

Mr. Hans Raj Sodhi maintains that the memorandum of appeal was liable to court-fee of rupees 4 under Article 11 of Schedule II of the Court-fees Act. For authority on this point reference is made to *Punjab Province versus Raja Dhian Singh* (1). Shahdev Singh
v.
The State
Harnam Singh,
J.

In *Punjab Province v. Raja Dhian Singh* (1), Teja Singh, J., observed :—

“In the case of an order of an arbitrator appointed to determine the amount of compensation under section 19 of the Defence of India Act there is no provision in the Act laying down that it can be executed like a decree or that it can be enforced otherwise.”

In *Punjab Province v. Raja Dhian Singh* (1), the point that arose for decision was the proper court-fee to be paid on memorandum of appeal from an order of the arbitrator under the Defence of India Act.

In my judgment, on the memorandum of appeal in the present case *ad valorem* court-fee is leviable.

In these circumstances, I order the appellant to make up the deficiency in court-fee within two months from today.

REVISIONAL CIVIL

Before Harnam Singh, J.

BAIJ NATH,—*Petitioner.*

v.

BADHAWA SINGH,—*Respondent.*

Civil Revision No. 39 of 1955

*East Punjab Urban Rent Restriction Act (III of 1949)—
Section 13(3)(a)(i)(a) and (b)—The word “occupation” in*

1955

(1) 1955 P.L.R. 15

Dec., 28th

section 13(3)(a)(i)(a), meaning of—Landlord in occupation of part of the house and other part rented out to a tenant—Application for eviction of the tenant whether barred under section 13(3)(a)(i)(b).

Held, that occupation includes possession as its primary element, but it also includes something more. Legal possession does not of itself constitute an occupation. The owner of vacant house is in possession and may maintain trespass against any one who invades it, but as long as he leaves it vacant he is not in occupation, nor is he an occupier.

Held further, that the occupation of a portion of the house by the landlord from which the eviction of the tenant is sought is no bar under section 13(3)(a)(i)(b) of the Act to his application for the eviction of the tenant.

R. Venkatesachary and others v. The Judge Court of Small Causes, Madras and another (1), and *F. K. Rahate v. Dr. D. N. Pendharkar and another* (2), relied upon.

Petition under Article 227 of the Constitution of India, for revision of the order of Shri I. M. Lall, District Judge, Ambala, dated the 3rd February, 1955, reversing that of Shri J. M. Tandon, Rent Controller, Ambala, dated the 16th December, 1954, accepting the appeal with costs and dismissing the petition of the plaintiff-respondent.

F. C. MITTAL, for Petitioner.

DALJIT SINGH, for Respondent.

JUDGMENT

Harnam Singh,
J. HARNAM SINGH, J. In case No. 213/R of 1954 *Shri Baij Nath* landlord sought eviction of *Sardar Badhawa Singh* tenant from building No. 4372/A, Ambala Cantonment. In that application eviction of *Sardar Badhawa Singh* was sought under section 13 (3) (a) (i) of the East Punjab Urban Rent Restriction Act, 1949, hereinafter called the Act. In deciding that case the

(1) A.I.R. 1950 Mad. 366

(2) A.I.R. 1954 Nag. 257

Rent Controller ordered the eviction of *Sardar Badhawa Singh* allowing him two months to vacate the house.

Baij Nath
v.
Badhawa
Singh

From the order passed by the Rent Controller *Sardar Badhawa Singh* appealed under section 15 of the Act.

Harnam Singh,
J.

In allowing the appeal the appellate authority observed—

“The respondent has not been clear in making his intention known to this Court or to the Rent Controller and the legislature has not used clear language and under these circumstances it is difficult for this Court to decide whether the case of the plaintiff-respondent is covered by the clause on which it purports to have been based. It was the duty of the plaintiff-respondent to go to the Rent Controller with clear and precise pleadings and as this was not done I am unable to affirm the finding of the Rent Controller that the plaintiff-respondent requires the portion of the building which is in occupation of the appellant for his own occupation.”

On the pleadings of the parties the Rent Controller fixed the following issue :—

“Whether the respondent is liable to be ejected on the ground given in the application ?”

Evidence was examined by the landlord to show that he required the building for his own occupation and evidence was examined by the

Baij Nath
v.
Badhawa
Singh
Harnam Singh,
J.

tenant to show that the landlord did not require the building for his own occupation. If so, I do not think that the appellate authority was right in thinking that the landlord had failed to specify in his application the precise ground on which the eviction of the tenant was sought.

As regards the meaning of the word "occupation" occurring in section 13 (3) (a) (i) (a) the appellate authority observed—

"It is, therefore, correct as stated in the Patna judgment stated above that the primary ingredient of occupation is possession, that is to say, that under this clause in order to succeed, the landlord must require the building for his own possession."

In the passage cited in the preceding paragraph the appellate authority refers to *Firm Ram Kishun Shah Etwari Sahu versus Jamuna Prasad and others* (1). In that judgment Ramaswami, J. (C. P. Sinha, J., concurring) observed—

As observed in *Rex versus St. Pancras* (2)—

"Occupation includes possession as its primary element, but it also includes something more. Legal possession does not of itself constitute an occupation. The owner of vacant house is in possession and may maintain trespass against any one who invades it; but as long as he leaves it vacant he is not in occupation; nor is he an occupier."

(1) A.I.R. 1951 Patna 469

(2) (1877) 2 Q.B.D. 581 at p. 588

In these circumstances, I do not accept the validity of the reasons given by the appellate authority for allowing the appeal.

