REVISIONAL CIVIL

Before D. Falshaw, C.J.

INDER PARKASH,—*Petitioner*

versus

HANS RAJ AND ANOTHER,—*Respondents*

Civil Revision No. 20 of 1964.

1964

December, 11th

Punjab Tenancy Act (XVI of 1887) as amended by Punjab Tenancy (Amendment) Act (XVIII of 1963)—S. 77(3) (n)—Whether applies to suits for the recovery of arrears of rent which the tenant undertook to pay while making a new contract of tenancy.

(4) A.I.R. 1962 S.C. 723.

Held, that the words added by the Punjab Tenancy (Amendment) Act, 1963, to section 77(3) (n) of the Punjab Tenancy Act, 1887, will only be applicable in a case where a suit brought by the landlord himself is only cognizable by a revenue Court. A suit for the recovery of arrears of rent which the tenant agrees to pay by way of compromise when entering into the fresh contract of lease is cognizable by civil Court, whether filed by the landlord or his assignee.

Petition under section 44 of Act 6 of 1918 for revision of the order of Shri R. S. Bindra, District Judge, Hoshiarpur, dated 7th January, 1964, reversing that of Shri Mukhtiar Singh Gill, Sub-Judge 1st Class, Hoshiarpur, dated 24th October, 1963, and remanding the case to it for proceeding further with the matter. In view of the difficult nature of the point involved in the appeal, the parties were directed to bear their own costs and to appear in the trial court on 10th January, 1964.

H. R. Sodhi, Advocate, for the Appellant.

Ganga Parshad, Advocate, for the Respondent.

JUDGMENT

Falshaw, C.J.—The petitioner in this case Inder Parkash is one of the defendants in a suit instituted by Hans Raj respondent for the recovery of Rs. 6,000-00. The *pro forma* defendant in the suit Shrimati Padma Wati owned considerable area of land which she leased to Inder Parkash as a tenant and as he did not pay any rent after Kharif 1952, Shrimati Padma Wati instituted proceedings against him in a revenue Court on the 5th of December, 1955, for his ejectment from the land. That application was compromised in 1959 by the landlord's allowing Inder Parkash to remain as tenant on his undertaking to pay Rs. 6,000 as arrears of rent up to Rabi 1959 by the 15th of June, 1959, and undertaking further to pay an annual rent of Rs. 2,000 on a date between the 1st of May and the 15th of June each year. There was also some undertaking in the compromise not to fell any trees or make any extension to his buildings without the landlord's consent. On these terms the ejectment application was dismissed. Falshaw, C.J.

The present suit was instituted by Hans Raj for the recovery of Rs. 6,000 on the allegation that Shrimati Padma Wati had assigned to him per right to recover the

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sum of Rs. 6,000 payable under the compromise on his payment to her of a sum of Rs. 4,000. The objection was raised at the outset by Inder Parkash that the suit was not cognizable by the Civil Court and was only cognizable by the revenue Court. This objection was upheld by the trial Court which returned the plaint for presentation to the proper Court under Order VII, rule 10, Civil Procedure Code. However, the plaintiff's appeal was accepted by the learned District Judge who held that the suit was cognizable by the Civil Court.

In arguing that the revenue Court alone had jurisdiction the learned counsel for the petitioner has relied on an amendment to the Punjab Tenancy Act introduced by the amending Act 18 of 1963 which came into force on the 24th of April, 1963, after the present suit had been instituted. By section 77(3)(n) of the Tenancy Act of 1887 suits by a landlord for arrears of rent or the money equivalent of rent or for sums recoverable under section 14 were made cognizable only by a revenue Court. The amending Act added the following words to Clause (n):—

> "or suits for the recovery of such arrears or sums by any other person to whom a right to recover the same has been sold or otherwise transferred."

It is clear from the statement of the objects of the amending Act that the amendment was introduced to circumvent the tactics of landlords who assigned their rights to recover rent to other persons so as to deprive the revenue Courts of their legitimate function.

The trial Court held that this amendment, being procedural was applicable to the present suit although it was introduced during the pendency of the suit. Before the learned District Judge it was conceded that the amendment was procedural and would apply to pending suits of the right kind, but it was contended that this was not a suit by the landlord or his assignee to recover rent within the scope of section 77(3)(n) of the Act, but arrears of rent based on a novation of contract by which under the terms of the compromise new terms of tenancy were introduced and an undertaking was given to pay Rs. 6,000 on account of arrears. This proposition was

accepted by the learned District Judge on the strength of the decisions in two cases, the first of which is *Amrit Lal and another* v. *Bhagwana and others* (1), a decision by Johnstone and Rattigan, JJ. In that case a bond had been executed for a certain sum due on account of arrears of rent and it was held that although the sum due was on account of rent the claim was in fact based on a bond and the claim for rent had merged in the right given by the bond and the Civil Court was accordingly held to have jurisdiction.

The other case is *Jiwan Das* v. *Sher Muhammad Khan* (2), a decision by Harrison and Dalip Singh, JJ. These learned Judges held that where the liability arises out of the existence of the original lease and the relation of landlord and tenant between the parties but the old contract of lease is terminated and superseded and a new contract substituted by an agreement whereby the relation becomes that of creditor and debtor, a suit can be instituted in the Civil Court.

I find it impossible to disagree with the finding of the learned District Judge in this case that by the compromise entered into in the revenue Court on the 12th of May, 1959, a new contract was entered into between the parties, and there seems to me to be no doubt that on the authorities cited above Shrimati Pardma Wati, could herself have instituted a suit in a Civil Court for the recovery of Rs. 6,000 which the tenant had agreed to pay as arrears of rent when entering into the fresh contract of lease. Such being the case, it is difficult to see how the same remedy is barred to her assignee. In other words I am of the opinion that the amendment relied on by the learned counsel for the petitioner would only be applicable in a case where a suit brought by the landlord himself would be only cognizable by a revenue Court. On this finding I dismiss the revision petition, but I leave the parties to bear their own costs.

B.R.T.

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(1) 41 P.R. 1907.

(2) A.I.R. 1926 Lahore 578.