APPELLATE CIVIL

Before Inder Dev Dua and Daya Krishan Mahajan, JJ.

KAURAN DEVI,—*Appellant.*

Versus

LAKHMI CHAND,—*Respondent.*

R.F.A. 209-D of 1962.

1964

May, 12th.

Delhi Rent Control Act (LIX of 1958)—S. 50—Slum Areas (Clearance and Improvement) Act (LXXXXVI of 1956)—S. 19—Suit for eviction of a tenant against whom a decree for ejectment under the Rent Control Act has already been passed—Whether entertainable in a civil Court.

Dua, J.

Held, that the definition of the word 'tenant' in section 2(l) of the Delhi Rent Control Act, 1958, excludes a tenant against whom any order or decree for eviction has been passed. An order or decree of eviction obtained from a proper and competent authority within the contemplation of section 2(l) of the Delhi Rent Control Act, retains its lawful character of such order or decree notwithstanding the requirement under the Slum Areas (Clearance and Improvement) Act, 1956, of previous written permission of the competent authority as a pre-requisite condition for executing the same. The bar to the jurisdiction of civil Courts contained in section 50 of the Delhi Rent Control Act is confined to eviction of tenants only and not of those persons who are excluded from the definition of the tenant. Consequently, a suit for eviction of a person against whom an order or decree for eviction has already been passed but which is inexecutable is entertainable by a civil Court.

Held, that section 19 of the Slum Areas (Clearance and Improvement) Act, 1956, does not prohibit either institution of suits for eviction or passing of decrees or orders for eviction. On the contrary, it seems to envisage the possibility of the existence of such decrees and orders and the only protection, it extends to the tenants is that they cannot be evicted except with the previous permission in writing of the competent authority appointed under the Act. The passing of a decree or order for eviction is thus not prohibited by this section.

Regular first appeal under section 39 of the Punjab Courts Act from the decree of Shri S. R. Goel, Sub-Judge, Ist Class, Delhi, dated the 7th September, 1962, dismissing the plaintiffs' suit with costs.

R. S. NARULA, AND MAN SINGH, ADVOCATES, for the Petitioner.

R. K. MUKHIJA, ADVOCATE, for the Respondent.

JUDGMENT.

The Judgment of the Court was delivered by:—

Dua, J.—This regular first appeal raises a very short point for decision. Bakshi Mehtab Singh, predecessor-in-interest of the present appellant, was the owner of the property in question and he had obtained a decree for eviction against Lakhmi Chand, respondent from a Rent Controller. This decree became final. Dua, J.

While seeking to execute this decree, the landlord had to obtain permission of the authorities concerned, under section 19 of the Slum Area (Clearance and Improvement) Act, 1956. This permission was not allowed and the landlord is stated to have failed in his attempt right up to the Supreme Court.

The present appellant, a transferee of the property in dispute by purchase from Bakshi Metab Singh, instituted the present suit in the Civil Court claiming possession of the property from Lakhmi Chand, alleging that he was a trespasser and had no right to remain in possession of the property. This suit was resisted on several grounds giving rise to the following four issues:—

(1) Whether the plaintiff is the owner of the premises in suit?

(2) Whether the defendant is in unauthorised occupation of the premises in dispute and is not a tenant in the same?

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(3) Whether the suit is barred under section 19 of the Slum Areas (Clearance and Improvement) Act, 1956.

(4) Whether the Civil Court has jurisdiction to try this suit

The Court below decided issue No. 1 in favour of the appellant and this issue is not being agitated before us. Issues Nos. 2 and 3 were discussed together and the Court below took the view that the definition of the word "tenant" in section 2(b) the Delhi Rent Control Act, 1958 would include a person against whom a decree or order for eviction has been made when such decree or order is not executable. According to that Court an inexecutable decree or order cannot be considered to be a valid decree or order and, therefore, a person against whom such an invalid decree or order has been made cannot be considered to be outside the definition of the word "tenant" contained in section 2(l) of the Delhi Rent Act. The defendant was accordingly considered to be a tenant of the plaintiff and by virtue of section 50 of the Delhi Rent Act, the jurisdiction of the Civil Court was held barred from trying the suit in question. The plaintiff's suit was consequently dismissed.

