

APPELLATE CIVIL

Before D. K. Mahajan, J.

HAKUMAT RAI,—Appellant.

versus

KHUSHI RAM,—Respondent.

Execution Second Appeal No. 372 of 1959.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Consent decree—Whether and when can be passed under—Benefits of a Statute—Whether a party can contract himself out of.

1959

Aug., 6th

Held, that a person cannot contract himself out of the benefits which a statute confers on him. This principle would apply to cases under section 13 of the East Punjab Urban Rent Restriction Act, 1949, only if parties agree to an ejection on grounds other than those set out in section 13 of the Act. A tenant can only be ejected if the grounds set out in section 13 are established. Thus it will be evident that as regards those grounds there can be no question of contracting outside the statute. These grounds are available to the landlord to seek ejection of the tenant and if any of these grounds is established, he is entitled to get the tenant ejected. Thus, it cannot be said that the law confers an absolute and exclusive benefit on the tenant and thus he cannot contract himself out of it. There is nothing in law to prevent a tenant to admit any one of these grounds, and agree to an ejection order. By this he is merely admitting his liability to ejection on that basis and such a consent decree will not be illegal or void. Thus a consent decree on any of the grounds available under section 13 of the Act can be passed and if passed can be executed by the Civil Courts.

Execution Second appeal from the order of the Court of Shri G. C. Jain, District Judge, Jullundur, dated the 19th December, 1958, affirming that of Shri M. L. Jain, Sub-Judge, 1st Class, Jullundur, dated the 24th July, 1958, holding that the Rent Controller had no jurisdiction to pass an eviction order on mere statements of parties and rejecting the application.

S. D. BAHRI, for Appellant.

G. P. JAIN, for Respondent.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—This is an execution second appeal arising out of an application by the landlord decree-holder for ejectment of the tenant on the basis of a consent decree.

The facts giving rise to this second appeal are that an application was made by Hakumat Rai, landlord against his tenant Khushi Ram for ejectment on the grounds of non-payment of rent and that the premises were required by the landlord *bona fide* for his personal use. Issues were framed and date was fixed for evidence on the 4th of June, 1956, an ejectment order was passed on the basis of a compromise arrived at between the parties, whereby it was agreed that the tenant will vacate the premises after the lapse of 1½ years, i.e., on the 4th of March, 1948. The arrears of rent had been paid by the first hearing. As agreed in the compromise, the premises were not vacated on the 4th of March, 1948. Consequently on the 31st of March, 1948, the landlord decree-holder took out execution of the compromise ejectment decree. This application was resisted by the tenant principally on the ground that no compromise decree for ejectment could be passed under the East Punjab Urban Rent Restriction Act (III of 1949). This objection prevailed with the execution Court and the appeal against the decision of the executing Court was also rejected by the District Judge. The landlord has come up in second appeal to this Court.

The question that arises for consideration is whether a valid consent decree can be passed under

section 13 of the Act, on the grounds on which the landlord has been given the right to eject a tenant.

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Mahajan, J.

It cannot be disputed that a person cannot contract himself out of the benefit which a statute confers on him. In this connection reference may be made to a Full Bench decision of the Lahore High Court in *Prem Parkash v. Pt. Mohan Lal, Judgment-debtor and another* (1). This principle would apply only if parties agree to an ejectment on grounds other than those set out in section 13 of the Act. A tenant can only be ejected if the grounds set out in section 13 are established. Thus it will be evident that as regards those grounds there can be no question of contracting outside the statute. These grounds are available to the landlord to seek ejectment of the tenant and if any of these grounds is established, he is entitled to get the tenant ejected. Thus, it cannot be said that the law confers an absolute and exclusive benefit on the tenant and thus he cannot contract himself out of it. There is nothing in law to prevent a tenant to admit any one of these grounds, and agree to an ejectment order. By this he is merely admitting his liability to ejectment on that basis. Therefore, I do not see how such a consent decree becomes illegal, which would result in making it void. In this connection the decision of this Court in *Babu Ram Sharma v. Pal Singh* (2), may be read with advantage. It was held that on an application for ejectment for non-payment of rent, the Rent Controller is competent to pass a compromise decree for the payment of the rent by instalments with a default clause and it is competent for the civil Court to execute such a decree when default has occurred. Thus a consent decree on any of the grounds available under section 13 of

(1) A.I.R. 1943 Lah, 268

(2) 61 P.L.R. 33

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the Act can be passed and if passed can be executed by the civil Courts.

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For the reasons given above, I set aside the order of the Courts below and allow this appeal. The decree-holder will be entitled to take out execution and obtain possession of the premises from the judgment-debtor.

In the circumstances of the case, however, I would leave the parties to bear their own costs throughout.

R. S.

APPELLATE CIVIL

Before Shamsheer Bahadur, J.

MST. BHAGWANI,—Appellant.

versus

LAKHI RAM AND ANOTHER,—Respondents.

Execution Second Appeal No. 38 of 1959.

1959
Aug., 11th

Code of Civil Procedure (V of 1908)—Order 21 Rule 2—Adjustment of the decree—Whether must be a completed contract—Agreement to adjust the decree on the fulfilment of a future condition—Whether an “adjustment”—Indian Registration Act (XVI of 1908)—Section 17(2)(vi)—Order on application under Order 21 Rule 2 C.P.C.—Whether requires registration.

Held, that an adjustment within the meaning of rule 2 of Order 21 of the Code of Civil Procedure must be a completed Contract which immediately extinguishes and takes the place of the original decree. If there is only an agreement to adjust the decree on the fulfilment of a future condition, there is no adjustment of the decree. When the performance on the part of the judgment-debtor of an agreement is yet to be done and his obligation remains in