

APPELLATE CIVIL

Before D. K. Mahajan and R. S. Narula, JJ.

BANARSI DASS,—Appellant

versus

DEVI DAYAL AND OTHERS,—Respondents

Regular First Appeal No. 8 of 1963

January 12, 1967

Evidence Act (1 of 1872)—S. 116—East Punjab Urban Rent Restriction Act (III of 1949)—Ss. 2(i) and 13—Landlord and Tenant—Relation between—Whether ceases after decree for eviction is passed—Hindu Law—Joint Hindu family—Property acquired by a member—Whether joint family property.

Held that once a decree for eviction is passed against the tenant under section 13 of the East Punjab Urban Rent Restriction Act, 1949, there is an end of the relationship of landlord and tenant and the tenant, who is awaiting eviction in execution, is merely in possession without authority of law. He has no right, after the eviction decree, to continue in possession and it cannot be said in these circumstances that his possession is that of a tenant. The eviction decree completely puts an end to the relationship of landlord and tenant and the quondam tenant can set up a hostile title by asserting in himself a paramount title without surrendering possession of the tenanted premises.

Held, that there is no presumption in law that any and every property acquired by a member of a joint Hindu family is joint Hindu family property. It has further to be established that it was acquired with joint Hindu family funds or it was made over by the acquirer to the joint family.

First Appeal from the decree of the Court of Shri Onkar Nath, Sub-Judge, 1st Class, Mansa, dated the 29th day of October, 1962, granting the plaintiff a declaratory decree to the effect that he was the owner of the shop in dispute by its valid purchase from its rightful owner Salig Ram deceased and further ordering that the plaintiff would also get the costs of the suit from Banarsi Dass, defendant.

DALIP CHAND GUPTA, ADVOCATE, for the Appellant.

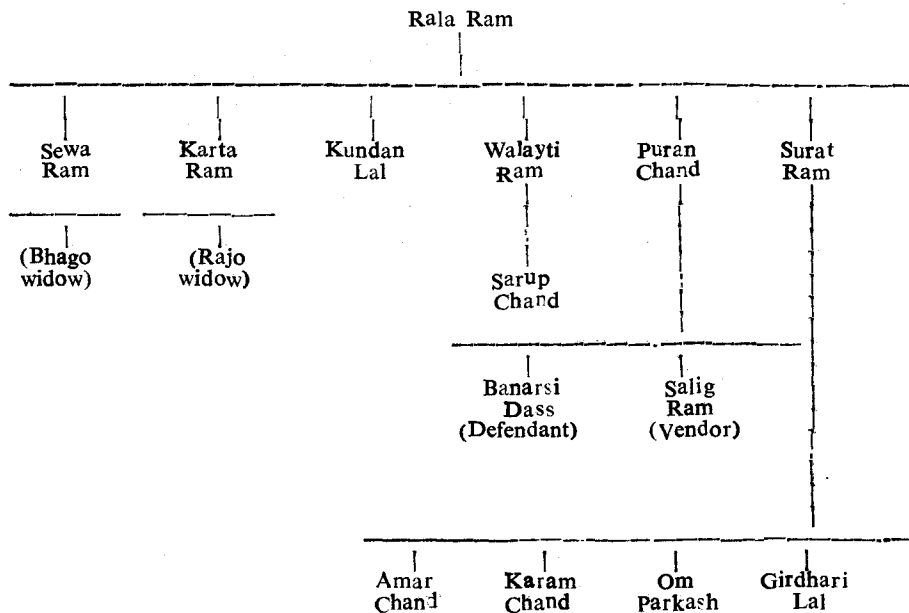
HANS RAJ AGGARWAL, AND BHAGWANT SINGH BAJWA, ADVOCATES, for the Respondents.