On appeal before us, the appellant's learned Counsel has submitted that the definition of the Act excludes a person against whom order or decree for eviction has been made. According to him the executebility of the order or decree is wholly foreign to the consideration of the question whether or not a person is a tenant in accordance with the statutory definition. Merely because a decree or order is not executable does not by itself invalidate the same. It is accordingly urged with vehemence that merely because section 19 of the

Slum Act lays down that a decree or order for the eviction of a tenant from a building in a slum area can only be executed with the previous written permission of the competent authority, such decree or order lawfully obtained, does not, for this reason alone, become invalid. In any event, according to the counsel, it does not lose its character of "a decree or order for eviction" within the contemplation of section 2(b) of the Rent Act. We have been referred by the counsel in this connection to a decision of the Supreme Court in Jyoti Pershad v. Union Territory of Delhi (1), but the ratio of this decision does not appear to me to be of any particular assistance in the decision of the controversy before us. In the reported case, the constitutionality of section 19 has been upheld and the restrictions imposed hereby considered to be reasonable and in the interest of general public. The observation by the Supreme Court that the provisions of the Slum Act in respect of the buildings in the slum areas operate in addition to the Rent Control Act is also of little assistance in settling the controversy before us. Rikhi Nath Kuari v. Rango Mahto (2), which lays down that upon the expiration of the terms of a lease the lessee becomes a trespasser unless the landlord chooses to treat him as a tenant for a fresh term is equally unavailing because we are, strictly speaking, concerned with the special provisions contained in the Rent Act and the Slum Act and it is not shown that the provisions of law with which the Patna Court was concerned are identical in terms or scope and effect with the statutes before us. Rahmat Ullah v. Mohammad Husain and others (3), may also be disposed of with the short comment that it deals with Transfer of Property Act and the general law governing the relationship of

(1) A.I.R. 1961 S.C. S.C. 1602.
(2) A.I.R. 1929 Pat. 18.
(3) A.I.R. 1940 All. 444.

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landlord and tenant, and not the statutory provisions similar to those which we have to construe.

The respondent's learned counsel has argued that the decree in question before us is dated 11th October, 1956 and the Slum Areas Act was enforced in Delhi in February, 1957. This Act does not define the term "tenant", but it supersedes the Rent Act and makes decrees for eviction inexecutable. The tenant, so proceeds the argument, must be protected by holding that the Civil Court cannot entertain and proceed with the trial of a suit for eviction when the Legislature intends to extend to him protection from eviction under the Slum Act. To hold otherwise would render the Slum Act redundant, and this, according to the submission, should be avoided by Courts.

I have devoted my serious thought and attention to the arguments addressed and am of the view that an order or decree of eviction obtained from a proper and competent authority within the contemplation of section 2(b) of the Rent Act retains its lawful character of such order or decree, notwithstanding the requirement under the Slum Act of previous written permission of the competent authority as a pre-requisite condition for executing the same. Had the Legislature intended to exclude from the expression "any order or decree for eviction" the orders or decree which can be executed only with the previous written permission of the competent authority under the Slum Act and to confine the said expression only to unconditionally executable orders or decrees, then one would have expected this intention to be expressed in plain words. As has often been pointed out according to the general rule, no intent may be impugned to the Legislature in the enactment of all legal provisions other than such as is supported by the face of the law itself; the Court may not

too readily speculate as to the probable intent of the Legislature apart from the words used.

