

APPELLATE CIVIL

Before Shamsher Bahadur, J.

BISHAMBAR DASS,—Appellant.

versus

CHHAJU RAM AND ANOTHER,—Respondents.

Regular Second Appeal No. 98 of 1968

September 29, 1969.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 29—Right of a displaced tenant to remain in possession of a rented property for two years—Whether heritable.

Held, that a person having protection of a statute is a tenant under the statute but has no estate in the rented property in his possession. He has only a personal right to remain in possession because such right to possession is protected by the statute. On the death of such a person he transmits no estate to his heirs. He has no estate in the building and so his heirs inherit not even the right to possession of the building. Hence the right of a displaced tenant to remain in possession of a rented property for two years under section 29 of Displaced Persons (Compensation and Rehabilitation) Act, 1954, is not heritable by his heirs after his death.

(Para 5)

Regular Second Appeal from the decree of the Court of Shri Asa Singh Gill, Additional District Judge, Ludhiana, dated 1st day of December, 1967, reversing that of Shri M. S. Lobana, Sub-Judge, IInd Class, Ludhiana, dated the 13th February, 1967, and dismissing the plaintiff's suit with costs throughout.

T. N. BHALLA, ADVOCATE, for the appellant.

HANS RAJ AGGARWAL, ADVOCATE, for the respondent.

JUDGMENT

SHAMSHER BAHADUR, J.—This is an appeal of Bishamber Dass whose suit for possession for the disputed premises consisting of a house in Mohalla Saidhan, Ludhiana was decreed by the trial Judge but in appeal of the defendants, has been dismissed by the lower appellate Court.

(2) It is common ground that the house in question was evacuee property and a sale certificate was granted in favour of the appellant

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on the 29th January, 1964. The sale was to take effect with effect from the 28th February, 1963. Beli Ram, father of the defendants, Chhaju Ram and Chaman Lal, was in occupation of the house as an allottee. Beli Ram, therefore, enjoyed the protection afforded by section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, for a period of two years. Beli Ram died some time in February, 1965. After the death of Beli Ram, his sons continued to remain in possession and in spite of the notice served on them, they refused to vacate the premises. The plaintiff was, therefore, obliged to bring the present suit for possession.

(3) The only plea raised by the defendants was that they were not trespassers and had become tenants under section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The only issue framed in the case was this :—

Whether the defendants are the tenants of the plaintiff under section 29 of the Central Act No. 44 of 1954.

The lower appellate Court found that no such tenancy has been established to exist under section 29 of the Central Act. The suit was accordingly decreed.

(4) Despite the specific plea taken by the defendants, the lower appellate Court found that the sons of Beli Ram continued to enjoy protection of the Rent Acts, and if they continued to pay the rent they could hold on to the property. Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, says that:—

“Where any person to whom the provisions of this section apply, is in lawful possession of any immovable property ...notwithstanding anything contained in any other law, such person shall, without prejudice to any other right which he may have in the property, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held the property immediately before the transfer :

Provided that notwithstanding anything contained in any such terms and conditions, no such person shall be liable to be ejected from the property during such period not exceeding two years as may be prescribed in respect of that class of property, except

(5) It is the case of the appellant that Beli Ram had become a statutory tenant and was entitled to the protection to remain in the premises for a period of two years. This position has not been controverted. All that has been contended is that the defendants who are the heirs of Beli Ram continued to enjoy the rights of the tenants. Beli Ram was plainly a statutory tenant and his rights are not heritable. In a case under the East Punjab Urban Rent Restrict Act (3 of 1949). It was held by the Hon'ble Chief Justice in *Gauri Shankar v. Smt. Shakuntla Devi and others* (1), "that a person having protection of a statute like the East Punjab Act 3 of 1949, is a tenant under the statute, and has no estate in the property in his possession and he has only a personal right to remain in possession because such right to possession is protected by the statute. On the death of such a person he transmits no estate to his heirs. He has no estate in the building and so his heirs inherit not even the right to possession of the building. What is true of the East Punjab Urban Rent Restriction Act (3 of 1949), is applicable equally to the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The plaintiffs have made out a case for possession and the lower appellate Court did not act according to law in reversing the decree granted by the trial Court. In this view of the matter the appeal must be allowed with costs and the decree of the trial Court restored. The defendants are given time upto 1st of November, 1969, to vacate the premises.

N.K.S.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit and C. G. Suri, JJ.

RANJIT SINGH,—*Petitioner.*

versus

THE CUSTODIAN-GENERAL OF EVACUEE PROPERTY AND OTHERS,—
Respondents.

Civil Writ No. 1708 of 1966

October 8, 1969.

Administration of Evacuee Property Act (XXXI of 1950)—Sections 7 and 27—Administration of Evacuee Property (Central) Rules (1950)—Rule 31(5)—Power of revision by the Custodian-General—Whether controlled by

(1) 1968 P.L.R. 87.