
(46) With the above modification in the matter of conviction and sentence, the appeal stands disposed of.

S.C.K.

Before : G. R. Majithia, J.

SARASWATI (SMT.) AND OTHERS,—Appellants.

versus

DR. SURESH JHAWAR,—Respondent.

Regular Second Appeal No. 303 of 1979.

30th March, 1992.

(1) *Limitation Act (XXXVI of 1963)—S. 21—Impleading of a party as plaintiff—Date of institution of suit quo such party.*

Held, that after the termination of the lease, anyone of the landlords can bring a suit for ejection against the tenant by joining the other landlords either as plaintiffs or as defendants. Failure to implead one of the heirs of the landlord does not affect the maintainability of the suit. There is no bar under S. 21 of the Limitation Act to declare that any plaintiff or defendant added subsequent to the institution of the suit will be deemed to have been added on the date when the suit was instituted, provided the applicant had acted in good faith.

(Para 7)

(2) *Transfer of Property Act, 1882—S. 106—Determination of tenancy by notice—Rent accepted after determination of tenancy—Whether a new tenancy created by such acceptance.*

Held, that where a contractual tenancy to which the rent control legislation applies has expired by efflux of time or by determination by notice to quit and the tenant continues in possession of the premises, acceptance of rent from the tenant, by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord had assented to a new contractual tenancy.

(Para 7)

Regular Second Appeal from the order of the Court of Shri Gian Inder Singh, Additional District Judge, Ludhiana, dated the 17th day of August, 1978 affirming that of Shri P. S. Ahluwalia, Sub-Judge 1st Class, Ludhiana, dated the 25th April, 1977, dismissing the suit of the plaintiffs and leaving the parties to bear their own costs.

Claim:— Suit for (1) Ejectment of the defendant tenant from Kothi No. 12 E Tagore Nagar, Civil Lines, Ludhiana bounded as follows:— North:—Road shown red in the plan attached with the plaint.

(2) for recovering of Rs. 1,240 as the arrears of rent from 1st November, 1973 till 28th February, 1974 i.e. 4 months at the rate of Rs. 310 per month.

Claim in Appeal:—For reversal of the order of both the Court's below.

CIVIL MISC. NO. 731-C of 1979:—Application Under Order 41, Rule 27, C.P.C. read with Section 151 C.P.C. praying that, the additional evidence mentioned above may be read as part of the evidence in this appeal and the same may be allowed to be placed on the record of this case.

R. L. Batta, Sr. Advocate with Gian Chand Tangri, Advocate,
for the appellants.

Arun Jain, Advocate with O. P. Sharma, Advocate, for the
respondent.

JUDGMENT

G. R. Majithia, J.

The plaintiff-appellants have come up in regular second appeal against the judgment and decree of the first appellate Court affirming on appeal those of the trial Judge and dismissing their suit for ejectment of the tenant defendant-respondent from the disputed premises.

(2) The facts:—

The plaintiff-appellants (hereinafter the plaintiffs) filed a suit for ejectment of the tenant defendant-respondent (hereinafter the defendant) from the disputed premises and also for recovery of Rs. 1,240 as arrears of rent from November 1, 1973 to February 28, 1974 on the ground that Dr. Ram Sarup was the owner of the disputed premises. He completed the construction of the disputed premises during the period when the building in dispute was exempt from the provisions of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter to be referred to as the Act). Notice to quit was served on the defendant, but he did not vacate the demised premises.

(3) The defendant controverted the pleas of the plaintiffs and denied that the construction of the building was completed during the period of exemption.

(4) The pleadings of the parties gave rise to the following issues:—

1. Whether the suit for arrears of rent for the period 1st November, 1973 to 23rd January, 1974 is not maintainable in the absence of a succession certificate ? OPP
2. Whether the provisions of the East Punjab Urban Rent Restriction Act are not applicable as the building was completed in August, 1970 ? OPP
3. Whether a valid notice u/s 106 T.P. Act has been given to the defendant ? OPP
4. Whether the plaintiffs are the legal heirs of Dr. Ram Sarup deceased, and thus become the landlord ? OPP
5. To what amount on account of arrears of rent are the plaintiffs entitled ? OPP
- 5A. Whether the plaintiffs have waived their notice and consequently the present suit is liable to be dismissed ? OPD
6. Relief.

(5) Issues No. 1 and 5 were not pressed at the trial; under issue No. 2, it was held that the plaintiffs had failed to establish that Dr. Ram Sarup had completed the construction of the building within the period of exemption; issues No. 3 and 4 were decided in favour of the plaintiffs; under issue No. 5-A it was held that the plaintiff had accepted rent after the issuance of the notice to quit and, on ultimate analysis, the suit was dismissed.

(6) Before the first appellate Court, issues No. 1 and 5 were not pressed. The first appellate, on appraisal of the evidence, held that the plaintiffs had failed to establish that the disputed premises were constructed during the period of exemption. It also held that suit with regard to one of the heirs, who was mother of the deceased

landlord, would be deemed to have been filed on the date when she was impleaded as a party to the suit. It further held that the landlord had accepted rent after the issuance of the notice to quit and the notice stood waived and the suit was not maintainable.