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JUDGMENT

The following Judgment of the Court was delivered by:

MAHAJAN, J.—This is defendant's appeal and is directed against a decree for declaration passed in plaintiff's favour. In order to appreciate the controversy, that has arisen before us in the present appeal, it will be proper not only to state the facts at some length but also to set down the genealogical tree of the defendants. The genealogical tree of the defendants is as follows:—



Plaintiff, at one time, was the tenant of the shop in dispute. He had been let into the shop by Banarsi Dass, defendant. The original date of letting in is not clear from the record; but there is the last rent note of 29th April, 1957, on the record. Under this rent note, the shop was rented out by Banarsi Dass, defendant, to Devi Dayal, plaintiff. The site of shop in dispute was acquired by Salig Ram, real brother of Banarsi Dass, defendant, in a Government auction on the 2nd of April, 1933,—(vide Exhibit PB/1). The price Rs. 850 was paid in three instalments as follows:—

- (1) Rs. 212-8-0 on 2nd July, 1933;
- (2) Rs. 212-8-0 on 14th March, 1934; and
- (3) Rs. 425-0-0 on 23rd September, 1934.

Salig Ram sold this shop on the 4th of January, 1958, to the plaintiff, Devi Dayal. The sale deed is Exhibit 'PA', and is duly registered. The shop was sold for a sum of Rs. 6,000. It is recited in the Registrar certificate that a sum of Rs. 5,500 was paid in cash before him. The remaining amount had been paid earlier as earnest money.

In the year 1958, an application for ejection under the East Punjab Urban Rent Restriction Act, 1949, (hereinafter referred to as the Act), was filed by Banarsi Dass against Devi Dayal. Devi Dayal's defence was that he was a tenant under Salig Ram and had, later on, purchased the shop from Salig Ram; and, therefore, no application for eviction lay. Banarsi Dass's position before the Rent Controller was that the shop was joint Hindu Family property and had been let out by him to Devi Dayal; that there was no relationship of landlord and tenant between Salig Ram and Devi Dayal and that the sale by Salig Ram to Devi Dayal was a fictitious sale. The Rent Controller allowed the application and directed Devi Dayal's eviction. The question of title was settled by the Rent Controller in favour of Banarsi Dass. Devi Dayal preferred an appeal to the Appellate Authority; and the Appellate Authority, though upholding the order of eviction, held that the Rent Controller should not have decided the question of title. The Appellate Authority left the question of title open to be decided by a civil Court. Against this decision, Devi Dayal preferred a revision petition to this Court. The decision of the Appellate Authority was affirmed and the revision petition was dismissed,—*vide* Exhibit D. 10, dated the 6th of January, 1961.

Banarsi Dass, thereafter, took proceedings for eviction of Devi Dayal; and before he could evict him, Devi Dayal filed the present suit for a declaration that he was the owner of the shop in dispute having purchased the same from Salig Ram, who was the owner thereof. He also claimed permanent injunction restraining Banarsi Dass from evicting him under the eviction decree obtained by him, a reference to which has already been made. This suit was resisted by Banarsi Dass. His pleas were that the shop in dispute did not belong to Salig Ram; that it belonged to the Joint Hindu Family consisting of himself, Salig Ram and others and that, at the moment of the written statement, it was owned by Banarsi Dass alone having fallen to his share in a private partition. It may be mentioned that Salig Ram died during the pendency of the suit. On the pleadings of the parties, the following issues were framed:—

- “(1) Whether the suit is not maintainable in the present form?
- (2) Whether the plaintiff is the owner of the shop in dispute by purchase?

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- (3) Whether Puran Chand and others are necessary parties to the suit?"

The trial Court held that the suit, as framed, was maintainable; that plaintiff is the owner of the shop in dispute by purchase and that Puran Chand and others were not necessary parties to the suit. Accordingly, the plaintiff's suit has been decreed and defendant, Banarsi Dass, who is dissatisfied with this decision, has come up in appeal to this Court.

Mr. Dalip Chand Gupta, learned counsel for the appellant, Banarsi Dass, has raised a number of contentions; and we propose to examine each of them in the order in which they have been raised.