Baij Nath
v.
Badhawa
Singh

In deciding the case the Rent Controller observed—

Harnam Singh,
J.

“I have myself inspected the spot in the presence of the parties. The applicant is occupying the ground floor of the house. This portion contains two small rooms, one of which is a ‘deorhi’ or porch. The portion is extremely dark and is no less than a dungeon. It is too small even for a family of three persons. It shall be criminal to make the applicant and his family live in this portion. I also inspected the house which the applicant occupied previously. That house is also in that very street. The applicant did not occupy the whole house. He had a few rooms only. The rooms are fairly small. In any case, as the applicant is not occupying that house now, we are to confine to the deficiency or sufficiency of the house that the applicant is now occupying. After the inspection of the spot I have absolutely no doubt in holding that the portion of the house in the occupation of the applicant is not at all sufficient for him. He, therefore, personally needs the house for his own use.”

In order to bring the case within section 13 (3) (a) (i) of the Act the landlord has to prove—

- (a) that he requires the building for his own occupation ;

Baij Nath
v.
Badhawa
Singh

Harnam Singh,
J.

- (b) that he is not occupying another residential building in the urban area ;
and
(c) that he has not vacated such a building without sufficient cause after the commencement of the Act in the said urban area.

In these proceedings the correctness of the finding given by the Rent Controller that the landlord personally needs the house for his own occupation is not challenged.

Shri Baij Nath landlord lived in a rented house for nine or ten years. On the 8th of October, 1948, *Shri Prem Chand*, son of *Shri Baij Nath* separated from him by registered deed of partition.

Shri Baij Nath gave evidence that *Shri Prem Chand* has had separate mess for two years before the present proceedings were initiated under section 13 of the Act.

On the 25th of April, 1954, *Shri Baij Nath* purchased the house bearing Nos. 4372 and 4372/A, Ambala Cantonment. As the accommodation in the rented house was insufficient, *Shri Baij Nath* vacated that building and came to occupy the ground floor of the house purchased by him on the 25th of April, 1954. In evidence it was stated that during the period that *Shri Baij Nath* lived in the rented house he had taken on loan one room in the house which his brother occupied.

In these circumstances it cannot be said that *Shri Baij Nath* has vacated the rented building without sufficient cause after the commencement of the Act.

But it is said that when *Shri Baij Nath* is occupying a portion of the same house he cannot maintain an application under section 13 (3) (a) (i) of the Act.

In *R. Venkatesachary and others versus The Judge, Court of Small Causes, Madras and another* (1), Rajamannar, C. J. and Chandra Reddi, J., in construing the provisions of section 7 of the Madras Buildings (Lease and Rent Control) Act, 1946, said—

Baij Nath

v.

Badhawa
Singh

Harnam Singh,
J.

“Though the definition of a building in the Act includes a portion of a building, it does not mean that the owner of a house, portions of which have been let separately, cannot file an application for obtaining possession of the entire house as a building.”

In *F. K. Rahate versus Dr. D. N. Pendharkar and another* (2), Sinha, C. J. and Bhutt, J. in construing section 13 (3) (ii) of the C. P. and Berar Letting of Houses and Rent Control Order, 1949, observed—

“It appears that where a landlord is not in possession of any other residential house of his own, the question of his need to occupy the part of the building let out to the tenant is not barred under clause 13 (3) (vi) (a) of the Rent Control Order, 1949.”

In *F. K. Rahate v. Dr. D. N. Pendharkar and another* (2), the facts were that the tenant was in occupation of half portion of the ground floor of the landlord's house, the rest of the building being occupied by the landlord himself.

In my judgment, in the present case section 13 (3) (a) (i) (b) of the Act does not bar the application of the landlord for the eviction of the tenant.

For the foregoing reasons, I set aside the order passed by the appellate authority and restore the order passed by the Rent Controller on the 16th of December, 1954.

(1) A.I.R. 1950 Mad. 366

(2) A.I.R. 1954 Nag, 257

Sardar Badhawa Singh is ordered to surrender possession of the building in his occupation to *Shri Baij Nath* within three months from to-day.

Parties are left to bear their own costs throughout.

APPELLATE CIVIL

Before Harnam Singh, J.

THE FIRST NATIONAL BANK, LTD.,—Appellant.

v.

BERI BROTHERS AND OTHERS,—Respondents.

First Appeal from Order No. 8 of 1955

Arbitrator—Judicial mis-conduct—Accepting fees from one party without reference to the other party, whether amounts to judicial misconduct—Indian Arbitration Act (X of 1940)—Sections 14(2) and 38.

Held, that the conduct of the arbitrator in accepting the fees from one party without reference to the other before he gave the award amounted to judicial misconduct and the award had been rightly set aside.

First Appeal from the order of *Shri Raj Inder Singh*, Senior Sub-Judge, Ludhiana, dated the 15th November, 1954, dismissing the application of the appellant.

BALRAJ TULI, for Appellant.

TEK CHAND and N. L. WADEHRA, for Respondents.

JUDGMENT

Harnam Singh, J. HARNAM SINGH, J. By agreement, Exhibit A. 4, made on the 21st day of May, 1953, the First National Bank Limited, Ambala Cantonment, hereinafter called the Bank, Messrs. Bery Brothers, Hosiery Manufacturers and Suppliers of Ludhiana, *Shri Parshant Rai* and *Shri Tulsi Ram* referred the dispute between them to the arbitration of *Diwan Ram Kishan Khosla*, Advocate, Ludhiana. That agreement provided *inter alia* that expenses of the arbitration such as stamp for award and its filing charges and other expenses

1956

Jan., 9th