The respondent before us, however, contends that we should not ignore the purpose and object of the Slum Act which includes protection of tenants in slum areas from eviction. This Act, it is emphasised, and as already noticed, was passed in 1956 and enforced in Delhi in February, 1957. The Delhi Rent Act of 1958 shoull be read along with the Slum Act and both these Acts should be so construed as to effectuate the object of protecting the tenants. Let us examine this contention.

Reliance in support of the bar of the suit in question is placed only on Section 19 of the Slum Act. But this section does not prohibit either institution of suits for eviction, or passing of decrees or orders for eviction. On the contrary it seems to envisage the possibility of the existence of such decrees and orders and the only protection it extends to the tenants is that they cannot be evicted except with the previous permission in writing of the competent authority appointed under the Act. The passing of a decree or order for eviction is thus not prohibited by this section. The word "tenant" it may be recalled, has not been defined by this Act and we are not called upon to express our opinion on the scope, effect and meaning of this word as used in section 19, as indeed no arguments were addressed on this aspect.

Now the bar to the jurisdiction of Civil Courts, contained in section 50 of the Delhi Rent Act of 1958, so far as the present controversy is concerned, is confined to eviction of tenants and the definition of "tenant" expressly excludes persons against whom an order or decree for eviction has been made. It is, again, not contended, and it is not the respondent's submission that this definition is

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inapplicable to the word "tenant' as used in this section. We are accordingly proceeding on the assumption that the statutory definition is fully applicable to it. It is argued that when an order of eviction has already been made against a person, no fresh order of eviction should be made against him, inexecutability of the earlier order notwithstanding. This broad propostion, in my opinion, may not always hold good, but, in any event the institution of the suit and the jurisdiction of the Civil Court to try the same can scarcely be held barred on this ground. Whether or not to pass a decree or order for eviction on the ground that such an order had already been passed may have to be determined on the merits, of the particular controversy on its own circumstances, the question scarcely, affects the jurisdiction of the Court to entertain and try the suit. The exclusion of Civil Court's jurisdiction as is well-known is not to be too readily inferred, it can be excluded only when the language expressly so declares or the necessary intendment is irresistible or undoubted. And then, even where the Civil Court's jurisdiction is excluded, the provision so excluding it calls for strict construction so as not to extend the exclusion beyond what is absolutely within the intendment. A citizen's right to have recourse to the ordinary Courts for adjudication of his dispute should not be curtailed or restricted without clear expression of legislative intent. The plea of exclusion of jurisdiction on this ground is thus repelled.

These were the only points argued before us. For the reasons foreging, we are clearly of the view that the order of the Court below is erroneous and allowing the appeal we set a aside the judgement and degree of the learned Subordinate Judge and remit the case back to the trial Court for further proceedings in accordance with law, in the light of

the observations made above. There will be no orders as to costs of this appeal. Parties are directed to appear before the Court below on 1st June, 1964, when another date would be given for further proceedings.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

SHIELA RANI,—*Appellant.*

Versus

DURGA PARSHAD,—*Respondent.*

F.A. No. 31-D of 1963.

1964

May, 20th.

Code of Civil Procedure (Act V of 1908)—S. 60 and Order 21 Rule 32—Decree for restitution of conjugal rights passed against the wife—Maintenance allowed to her by an order under S. 488 Cr. P. Code—Whether attachable in execution of that decree.

Held, that clause (n) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure exempts from attachment and sale "a right to future maintenance". The maintenance granted by the criminal Court is purely a personal right created by the order of the criminal Court and is, therefore, not liable for attachment. The arrears of such maintenance are also not liable to attachment. Where the maintenance has not been realised by the person held entitled to it, it still remains a right of future maintenance and does not become attachable merely because the arrears have not been realised. The husband, after obtaining the decree for restitution of conjugal rights, can apply to the criminal Court for relief under section 489 of the Code of Criminal Procedure but cannot ask the civil Court to attach the maintenance granted to the wife by the Criminal Court.

Execution First Appeal from the order of Shri D. R. Khanna, Sub-Judge, Ist Class, Delhi, dated the 5th January,