

## REVISIONAL CIVIL

Before Mehar Singh, C.J.

SRI KISHAN DEV,—Petitioner

versus

BABU NAND KISHORE, ADVOCATE AND ANOTHER,—Respondents.

Civil Revision No. 383 of 1968.

February 6, 1970.

*East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(c)—Payment of rent by the tenant to one of the joint land lords—Whether gives a ground for eviction against such tenant to the other land lords for non-payment of rent.*

Held, that landlord as defined in section 2(c) of the East Punjab Urban Rent Restriction Act, 1949, is a person entitled to receive rent for the time being whether on his own account or on behalf of another and so also every person from time to time deriving title under a landlord. Hence two persons who derive title to demised property from one original landlord are landlords within the definition of the expression 'landlord' in section 2(c) of the Act and either of them may receive rent on behalf of the other. Therefore, the payment of rent to one of the joint landlords does not give a ground for eviction against the tenant to the other landlord or landlords on the basis of non-payment of arrears of rent. (Para 3)

*Petition under section 15(V) of The East Punjab Urban Rent Restriction Act, 1949 for revision of the order of Shri J. P. Gupta, Appellate Authority, Hissar, dated the 23rd February, 1968 affirming that of Shri A. S. Garg, Rent Controller, Hissar, dated the 29th April, 1967 dismissing the application with costs.*

H. L. SARIN AND A. L. BAHL, ADVOCATES, for the petitioner.

A. N. MITTAL, ADVOCATE, for the respondents.

## JUDGMENT

MEHAR SINGH, C.J.—The only question that arises for consideration in this revision application is whether payment of rent to one of the joint landlords gives a ground for eviction against the tenant to the other landlord or landlords on the basis of non-payment of arrears of rent?

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and another (Mehar Singh, C.J.)

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(2) The tenancy was created in favour of the tenant, respondent 1, on January 6, 1945, under the rent-note, Exhibit A/7, by Prahlad Rai, who having died on January 11, 1954, the property devolved upon his son, Sri Krishan Dev applicant, and his widow Champa, respondent 2. Between 1954 and 1965, when the applicant made the application for ejection against the tenant, he never made any claim to the rent of the demised property from the tenant. In the meantime the rent had been paid by the tenant to his mother, Champa, respondent 2, the other landlord. So if payment to Champa, respondent 2, one of the landlords, results in the non-existence of arrears of rent on the part of the tenant, this ground of eviction obviously will not be available to the other landlord, the applicant, Sri Krishan Dev.

(3) In the definition of the expression 'landlord' as in section 2(c) of the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), a person entitled to receive rent for the time being whether on his own account or on behalf of another, is a landlord and so also every person from time to time deriving title under a landlord. Now, both the applicant and Champa, respondent 2, have derived title to the demised property from the original landlord, and so both are landlords within the definition of the expression 'landlord' in section 2(c) of East Punjab Act 3 of 1949. It is further apparent that either may receive rent on behalf of the other, and no circumstances stated in this case prohibited one landlord from receiving rent on behalf of the other. If anything, the circumstance that the applicant did not claim rent between the years 1954 and 1965 is a corroborative circumstance that he had no objection to the realisation of rent by his mother Champa, respondent 2. So having regard to the definition of the expression 'landlord' in section 2(c) of East Punjab Act 3 of 1949, realisation of rent by Champa, respondent 2, one of the landlords, was realisation on her own behalf as also for and on behalf of her son, the applicant, and once that is the conclusion, there were no arrears due from the tenant on the date of the eviction application by the applicant. In *Sukh Dev Dass v. Lalit Mohan* (1), the learned Judge reached the same conclusion on somewhat similar facts.

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(1) 1967 P.L.R. 221.

(4) The learned counsel for the applicant refers to *Ram Chandra v. Goswami Rajjan Lal* (2) and *Mathra Das v. Nizam Din* (3), in both of which cases the learned Judges have held that payment of the mortgage money to one of the several co-mortgagees without the consent of the other co-mortgagees is not a complete discharge of the mortgage debt binding on all the mortgagees and that section 38 of the Contract Act contemplates and prescribes the results of only a rejected, not of an accepted, offer of performance. But it is apparent that these cases have no bearing so far as the present case is concerned, for they do not turn upon the definition of the expression 'landlord' as in section 2(c) of East Punjab Act 3 of 1949 or a parallel provision. Another case referred to by the learned counsel for the applicant is *Shyam Lal v. Jagannath* (4), in which the learned Judge held that section 38 of the Contract Act is no authority for the proposition that a payment to one of the several co-promisees operates as a valid discharge or is tantamount to payment to all of them, and that, therefore, a payment of rent to one of several co-sharer landlords does not give a valid discharge to a tenant. It is again apparent that that was not a case, and could not be a case, under East Punjab Act 3 of 1949 and the decision of the learned Judge has no relation to any provision parallel to the definition of the expression 'landlord' as in section 2(c) of this Act. No such expression came for consideration of the learned Judge in that case. None of these cases, therefore, has bearing on the facts of the present case and so far as the provisions of East Punjab Act 3 of 1949 are concerned.

(5) In consequence, this revision application fails and is dismissed with costs, counsel's fee being Rs. 32.

N.K.S.

(2) (1910) 32 All. 164.

(3) 68 P.R. 1917 (F.B.)

(4) A.I.R. 1937 All. 527.