

(1986) 02 GAU CK 0009

Gauhati High Court

Case No: Civil Revision No. 3 of 1986

Shri Dhirendra
Krishna Paul

APPELLANT

Vs

Shri Santi Ranjan Dey
and Another

RESPONDENT

Date of Decision: Feb. 7, 1986

Acts Referred:

- Assam Urban Areas Rent Control Act, 1972 - Section 2, 3, 4, 4(1), 8
- Civil Procedure Code, 1908 (CPC) - Section 10, 2(2), 26

Citation: (1986) 2 GLR 79

Hon'ble Judges: Manisana, J

Bench: Single Bench

Advocate: D.C. Mahanta, for the Appellant; B.K. Goswami and P. Kalita, for the Respondent

Final Decision: Dismissed

Judgement

Manisana, J.

The revision petition arises from the order dated 27.9.85 pasted by the learned Munsiff (I), Jorhat in T.S. No. 17 of 1985 refusing to stay further proceeding in the suit during the pendency of Misc. Appeal No. 21 of 1915 in the Court or the Assistant District Judge, Jorhat.

2. The Petitioner instituted Misc. Case No. 10 of 1984 in the Court of the learned Munsiff (J), Jorhat against the Respondents for determination of fair rent u/s 4 of the Assam Urban Areas Rent Control Act, 1972, for short the "Act". The learned Munsiff dismissed the petition under/or by an order dated 28.5.1985. Being aggrieved by the order of learned Munsiff. the Petitioner filed Misc. Appeal No. 21 of 1985 which is now pending in the Court of the learned Assistant District Judge, Jorhat. The Respondents restituted T.S. No. 17 of 1985 in (be Court of the learned Munsiff (I) claiming, Inter alia, for eviction of the Petitioner from the said house on the footing

that the Petitioner had not paid the rent lawfully due in respect of the house and; or the house is bonafide required by the Respondents. Thereafter, the Petitioner filed an application u/s 10, CPC in the Court of the learned Munsiff to stay the hearing of the subsequently instituted T.S. No. 17 of 1985 till the disposal of the said Misc. Appeal No. 21 of 1985. The learned Munsiff by an order dated 27.9.85 rejected the petition hence this revision petition in this Court.

3. Mr. D.C. Mahanta, learned Counsel for the Petitioner submits that the said house is involved in both the suits," and as such, u/s 10, Code of Civil Procedure, the T.S. No. 17 of 1985 is to be stayed. Mr. B.K. Goswami, learned Counsel for the Respondent submits that the proceeding for determination of fair rent u/s 4 of the Act is not a "suit". Therefore, Section 10, CPC is attracted.

4. The first question for consideration is whether the proceeding u/s 4 of the Act for determination of fair rent is a "suit". "Suit" has not, been defined. In *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 the Privy Council observed that the word "suit" ordinarily means, and apart from some context must be taken to mean, a civil proceeding instituted by the presentation of a plaint. Section 26, CPC also provides that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. A plaint means statement of claims presented or tendered to the Court complying with the rules contained in Orders 6 and 7, Code of Civil Procedure. Orders 6 and 7, CPC lay down the particulars to be contained in a plaint or requirements of a plaint. u/s 2(2), Code of Civil Procedure, a "decree" is to be passed in a regular "suit". u/s 4 of the Act if any dispute arises regarding the rent payable in respect of any house, it shall be determined by the "Court". Section 2(a) of the Act refers to the "Court" already constituted. Therefore, "Court" means the Court of ordinary Civil jurisdiction constituted under the relevant laws. Therefore, the Court which is to decide or pass order u/s 4 of the Act is the said constituted Court of the Civil jurisdiction having territorial and pecuniary jurisdiction. Similarly, the Court which is to pass a decree for eviction is the said Court. Procedure for determination of fair rent is provided u/s 4 of the Act. u/s 4(1) of the Act, a proceeding is to be started on an application made either by the landlord or the tenant. The application cannot be said to be a plaint because all the requirements of the plaint as stated above are not contained. The course of action of the Court for passing an order u/s 4 of the Act is provided under the Act itself. The course of action of the Court in the proceeding u/s 4 of the Act is not the same as that of a suit. Therefore, the proceeding is not a suit". This view of mine is further more strengthened by the provision u/s 8 of the Act. Section 3 of the Act provides that a landlord or a tenant aggrieved by any decision or order of the Court under the provision of Section 4 of the Act shall have a right to appeal against the same as if such decision or order were a decree in a "suit" for ejectment of the tenant from the house. u/s 8 of the Act, therefore, an order or a decision u/s 4 of the Act will be deemed to be a decree for the purpose of appeal u/s 8 of the Act, although such an order or a decision itself is not a decree as understood u/s 2(2), Code of Civil

Procedure. In this view of the matter, merely because a proceeding is instituted in the Court of the ordinary civil jurisdiction to decide the proceeding u/s 4 of the Act is not a "suit", and as such, the Misc. case No. 10 of 1985 out of which Misc. Appeal No. 21 of 1985 arose is not a "suit".

5. Section 10, CPC runs:

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the sumo or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limit of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

(emphasis added)

6. Section 10, CPC provides for stay of a subsequently instituted suit if the "matter in issue" is directly and substantially in issue in a previously instituted "suit" between the same parties. On a plain reading of Section 10, CPC it manifests that Section 10, CPC is attracted only when the previously instituted proceeding and the subsequently instituted proceeding are suit. In other words, if one is a suit and other is not, Section 10, CPC is not attracted. As already stated above, the proceeding in Misc. case No. 10 of 1985 out of which Civil Appeal No. 21 of 1985 arises is not a suit. Therefore, Section 10, CPC is not attracted in the present case.

7. Even assuming that the previously instituted proceeding u/s 4 of the Act for determinates of fair rent is a suit, Section 10, CPC will not be attracted. The expression "matter in issue" occurring in Section 10, CPC refers to the entire subject matter in controversy between the parties and a mere identity of some of the issues in both the suits is not enough to attract the operation of Section 10, Code of Civil Procedure. There must be a complete identity of the entire matter in both the suits such that the decision in one suits shall affect the decision of the other suit.

8. The point for determination in Misc. Appeal No. 21 of 1985 is what is the fair rent under the relevant provisions of the Act. In T.S. No. 17 of 1985, the point for determination is whether the Petitioners had defaulted the payment of rent and/or the house is bonafide required by the Respondents. In M.M. Chawla v. J.S. Sethi 1969 Hen CR 861 : 1971 Lab IC (N) 11, the Supreme Court has clearly laid down that the prohibition to charge rent of a house at a figure higher than, or in excess of, the standard rent does not apply unless and until the fair rent or the standard rent has been fixed by an order of the competent authority and it becomes effective only from the date it operates and not earlier. Therefore, the onuses of action in the first and the second proceedings are different, and the issue of fair rent will not at all arise in T.S. No. 17 of 1985 and as such, the "matter in issue" in T.S. No. 17 of 1985 is not directly or substantially in issue in the previously instituted proceeding i.e. Misc.

Case No. 10 of 1984.

9. For the foregoing reasons, the petition is dismissed. No-costs.