

(1955) 11 BOM CK 0049

Bombay High Court

Case No: Civil Revision Application No. 1584 of 1953

Mamlatdar of Baroda as
Custodian of the Properties of
the Evacuee Abdul Satan

APPELLANT

Vs

Kamla Motilal Ranchhod

RESPONDENT

Date of Decision: Nov. 3, 1955

Acts Referred:

- Administration of Evacuee Property Act, 1950 - Section 18, 19, 7, 8

Citation: AIR 1956 Bom 498

Hon'ble Judges: Gokhale, J; Chainani, J

Bench: Division Bench

Advocate: V.S. Desai, Asst. Govt. Pleader, for the Appellant; N.V. Karlekar, for the Respondent

Judgement

Chainani, J.

The facts of the suit from which this revision application arises are briefly these: The suit premises had been leased by the plaintiff to defendant 1, Abdid Satar, at a rent of Rs. 41/- per month. The rent was paid upto October 1948. Thereafter, it appears to have fallen into arrears. Defendant 1 migrated to Pakistan some time about the beginning of 1949.

As therefore the plaintiff could not serve a notice on him personally, a notice terminating his tenancy was affixed at the suit premises on 29-9-1949. Thereafter the plaintiff filed the present suit for recovering the arrears of rent and for obtaining possession of the property. On 7-2-1950, defendant 1 was declared to be an evacuee.

The Deputy Custodian of Evacuee Property then took possession of the suit premises. He was joined as defendant 2 in the suit. He contended that the notice terminating the tenancy had not been properly served. He also contended that the

notice had been waived, as the plaintiff had, during the pendency of the suit, received rent from

The trial Court held that the notice given by the plaintiff was not valid and that it had been waived. Accordingly the trial Court dismissed the plaintiff's claim for possession of the suit premises. It, however, passed a decree in favour of the plaintiff for arrears of rent. The plaintiff appealed to the District Court.

The learned District Judge held that the notice given by the plaintiff had been properly served and (hat this notice had not been waived. Accordingly he allowed the appeal and passed a decree for possession in favour of the plaintiff. Against that decree the present revision application has been filed.

2. Mr. Desai, who appears on behalf of the Deputy Custodian, has contended that the order passed by the learned District Judge is wrong as u/s 180 Administration of Evacuee Property Act (31 of 1950) no decree for eviction could have been passed in this case. By Section 8, Administration of Evacuee Property (Amendment) Act 1953, a new Section 18 was substituted for the old Section 18. Section 8 provided:

"For Section 18 of the principal Act the following section shall be substituted and shall be deemed always to have been substituted, namely: -- Section 18". It is, therefore, clear that the new section 18 had been given retrospective effect and must be deemed to have been in force from the date on which the Administration of Evacuee Property Act" came into force. The relevant part of the section provides:

"Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as, an occupancy tenant or as a tenant for certain time, monthly or otherwise of any land, or house or other building shall be liable to be ejected or be deemed to have been so liable on any ground what so ever for any default of (a) the evacuee committed after, he became an evacuee or within a period of one year immediately preceding the date Of his becoming an evacuee; or (b) the Custodian".

It is not known when exactly Abdul Satar, defendant 1, migrated to Pakistan. The Administration of Evacuee Property Act, 1950, does not require the declaration of any person to be an evacuee. Such a declaration is required u/s 19 only in the case of intending evacuees.

Section 7 provides that where the Custodian is of opinion that any property is evacuee property he may, after causing notice thereof to be given as may be prescribed to the person interested, and after holding an inquiry into the matter, pass an order declaring any such property to be evacuee property.

No such declaration is, however, required for declaring any person to be evacuee. The definition of the word "evacuee" slows that a person became an evacuee when

he left for Pakistan, on or after 1-3-1947 on account of the setting up of the Dominion of India and Pakistan or on account of civil disturbances following partition or on account of the fear of such disturbances.

Defendant 1, Abdul Satar, therefore became an evacuee when he migrated to Pakistan some time in the beginning of 1949. The default in the payment of rent was committed after 1-11-1948. It was therefore committed within the period of one year immediately preceding the date on which Abdul Satar, defendant 1, became an evacuee. u/s 18 no decree for eviction could be passed on account of such default.

3. The order passed by the District Judge allowing the plaintiffs claim for possession of the suit premises must consequently be set aside. The decree passed by the District Judge is, therefore, set aside and that passed by the trial Court is restored. As the application succeeds on a point which was not urged before the District Judge, we direct that the parties should bear their own costs throughout.

4. Revision allowed.