

## REVISIONAL CIVIL

Before Bhandari, C. J.

SHRI RAM UDHAR AND OTHERS,—*Petitioners*

*versus*

SHRI HARI CHAND AND DHARAM CHAND,—*Respondents*

Civil Revision No. 248 of 1957.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(c) and 2(i)—Mortgagee with possession leasing out the mortgaged property to the mortgagor on rent equal to stipulated interest—Relationship of landlord and tenant—Whether exists between the two.*

1957

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Held, that where the mortgage is with possession, the mortgagee is entitled, by virtue of his legal title, to the immediate possession of the mortgaged premises. He is at liberty to reside in the premises himself or to create a tenancy in favour of the mortgagor or in favour of another person. If the premises are leased out to the mortgagor, the latter becomes the tenant of the mortgagee, for a tenant is one who occupies the premises of another in subordination to that other's title and with his assent, express or implied, and the relationship of landlord and tenant between the two comes into existence. It may be that the mortgagee thereby intends to secure on the amount lent an income equal to the interest at a certain rate but he is not precluded from entering into a transaction of this kind.

*Bakhshi Ram alias Bakhsha v. Buta Singh (1), and Asa Ram and others v. Kishan Chand and others (2), relied on; Baijnath Prasad and another v. Jang Bahadur Singh and another (3), dissented from.*

*Petition under section 15, subsection 5, of East Punjab Rent Restriction Act III of 1949, as amended by Punjab Act 29 of 1956, for revision of the order of Sh. Pritam Singh Jain, District Judge, Ludhiana, dated the 6th March, 1957, affirming that of Sh. Ishar Singh, Rent Controller,*

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(1) 1956 P.L.R. 574

(2) A.I.R. 1930 Lah. 386

(3) A.I.R. 1955 Pat. 357

*Ludhiana, dated the 25th July, 1956, dismissing the suit of the petitioner and allowing to him one month's time from 6th March, 1957, to vacate the premises, failing which the landlord will be entitled to take possession in execution.*

N. L. WADHERA, for Petitioner.

C. L. LAKHANPAL, for Respondent.

#### JUDGMENT

Bhandari, C.J. BHANDARI, C.J.—This petition raises the question whether the relationship of landlord and tenant exists between the petitioner and the respondent.

Ram Udhar and two others are stated to be the owners of a certain house situate in Ludhiana. On the 15th July, 1944, the owners mortgaged the property with Hari Chand and Dharam Chand for a sum of Rs. 10,000. The mortgage was with possession. It was stipulated that interest would run at the rate of annas eight per cent per mensem but would increase to annas ten per cent per mensem in case of default. On the same day the mortgagors executed a rent deed by virtue of which they agreed to pay rent at the rate of Rs. 600 per annum to the mortgagees.

The mortgagors failed to pay the rent which was due from them and on the 3rd September, 1953, they created a second mortgage more or less on the same terms as were incorporated in the first mortgage deed. On the same date, that is on the 3rd September, 1953, the mortgagors agreed to pay rent at the rate of Rs. 750 per annum. On the 21st June, 1955, the mortgagees applied for ejectment of the mortgagors on the ground that the mortgagors had failed to pay the rent which was due from them. The Rent Controller came to the conclusion that the relationship of landlord and tenant existed between the parties, that the

mortgagors had failed to pay rent for the period in dispute and that they were liable for eviction from the premises in question. The order of the Rent Controller was upheld by the learned District Judge and the mortgagors have come to this Court in revision.

Shri Ram Udhar  
and others  
v.

Shri Hari Chand  
and Dharam  
Chand

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Bhandari, C.J.

Mr. Wadhwa, who appears for the mortgagors, invites my attention to *Baijnath Prasad and another v. Jang Bahadur Singh and another* (1), where a mortgagor took back a lease of the mortgaged properties by executing a *kirayanama* in favour of the mortgagee. It was held that the so-called rent payable under the *kirayanama* in fact represented the interest payable on the mortgage money and not rent for use and occupation, that the *kirayanama* was merely a device for regular payment of interest on the mortgage money and not a lease of the properties and that the relationship of landlord and tenant did not come into existence between the mortgagee and mortgagor.

I must confess with great regret that I am unable to concur in this view. The mortgage was with possession and the mortgagees were entitled by virtue of their legal title to immediate possession of the premises in question. They were at liberty to reside in the premises themselves or to create a tenancy in favour of the mortgagors or in favour of another person. They leased out the premises to the mortgagors and the latter became the tenants of the mortgagees, for a tenant is one who occupies the premises of another in subordination to that other's title and with his assent express or implied. When a mortgagee with possession allows the mortgagor to remain in possession of the mortgaged property on the mortgagor executing a lease, the relationship of landlord and

(1) A.I.R. 1955 Pat. 357

Sbri Ram Udhar and others v. Shri Hari Chand and Dharam Chand Bhandari, C.J. tenant comes into existence, *Bakhshi Ram alias Bakhsha v. Banta Singh* (1). It may be that the mortgagees intended to secure on the amount lent an income equal to the interest at a certain rate, but as pointed out in *Asa Ram and others v. Kishan Chand and others* (2), they were not precluded from entering into a transaction of this kind.

For these reasons I would uphold the order of the Courts below and dismiss the petition. There will be no order as to costs.

B.R.T.

APPELLATE CIVIL

Before Bishan Narain, J.

REGIONAL DIRECTOR, EMPLOYEES STATE INSURANCE CORPORATION, NEW DELHI,—Appellant

*versus*

DYER MEAKIN BREWERIES, LTD., AND ANOTHER,—  
Respondents.

Regular First Appeal from Order No. 144 of 1955.

1957  
Oct. 11th

*Employees State Insurance Act (XXXIV of 1948)—Sections 61 and 67—Scope of—Employees State Insurance Corporation—Whether entitled to claim indemnity from a person causing the death of an insured person—Fatal Accidents Act (XIII of 1855)—Sections 1 and 2—Scope of—Whether legal representatives of the deceased are entitled to recover damages consequent upon his death by accident.*

*Held*, that section 61 of the Employees State Insurance Act, 1948, is wide enough to prevent a dependant from receiving any benefit similar to “dependants benefit” which he is entitled to receive under any other enactment, e.g., Workmen’s Compensation Act. It is, however, not wide enough to prevent a dependant from recovering damages from a third person who is liable in tort to pay damages for

(1) 1956 P.L.R. 574  
(2) A.I.R. 1930 Lah. 386