peaceful possession of the property to the Defendant at the time of sale deed as and when required by the Defendant. The character of the Plaintiff was that of the licensee, whose licence has been revoked and his occupation is that of a trespasser. He is liable to be evicted even otherwise.

3. The learned Munsif framed the following issues:

1. Whether the Plaintiff was a tenant of the Defendant on a monthly basis?

2 Whether the Plaintiff was a care taker as alleged?

3. Whether the relationship between the parties was that of a landlord and tenant? and if so, effect?

4 Whether the suit is barred by Sections 12 and 13 of the U.P. Act No. 13 of 1972?

5. Relief?

The learned Munsif found issue No. 2 in affirmative. Other issues were found in negative. It was held that the Plaintiff was merely a licensee and his licence has been revoked and he was liable to be evicted at any time as a trespasser.

4. Aggrieved by the judgment of the learned Munsif, the Plaintiff filed a Civil Appeal No. 15 of 1987, which was heard and decided by the learned Civil Judge, Roorkee on 23.9.88. whereby his appeal has been dismissed and the judgment and decree passed by the learned lower court has been affirmed.

5. Feeling aggrieved, the Plaintiff has preferred this Second Appeal.

6. The appeal was admitted on question Nos. 1, 2, 6 and 7 as framed in the memo of appeal, which are as follows:

1. Whether after the revocation of the licence of a person, he can be evicted without adopting the proper form and by force?

2 Whether an unauthorised occupant can be evicted by force without proper decree or order from the courts of law?

3. Whether in view of the facts and circumstances of the case, the impugned judgment and decree are liable to be quashed by this Court?

4. Whether the provisions of Section 38(2)(3)(d) of the Specific Relief Act can protect the suit of the Appellant for permanent injunction?

5. After hearing the learned counsel for the parties and also after perusing the affidavit dated 25.4.80, specially paragraph 5, filed by Sri Raghbir Prasad Goel,

Defendant-Respondent that "answering Respondent undertakes that he will not evict the Appellant otherwise than in accordance with law", the appeal is being disposed of with the following observations.

7. My attention has been invited to an observation of this Court in the case of [Parashram Vs. Nagar Mahapalika](#) . The following observations have been relied upon:

It is true that under Sections 293 and 296 of the Nagar Mahapalika Adhiniyam, the licensee is liable to be evicted without notice by Mukhya Nagar Adhikari of the Nagar Mahapalika. That, however, does not authorise the Nagar Mahapalika Adhikari to evict the licensee by force. Even if he is to be evicted, he can be evicted only in accordance with law and not by force. In our country, law is supreme. No person can take law in his own hand. The licensee can be evicted either by way of filing a suit or under the provision of U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 or any other law. Section 296 permits the Mukhya Nagar Adhikari to evict the licensee without notice. But there is no procedure prescribed. Obviously, he can be dispossessed only by due process of law.

8. In view of the admitted legal position, it is clear that the Plaintiff, who has been adjudged to be a trespasser at page 5 of the judgment of the first appellate Court, he cannot be evicted except through due process of law. Meaning thereby, that he cannot be evicted forcefully and in an unauthorised manner. Of Course, the Defendant will be at liberty to file a suit for his eviction in accordance with law.

9. Till the decree for eviction is passed in favour of the Defendant, the Plaintiffs possession would not be disturbed.

10. With these observations, the second appeal is disposed of finally. The judgment and decree passed by the courts below are upheld with the reservation as noted above. Cost easy.