

The award of the Court that the lease stood determined on account of nonpayment of rent was a finding made by the reference Court for a limited purpose i.e. not to accept the defendant's claim for compensation. Such finding cannot be binding on the parties in a suit for possession based on title.

[Case Brief] Nand Ram (D) Through LRS. & ORS V/S Jagdish Prasad (D) Through LRS.

Case name: Nand Ram (D) Through LRS. & ORS V/s Jagdish Prasad (D) Through LRS

Case number: CIVIL APPEAL NO. 9918 OF 2011

Court: Supreme Court of India

Bench: L. NAGESWARA RAO, J.
HEMANT GUPTA, J.

Decided on: MARCH 19, 2020

Relevant Act/Sections: Land Acquisition Act, 1894, Evidence Act, Limitation Act, 1963, Transfer of Property Act, 1882

➤ BRIEF FACTS AND PROCEDURAL HISTORY:

1. The appellants-plaintiff No. 1 and plaintiff Nos. 2 to 8, as legal heirs of one Bhagwana, filed a suit for possession asserting that they were owners in possession of land total measuring 5 Bighas 7 Biswas in the revenue estate of Village Tatarpur, Delhi.
2. The land measuring total measuring 2 Bighas 15 Biswas was taken on lease for 20 years commencing from 23rd September, 1954 till 22nd September, 1974 on payment of Rs.235/ per year by Jagdish Prasad, the defendant. It was agreed between the parties that if the rent for one year remained in arrear, then the lessor would have the right to eject the lessee.
3. The entire leased land was acquired pursuant to the notification dated 24th August 1959 under Section 4 of the Land Acquisition Act, 1894. The Land Acquisition Collector determined a

sum of Rs.28,284.85 as the market value of the land acquired **A dispute arose with regard to apportionment of compensation and the same was referred to the Reference Court.**

4. The respondent-defendant claimed share in the compensation for 2 Bighas 15 Biswas of land on the ground that they were deprived of the right to retain possession of that land for the unexpired period of 14 years of the lease in their favour, which was for 20 years in total.
5. **The learned Additional District Judge, in such reference, in its award dated 21st October, 1961, held that the respondent had not paid rent for more than 12 months and, thus, the lease had come to an end. Therefore, the defendant had no right to claim a share in the compensation payable for the land leased to them.**
6. Thereafter, the plaintiffs served a notice dated 12th February, 1981 claiming possession of the land measuring 1 Bigha 19 Biswas, i.e. the land leased that continued in possession with the defendant post the denotification. The suit was filed by the plaintiffs on 13th March, 1981. The learned trial court decreed the suit after evidence was led by the parties in the favour of plaintiffs.
7. In appeal against the said judgment and decree, the defendant moved an application to amend his written statement and asserted that the suit was barred by limitation under Article 66 of the Schedule to the Limitation Act, 1963. The learned First Appellate Court did not permit the defendant to amend the written statement but the question of limitation was allowed to be raised.
8. **The learned First Appellate Court affirmed the findings recorded by the trial court. Thereafter, the defendant preferred a second appeal in the high court. The High Court allowed the second appeal finding that upon non-payment of rent for 12 months, the lease had come to an end would operate as res judicata.**
9. **The High Court further held that period of limitation under Article 67 of the Limitation the suit filed on 13th March, 1981 was beyond the period of limitation.**
10. **Further the present appeal is to an order passed by the High Court of Delhi.**

➤ **ISSUE BEFORE THE COURT:**

1. **Which Article of the Limitation Act would be applicable in the present case?**
2. **The order of the high court of delhi was also in question?**

➤ **RATIO OF THE COURT:**

1. Mr. Vishwanathan, learned senior counsel for the appellants raised two-fold arguments.
 - a) First that the legal representatives of Harpal Singh were not brought on record, the appeal stood abated.
 - b) Second, that clause 9 of the lease did not mean that if the rent for one year was not paid, the lease will stand terminated but only that the lessor would get a right to eject the lessee.
2. It was argued that the issue before the Reference Court was restricted to the entitlement of payment of compensation on acquisition of lease hold rights. The right of the landlord to claim possession was not a subject matter of reference. Therefore, the decision of the Reference Court was neither res judicata nor constructive res judicata within the meaning of Explanation IV to Section 11 of the Code.
3. It was also argued that the suit was within the period of limitation under Article 65 of the Limitation Act, which confers a right on the plaintiffs to seek possession from a person who is in possession, by virtue of his title. It is for the defendant to prove that his possession is open, continuous and uninterrupted so as to ripen the adverse possession into ownership.
4. The defendant-respondent contended that the period of limitation commenced from the date of the notice terminating the lease or in any case from the date of the award of the Reference Court, thus, the suit filed by the plaintiffs was barred by limitation.
5. The court held that the finding returned in **the award of the Reference Court that the lease stood determined on account of nonpayment of rent was a finding made by the reference Court for a limited purpose i.e. not to accept the defendant's claim for compensation.** Such finding cannot be binding on the parties in a suit for possession based on title. Section 11 of the Code bars the subsequent Court to try any suit or issue which has been directly and substantially issue in a former suit.

The court relied on –

- a) **Sajjadanashin Sayed Md. B.E. Edr. v. Musa Dadabhai Ummer, (2000) 3 SCC 350** this Court held that *if a matter was only “collaterally or incidentally” in issue and decided in an earlier proceeding, the finding therein would not ordinarily be res judicata in a latter proceeding where the matter is directly and substantially in issue.*
- b) **Asgar & Ors. v. Mohan Varma and Others, Civil Appeal No. 1500 of 2019**

c) **Mathura Prasad Bajoo Jaiswal & Ors. v. Dossibai N.B. Jeejeebhoy, (1970) 1 SCC 613** a three-Judge Bench of this Court held that *the previous decision on a matter in issue alone is res judicata, the reasons for such decision are not res judicata*

6. The court also stated that the lessor had a right to seek possession in terms of clause 9 of the lease deed. The mere fact that the lessor had not chosen to exercise that right will not foreclose the rights of the lessor as owner of the property leased. After the expiry of lease period, and in the absence of payment of rent by the lessee, the status of the lessee will be that of tenant at sufferance and not a tenant holding over
7. This suit would fall within Article 67 of the Limitation Act. It having been filed on 13th March, 1981 within 12 years of the determination of lease by efflux of time on 23rd September, 1974, the same is within the period of limitation.
8. For period of limitation the court relied on-
 - a) **Badrilal v. Municipal Corpn. Of Indore**
 - b) **Bisheshar Nath v. Kundan & Ors., ILR (1922) 44 All 583**
9. The court said as the respondent has not led any evidence of hostile possession to the knowledge of true owner at any time before or after the award of the reference Court nor he has surrendered possession before asserting hostile, continuous and open title to the knowledge of the true owner. The question of adverse possession thus is not tenable.

➤ **DECISION HELD BY COURT:**

1. **The court held that the suit of the plaintiffs filed within 12 years of the determination of the tenancy by efflux of time is within the period of limitation.**
2. **The court finally found that the High Court erred in holding the suit barred by limitation the order passed by the High Court was held to be clearly erroneous and is not sustainable in law.**