

REVISIONAL CIVIL

*Before D. Falshaw, C. J.*MAHI DAS,—*Petitioner.**versus*Nagar Mal,—*Respondent.*

Civil Revision No. 184 of 1963.

1964

November, 6th

East Punjab Urban Rent Restriction Act (III of 1949) — S s. 2(i) and 13 — Tenancy terminating before the Act came into force but tenant continuing in possession without renewal of tenancy — Landlord — Whether can eject such tenant under the Act — Rent Controllers — Whether can decide disputes as to title in ejectment proceedings under the Act.

Held, that the East Punjab Urban Rent Restriction Act, 1949, cannot be taken as retrospective and cannot confer any right upon a landlord which he did not enjoy when the Act came into force. If therefore the tenancy in this case had terminated 20 years before the Act came into force under the law as it then stood, it cannot be revived merely by the definition of the word 'tenant' in the Act.

Held, that the Rent Controllers should confine themselves to deciding matters under the Act and should not attempt to decide rival claims to title in property under the guise of ejectment applications under the Act.

Petition under section 15(5) of Act III of 1949 as amended by Act 29 of 1956 for revision of the order of Shri Kul Bhushan, Appellate Authority (District Judge), Gurdaspur, dated the 9th February, 1963, reversing that of Shri G. K. Bhatnagar, Rent Controller, Gurdaspur, dated the 29th March, 1962, and ordering the eviction of the tenant from the house in dispute and further ordering that he should hand over its possession to the landlord up to 9th May, 1963. On his failure to do so the landlord will be entitled to have its possession by way of execution.

H. L. SARIN AND MISS ASHA KOHLI, ADVOCATES, for the Petitioner.

H. R. AGGARWAL, ADVOCATE, for the Respondent.

JUDGMENT

FALSHAW, C.J.—This is a revision petition by tenant Mahi Das against the order of the Appellate Authority accepting the landlord's ejectment petition which had been dismissed by the Rent Controller.

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The facts are that in January, 1962, Nagar Mal instituted his petition for the ejectment of Mahi Das simply on the allegation that Mahi Das and his brother Sain Das had mortgaged the house in dispute with him for Rs. 300 with possession and that at the same time they executed a rent deed by which they took the house on lease for one year from the 12th of September, 1929, on a monthly rent of Rs. 3. Sain Das had died about 13 years ago and Mahi Das was his only heir and was in sole possession, and Mahi Das had failed to pay any rent for the last 10 years. In his written statement, which appears to be badly drafted, Mahi Das denied that Nagar Mal had any concern with the house and alleged that he himself was in possession as

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the owner. He admitted that he was the only heir of his brother who had died, but he pleaded that there was no relationship of landlord and tenant and that if any had ever existed it had come to an end under the terms of the lease on the 12th of September, 1929.

In evidence Mahi Das admitted the mortgage, but said that he and his brother had discharged the debt during the first year by working for the landlord for which they were credited with Rs. 10 per mensem each, and paying Rs. 100. Since then they had never paid any rent to the landlord and had remained in occupation of the house as owners. He also stated that he and his brother had long since reconstructed the house, which was described only in the mortgage deed as a kutcha house, and which they had now made pucca, and there had never been any further claim from the landlord.

The only evidence of the landlord that any rent was ever paid after the termination of the lease was in the form of some writings by the landlord himself on the back of the rent deed and even these writings only cover payments amounting to Rs. 104 which, as the learned Rent Controller has said, could only show the payment of rent up to August, 1931, even if accepted at their face value.

In these circumstances the learned Rent Controller found that since the lease deed on which the landlord relied had come to an end in 1929, i.e., long before statutory tenancies were created by any Act such as the East Punjab Urban Rent Restriction Act of 1949, and there was no evidence to show that the tenant had ever acknowledged the landlord as such after the expiry of the lease, or any evidence worth the name of any payment of rent therefor, no relationship of landlord and tenant existed between the parties, and he rightly held that it was not for him to decide whether the mortgage had in fact been redeemed, which could only properly be determined after Nagar Mal instituted a suit to enforce his mortgage. He, therefore, dismissed the landlord's application.

The learned Appellate Authority in reversing this decision has held that the learned Rent Controller ought to have decided the matter purely in accordance with the

terms of the Act of 1949, under which the tenant in this case fell within the definition of 'tenant' in the Act, which includes a tenant continuing in possession after the termination of the tenancy.

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In my opinion the view taken by the learned Rent Controller was correct. The Act cannot be taken as retrospective and cannot confer any right upon a landlord which he did not enjoy when the Act came into force. If, therefore, the tenancy in this case had terminated 20 years before the Act came into force under the law as it then stood, it cannot be revived merely by the definition of the word 'tenant' in the Act.

On the question of termination of the tenancy there is the decision of Tek Chand and Dalip Singh, JJ., in *Banwari Lal v. Mt. Hussaini and another* (1), in which it has been held that in a case of tenancy for a fixed term the tenancy is determined automatically at the expiry of the term of the lease and after that date the relationship of landlord and tenant does not subsist unless it is proved that there was novation of contract, express or implied, and the tenancy has been converted into a tenancy-at-will or a tenancy from year to year. In the same case it was held that where a tenant remains in possession after the expiry of a period of lease without paying rent, and there is nothing to show that the lessor assented to the lessee's continuing in possession, the suit by the lessor for possession beyond 12 years from the expiry of the period of lease is time-barred under Article 139.

In deciding the matter in favour of the landlord the learned Appellate Authority has expressed disbelief of the plea of the tenant that the mortgage was redeemed by the end of first year in the manner alleged on the ground that this plea was not specifically taken in the written statement and appeared to be an after-thought. In my opinion the learned Appellate Authority was quite wrong in embarking on a decision as to whether the mortgage had been redeemed or not, and the learned Rent Controller was quite right in holding that that could only be decided if Nagar Mal instituted a suit based on the mortgage. In

(1) A.I.R. 1940 Lahore 410.

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more than one cases it has been held by this Court that Rent Controllers would do well to confine themselves to deciding matters under the Act and not deciding rival claims to title in property under the guise of ejection applications under the Act. This has been said by Dulat, J., in *Budh Ram and another v. Ragobar Dayal and others*, Civil Revision No. 514 of 1961, decided on the 4th of October, 1962, and by me in *Hari Ram v. Dalip Singh and another*, Civil Revision No. 701 of 1961, decided on the 30th of November, 1962.

Holding, as I do, that the view of the learned Rent Controller, was correct in this case I accept the revision petition and restore his order dismissing the landlord's ejection petition. The parties may be left to bear their own costs.

B.R.T.