(7) The view taken by the first appellate Court that suit *qua* mother of the deceased landlord will be deemed to have been filed on the date when she was made a party plaintiff to the suit is not only illegal but illogical. After the termination of the lease, anyone of the landlords can bring a suit for ejection against the tenant by joining the other landlords either as plaintiffs or as defendants. Failure to implead one of the heirs of the landlord does not affect the maintainability of the suit. There is no bar under Section 21 of the Limitation Act to declare that any plaintiff or defendant added subsequent to the institution of the suit will be deemed to have been added on the date when the suit was instituted, provided the applicant had acted in good faith. It was stated in the application for impleading the mother of the landlord as a party plaintiff to the suit that the plaintiffs were not aware that she was also an heir and because of this ignorance she was not made a party plaintiff to the suit when it was instituted. There is no material on record to disbelieve the plaintiffs, and the Courts below were in error in not declaring that the mother of the deceased landlord will be deemed to have been added as a party plaintiff to the suit from the date the suit was instituted. The first appellate Court was equally in error in holding that the landlord having accepted the rent after the determination of the lease by serving notice under Section 106 of the Transfer of Property Act had waived the notice. It did not arrive at a logical conclusion after so saying. Presumably, it wanted to say that by accepting the rent after determination of the contractual tenancy, a new tenancy had been created. This view is unsustainable in law. Where a contractual tenancy to which the rent control legislation applies has expired by efflux of time or by determination by notice to quit and the tenant continues in possession of the premises, acceptance of rent from the tenant, by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord had assented to a new contractual tenancy. On the determination of the lease, it is the duty of the lessee to deliver up possession of the demised premises to the lessor. In *Kai Khushroo v. Bai Jerbai* (1), it was held thus:—

(1) A.I.R. 1949 FC 124.

“On the determination of a lease, it is the duty of the lessee to deliver up possession of the demised premises to the lessor. If the lessee or a sub-lessee under him continues in possession even after the determination of the lease, the landlord obviously has the right to eject him forthwith; but if he does not, and there is neither assent or dissent on his part to the continuance of occupation of such person, the latter becomes in the language of English law a tenant on sufferance who has no lawful title to the land but holds it merely through the laches of the landlord. If now the landlord accepts rent from such person or otherwise expresses assent to the continuance of his possession a new tenancy comes into existence as is contemplated by Section 116. T.P. Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of Section 106 of the Act.”

In cases of tenancies relating to dwelling houses to which the Rent Restriction Acts apply, it was observed by their Lordships of the Federal Court thus:—

“.....in cases of tenancies relating to dwelling houses to which the Rent Restriction Acts apply, the tenant may enjoy a statutory immunity from eviction even after the lease has expired. The landlord cannot eject him except on specified grounds mentioned in the Acts themselves. In such circumstances, acceptance of rent by the landlord from a statutory tenant whose lease has already expired could not be regarded as evidence of a new agreement of tenancy and it would not be open to such a tenant to urge, by way of defence, in a suit for ejectment brought against him under the provisions of Rent Restriction Act that by acceptance of rent a fresh tenancy was created which had to be determined by a fresh notice to quit.”

The aforesaid decision was followed by the apex Court in *Ganga Dutt Munerka v. Kartik Chandra Das and others* (2), and it was held thus:—

“The High Court was in our judgment right in holding that by merely accepting rent from the appellant and by

(2) A.I.R. 1961 S.C. 1067.

failing to take action against him, the appellant did not acquire the rights of a tenant holding over. It is true that in the notice dated October 10, 1950, the appellant is described as a 'monthly tenant', but that is not indicative of conduct justifying an inference that a fresh contractual tenancy had come into existence. Within the meaning of the West Bengal Premises Rent Control Act, 1950, the appellant was a 'tenant' and by calling the appellant a tenant the respondents did not evidence an intention to treat him as a contractual tenant. The use of the adjective 'monthly' also was not indicative of a contractual relation. The tenancy of the appellant was determined by efflux of time and subsequent occupation by him was not in pursuance of any contract express or implied, but was by virtue of the protection given by the successive statutes. This occupation did not confer any rights upon the appellant and was not required to be determined by a notice prescribed by Section 106 of the Transfer of Property Act."

(8) On these two grounds, the judgment and decree of the first appellate Court cannot be sustained. However, the finding recorded by the first appellate Court, on appreciation of evidence, that the disputed building was not constructed within the period of exemption, is essentially a finding of fact. The finding has not been shown to be erroneous. It was not pointed out that any material evidence was ignored by it. I have not been persuaded to hold that the finding suffers from any infirmity. The same is upheld. The tenant is entitled to protection of the rent control legislation and he can be evicted only in accordance with the provisions of the Act.

(9) In Civil Misc. No. 731-C of 1979, learned counsel has prayed that the plaintiffs be allowed to produce additional documentary evidence mentioned in para 4 thereof to establish that the disputed premises were constructed during the period of exemption. The plaintiffs cannot be permitted to fill up lacunae in the evidence. The prayer for reception of evidence does not fall within the ambit of Order 41, Rule 27, Civil Procedure Code. No case for reception of additional evidence is made out. Civil Misc. is dismissed.

(10) For the reasons stated above, the appeal and the application for additional evidence are dismissed, but with no order as to costs.

S.C.K.