

The Indian Law Reports

Before : J. V. Gupta, C.J. & R. S. Mongia, J.

HARI KRISHAN,—Petitioner.

versus

SMT. KRISHNA MOHINI,—Respondent.

Civil Revision No. 1270 of 1981

26th July, 1990.

Transfer of Property Act, 1882—Ss. 55 & 109—Ejectment sought on the ground of non-payment of rent—Rent tendered by tenant from the date of purchase of premises by new landlady—No assignment of arrears of rent in favour of vendee—Vendee's entitlement to rent from the date she became owner.

*Held, that there was no assignment of arrears of rent in favour of the vendee. The above said sale deed is silent in this regard. Section 55 of the Transfer of Property Act, 1882, which deals with the rights and liabilities of buyer and seller provides *inter alia* that the seller is entitled "to the rents and profits of the property till the ownership thereof passes to the buyer". It has been clearly provided therein that "provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reasons to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee."*

(Para 4)

Petition under Section 15(5) of Act III of 1949 for revision of the order of the Court of Shri Gurjit Singh Sandhu, Appellate Authority Ludhiana dated 22nd April, 1981 affirming that the order of the Court of Shri I. C. Aggarwal, P.C.S. Rent Controller, Ludhiana dated 17th December, 1979 dismissing the application.

Claim:—Application under section 13 of the East Punjab Urban Rent Restriction Act for ejectment of the respondent from a room shown red in the plan and bounded as North : Dr. P. L. Kapur South : Kewal Krishan Bhullar, East : Road West : House of Mohinder Paul.

Situated at Chauk Bhaga Lalari, Purana Bazar, Ludhiana.
Claim in Revision : For reversal of the order of both the Courts below.

H. L. Sarin, Sr. Advocate with Ashish Handa, Advocate, for the Petitioners.

D. D. Bansal, Advocate, for the Respondent.

JUDGMENT

(1) The demised premises were purchased by the land-lady Smt. Krishna Mohini,—vide registered sale deed dated 9th November, 1972. She sought the ejection of her tenant on the ground of non payment of arrears of rent @ Rs. 10 per mensem since 1st January, 1965 including the house tax. The ejection petition was filed on 7th March, 1977. The rent was tendered from 1st November, 1972 i.e. from the date of sale deed. The authorities below found that the tenant had failed to prove that the rent prior to 1st November, 1972 was paid to the vendor. It was, therefore, held that the tender was short. Consequently, the eviction order was passed.

(2) When the revision petition came up for hearing before the Ld. Single Judge, he referred the case to the larger Bench on the question whether the rent due for a period prior to the sale can be claimed by the vendee as arrears of rent and whether the tenant can be ejected for its non payment on the first date of hearing when there is no assignment of the arrears of rent to the vendee. This is how this petition has come up before this Bench.

(3) Learned counsel for the petitioner-tenant submitted that there was no assignment of the arrears of rent in favour of the vendee and therefore the question of recovery as arrears of rent prior to the sale did not arise. He also submitted that even if there be an assignment of rent, even the arrears of rent does not include the assigned arrears as to evict the tenant. In support of his contention he referred to *Abid Hussain v. Roshan Dass* (1), *Mohan Lal v. Diwan Chand* (2), and *Sham Lal v. Mst. Nasib Kaur and others* (3). On the

(1) 1960 P.L.R. 836.

(2) 1981 (2) R.L.R. 209.

(3) C.R. No. 398 of 1972 decided on 28th March, 1973.

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other hand, learned counsel for the land-lady/respondent submitted that by virtue of the sale deed Ex. AW 1/1, dated 9th November, 1972 all the rights in the property were sold and therefore the arrears of rent will also be deemed to have been assigned to the vendee Land-lady. In support of his contention he referred to *Champaklal Dahyabhai Natali and others v. Saraswatiben and others* (4), *Radhubai Bapurao Shelar and others v. Trimbak Madhavrao Shirole and others* (5), *Chanderasen and Others v. Murarilal* (6), *Naraindas v. Rajendra Singh* (7).

(4) After hearing learned counsel for the parties, and going through the case law cited at the bar we are of the considered view that in the present case there was no assignment of arrears of rent in favour of the vendee. The above said sale deed is silent in this regard. Section 55 of the Transfer of Property Act, 1882, which deals with the rights and liabilities of buyer and seller provides *inter alia* that the seller is entitled "to the rents and profits of the property till the ownership thereof passes to the buyer." This is in the absence of a contract to the contrary. Thus it is evident that there being no contract to the contrary the seller is entitled to the rents and profits of the property till the ownership thereof passes to the buyer. As observed earlier, in the sale deed there is nothing cited as regards the arrears of rent or there is no specific assignment of the said arrears, if any, in favour of the vendee. Reference may also be made to Section 109 of the Transfer of Property Act, 1882 which provides rights of lessor's transferee. It has been clearly provided therein that "provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reasons to believe, that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee."

(5) Similar matter came up for hearing before the Supreme Court in the case of *Girdharilal v. Hukam Singh and others* (8), wherein it was observed in para 9 thereof that "the next objection is that under the proviso to Section 109 of the Transfer of Property Act the transferee is not entitled to arrears of rent due before the transfer. In our opinion he is ordinarily not so entitled unless there

(4) A.I.R. 1977 Gujarat 48.

(5) A.I.R. 1983 Bombay 303.

(6) 1976 R.C.R. 554.

(7) 1972 R.C.R. 465.

(8) A.I.R. 1977 S.C. 129.

is a contract to the contrary. There was an express contract to the contrary contained in the compromise petition which was incorporated in the compromise decree passed by the Court". In these circumstances, since there was no assignment of arrears of rent in favour of the vendee, the tenant could not be ejected for non payment of such arrears. Since in the present case there was no assignment of arrears of rent in favour of the vendee, the second question as to whether the rent due for a period prior to the sale could be claimed by the vendee as arrears of rent need not be gone into this petition. Consequently, this petition succeeds. The eviction order is set aside and the ejectment application is dismissed with no order as to costs.

P.C.G.

Before : I. S. Tiwana & A. P. Chowdhri, JJ.

CHARAN SINGH AND OTHERS.—Petitioners.

versus

STATE OF PUNJAB AND OTHERS.—Respondents.

Civil Writ Petition No. 366 of 1990.

10th August, 1990.

Constitution of India, 1950—Art. 226—Punjab State Assistant Grade Examination Rules, 1984—Rls. 4 & 8—Reversion—Promotions made on provisional basis under old rules applicable to the service—Condition of written test for promotion—Old rules replaced by 1984 rules—Rule 12 conferring power on Government to grant exemption prospectively—Exemption granted by order in 1985—Petitioners, held, liable to pass written test—Effect of rule 12 is prospective—Promotion on provisional basis not exempt from qualifying test—Reversion to lower posts as a consequence is justified.

Held, the reversions of the petitioners and the exemptees are not ordered under Rule 4 of the 1984 Rules; rather these are the necessary consequence or outcome of the re-fixation of their seniorities on the basis of their promotions on regular basis with effect from May 2, 1985 i.e. the date of granting exemption under Rule 12. In other words, these reversions are independent of the 1984 Rules.

(Para 7)

Held, in the absence of exemption and the failure of the petitioners to qualify the test as prescribed in Rule 4, the consequences would have been their reversions to the posts of Clerks. They could not even stay as Assistants as is now the net result of grant of this