The first contention of the learned counsel is that the shop in dispute was not the sole property of Salig Ram. It was a joint Hindu Family property. To elaborate the contention, the learned counsel urges that the funds to purchase the property came from the joint Hindu family coffers. The joint Hindu family was possessed of sufficient means or nucleus. Salig Ram merely purchased it for the family. Salig Ram had no independent source of livelihood nor he had the means to purchase the site. Therefore, shop on the site was constructed with joint Hindu family funds. Therefore, the property is joint Hindu family property. In any case, the learned counsel argues that where it is established that a joint Hindu family has enough nucleus and the acquisition of property is by one of the members of the joint Hindu family and that member has no independent source of livelihood, a presumption must necessarily be raised that the property was acquired by the joint Hindu family as such and not by the individual member who acquired it. Evidence has been led to show that the property was purchased with the joint Hindu family funds. This evidence being oral and interested was rejected by the trial Court. We have been taken through this evidence and all that we need say is that the evidence is wholly worthless and does not establish the assertion made by the learned counsel that it proves that the property was purchased with the joint Hindu family funds. It is in evidence that the joint Hindu family maintained accounts. No account-book has been produced. As a matter of fact, shelter has been taken behind the plea that the account-books merely related to money-lending business. If this assertion was correct, there would have been no objection to the production of the account-books because, the Court would have been then in a position to accept the bald statement of

the defendant that the accounts were merely maintained in respect of the money-lending business. There is no documentary evidence that the amount, with which the shop in dispute was acquired, came from the joint family funds. On the one hand, Mr. Gupta contends that the joint Hindu family was possessed of enormous means and was a well-to-do and prosperous family. If the purchase price had emanated from the family funds, there is no reason why the entire sale consideration of the site would not have been paid in a lump-sum. The sale consideration was paid in three instalments. This fact is consistent with the view taken by the trial Court that the site was acquired by Salig Ram alone and not by joint Hindu family. Attempt was also made to prove that the shop was constructed with the joint Hindu family funds. But there is no cogent and satisfactory evidence on the record to establish this fact. The best evidence to prove, that the site and the building thereon came into being from the joint family funds were the account-books. We would be fully justified in drawing an adverse inference against the defendant from the non-production of the account-books, namely, that if they had been produced, they would have negated the defendants' assertion. There is no evidence, either cogent or convincing, which would justify the contention of Mr. Dalip Chand Gupta, that the property in dispute is proved to be joint-Hindu family property.

Mr. Gupta then strongly urged that we should draw a presumption that the property in dispute is joint family property from two facts; namely, that the joint Hindu family had ample means and that Salig Ram was not doing any independent business. In the first place, it is in evidence that Salig Ram was doing the cloth business. Defendant Banarsi Dass's assertion is that he was merely doing the ancestral family business or joint family business. But there is no independent evidence in support of this assertion. It may well be, that Salig Ram's cloth business was his own private business; and, in any event, the proper evidence would have been the account-books which would have proved whether the business carried on by Salig Ram was joint family business or his private business. Therefore, there is no basis for the assumption that Salig Ram was not possessed of independent means. If this fact is not proved, it hardly matters whether the joint Hindu family was possessed of sufficient means. There is no presumption in law that any and every property acquired by a member of a joint Hindu family is joint Hindu family property. It has further to be established that it was acquired with joint Hindu family funds or it was made over by the acquirer to the joint family. There is no evidence in support of the one or the other

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alternative. We would accordingly uphold the decision of the trial court that the shop in dispute was acquired by Salig Ram and it is his private property and is not joint Hindu family property.

The second contention of Mr. Gupta is that the shop in dispute was let out by his client Banarsi Dass to Devi Dayal plaintiff. Therefore, Devi Dayal plaintiff cannot set up a hostile title by asserting in himself a paramount title. In other words, the learned counsel brings to his aid the provisions of Section 116 of the Evidence Act. In support of his contention, it is maintained that according to the definition of "tenant" in Section 2(i) of the East Punjab Urban Rent Restriction Act, 1949, which is in these terms—

"(i) 'tenant' means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by a municipal, town or notified area committee;"

mere termination of tenancy is of no consequence. The tenant will still continue to be a tenant so long as he does not surrender possession of the tenanted premises to the landlord. It is only after the surrender of the possession of the tenanted premises that the relationship of landlord and tenant will come to an end. This contention loses sight of the fact that there is a valid decree of eviction against the tenant. According to our view, once a decree for eviction is passed under section 13 of the Act, there is an end of the relationship of landlord and tenant and the tenant, who is awaiting eviction in execution, is merely in possession without authority of law. He has no right, after the eviction decree, to continue in possession; and it cannot be said in these circumstances that his possession is that of a tenant. The eviction decree completely puts an end to the relationship of landlord and tenant. Mr. Gupta, however, placed strong reliance upon a Single Bench decision of Mr. Justice Grover, in *Brij Mohan v. Faqir Chand*, SAO 34 of 1964, decided on 1st December, 1965. That decision, no doubt, supports the contention of the learned counsel; but, with utmost respect to the learned Judge, we

are unable to agree with it. Mr. Justice Grover, while holding that a tenant, against whom an eviction decree has been passed, still continues to be a tenant, based his decision on two Single Bench decisions of this Court in *Lakshmi Chand v. Sham Dass and another* (1) and *Rajinder Kumar v. Basheshar Nath* (2). So far as the decision in *Rajinder Kumar's* case is concerned, it certainly does not support the proposition for which it has been taken as an authority. In this case, the premises were exempted from the provisions of the Rent Restriction Act and during the period of exemption a decree for eviction was obtained against the tenant. But before the decree could be executed, the provisions of the East Punjab Urban Rent Restriction Act were made applicable. Section 13 of the Act clearly provided that "a tenant in possession of a building or rented land shall not be evicted therefrom in execution of a decree passed before or after the commencement of this Act or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section". (Section 13 of the East Punjab Urban Rent Restriction Act). Therefore, the decree, that had been obtained by the landlord, had been rendered ineffectual by a legislative provision. The learned Single Judge was not deciding the case as to the effect of an eviction decree properly obtained under the Act, i.e., Section 13.

So far as the decision in *Lakshmi Chand's* case is concerned, it again is based on a Full Bench decision in *Sham Sunder v. Ram Das* (3), which is *pari materia* with the decision in *Rajinder Kumar's* case. The Full Bench was considering the provisions of Delhi and Ajmer, Merwara Rent Control Act in similar circumstances and was concerned with a decree passed before the application of that Act. It, therefore, appears to us that the decision of Chopra, J., in *Lakshmi Chand's* case does not lay down a correct rule of law, so far as the effect of an eviction decree passed under the Act is concerned. It may also be mentioned that section 2(1) of the Act uses the same phraseology as does section 13(1). Section 2(1) lays down that—

"....A tenant continues to be a tenant, if he remains in possession after the termination of the tenancy in his favour."

Similarly, Section 13(1) lays down that—

".... The termination of a tenancy except in accordance with the provisions of this section" will not

(1) 1959 P.L.R. 537.

(2) I.L.R. (1965) 2 Punj. 689=1965 P.L.R. 974.

(3) 1951 P.L.R. 159.

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put an end to the relationship of landlord and tenant. (The words after the inverted commas are mine). Therefore, nothing turns on the phraseology used in section 2(i). A tenant will remain a tenant so long his tenancy is not put an end to, as provided in section 13. Moment, there is an order under section 13 of the Act evicting a tenant, that would clearly put an end to the relationship, because the relationship only continues so long as there is no order under Section 13. It would be too much to say, that in spite of the eviction decree, the relationship of landlord and tenant continued, in the absence of any statutory provision to the effect. The execution of the order of eviction is a totally different matter. The view, that we have taken of the matter that on the basis of the eviction decree, the relationship of the landlord and tenant comes to an end, finds support from the decision of the Nagpur High Court in *Kunji Lal and others v. Pannalal and another* (4).

The last contention of Mr. Gupta is that Salig Ram had no subsisting title and, therefore, under the sale, no title in the shop passed to Devi Dayal. The only fact, on which Mr. Gupta has been able to place his reliance, is that the property in dispute was rented out by Banarsi Dass to the plaintiff; and the earliest renting out, that he has been able to prove, is somewhere after 1950. Moreover, Salig Ram and Banarsi Dass are real brothers. There would be nothing wrong and we would not be stretching it rather too far in holding that the renting out by Banarsi Dass was on behalf of Salig Ram. In any event, there is an assumption in law that the owner is in full possession and enjoyment of his property unless contrary is proved. In the present case, even if we accept Mr. Gupta's contention, the contrary is only proved after 1950, and the statutory period of twelve years has not intervened so as to defeat the owner's right. The present controversy started in the year 1958, long before the period of twelve years had expired. Therefore, there is no merit in this contention either.

No other contention has been advanced.

For the reasons recorded above, we see no force in this appeal, the same fails and is dismissed; but there will be no order as to costs.

(4) A.I.R. 1923 Nag. 91.