

been prepared in accordance with the provisions of law. The defect seems to be material with respect to an essential particular. Non-interference in these circumstances would amount to inflicting on the citizens of Morinda a Municipality which is not their truly representative body, which result can hardly be countenanced by this Court.

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and another
v.
The State of
Punjab and
others
Dua, J.

For the reasons given above, this writ is allowed and the impugned election set aside. In the peculiar circumstances of the case, there will be no order as to costs.

K.S.K.

REVISIONAL CIVIL

Before A. N. Bhandari, C. J.

SAIN DASS,—Petitioner.

versus

PT. SANT RAM,—Respondent.

Civil Revision No. 94 of 1959.

Evidence Act (I of 1872)—Section 116—Scope of—Tenant—Whether and when can deny his landlord's title—Sub-tenant—Whether discharged by payment of rent to the paramount landlord.

1959
July, 13th.

Held, that Section 116 of the Evidence Act accords statutory recognition to the well-known doctrine that during the existence of the relationship of landlord and tenant the tenant is estopped from denying his landlord's title or from asserting that another person has a better title than the landlord. This doctrine has no application where the landlord's title has expired or been extinguished or where there has been a fraud on the part of the landlord in the execution of a lease, or where the tenant did not obtain or retain possession under the lease or by virtue of it, or where he has been evicted by title paramount. A person who is evicted by such a title is at liberty to deny

his landlord's title, for an eviction is equivalent to a termination of the tenancy. Even if a tenant is not actually evicted, but if a judgment of eviction has been passed against him a tenant is justified in treating the relation of tenancy at an end and at liberty to give a new and rightful character to his possession.

Held, that a person who wishes to discharge a debt owing from him must make the payment either to the person who is entitled to receive it or to an agent of the person who is so entitled. A payment to a third person does not reach the debt and does not bar the recovery from the debtor by the person rightfully entitled thereto. In view of this rule it is necessary that a tenant should pay the rent either to the landlord from whom he has obtained the lease or to an agent of the landlord or run the risk of having to pay the rent twice over. The tenant in the present case did not pay the rent to the landlord from whom he had obtained the premises or to an agent of the landlord but to a third person who happens to be the paramount landlord. This payment cannot have the effect of discharging the obligation which the tenant owed the landlord.

Petition under Section 115, C. P. C., for revision of the order of Sh. Gyan Dass Jain, Senior Sub-Judge, Gurdaspur, dated the 27th November, 1958, affirming that of Sh. M. S. Sethi, Sub-Judge, IInd Class, Pathankot dated the 27th June, 1958, passing a decree for Rs 390 with proportionate costs in favour of the plaintiff against the defendant.

HARBHAGWAN SINGH, for Petitioner.

MANMOHAN MAHAJAN, for Respondent.

JUDGMENT

Bhandari, C. J.

BHANDARI, C.J.—This petition raises the question whether a tenant is at liberty to controvert his landlord's title while he retains the possession under which he originally entered.

Some twenty years ago Sant Ram plaintiff who is the tenant of a certain shop situate in Pathankot,

leased it out to Sain Das defendant on a certain rent which was later raised to Rs 22 per mensem. The defendant ceased paying rent to the tenant with effect from 1st February, 1956, and started remitting rent to Ramsaran Das Dharam Arth Trust, the paramount owner of the property. The plaintiff thereupon brought a suit out of which this petition has arisen, for the recovery of a sum of Rs 500 on account of arrears of rent for the period 1st February, 1956 to 31st January, 1958. The trial Court granted a decree in favour of the plaintiff, and the order of the trial Court was upheld by the Senior Subordinate Judge of Gurdaspur. The defendant has now come to this Court in revision.

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It is common ground that the relationship of landlord and tenant exists between the plaintiff and the defendant, that the defendant has paid no rent to the plaintiff for the period 1st February, 1956 to the 31st January, 1958 and that he has paid the rent for this period to the Trust who, as I have stated already, is the paramount landlord. The simple question which arises for decision, therefore, is whether the payment of rent to the paramount landlord has had the effect of extinguishing the debt which was due from the defendant to the plaintiff.

It is an accepted proposition of law that a person who wishes to discharge a debt owing from him must make the payment either to the person who is entitled to receive it or to an agent of the person who is so entitled. A payment to a third person does not reach the debt and does not bar a recovery from the debtor by the person rightfully entitled thereto. In view of this rule it is necessary that a tenant should pay the rent either to the landlord from whom he has obtained the lease

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or to an agent of the landlord or run the risk of having to pay the rent twice over. The tenant in the present case did not pay the rent to the landlord from whom he had obtained the premises or to an agent of the landlord but to a third person who happens to be the paramount landlord. This payment cannot have the effect of discharging the obligation which the tenant owed the landlord.

The learned counsel for the defendant contends that the plaintiff had leased the premises out to him without the permission of the Trust, that he was always under an apprehension that he would be evicted by the paramount landlord on this ground and that tragically situated as he was, he had no alternative but to attorn to the paramount landlord and to start paying the rent to him. The threat of eviction, it is contended, was equivalent to eviction and consequently that the defendant was justified in disclaiming the title of the plaintiff and attorning to the paramount landlord.

This argument appears to me to be wholly devoid of force. In the first place, it was never contended before the trial Court that the plaintiff had leased the premises out to the defendant without the consent of the Trust. No issue was framed as to whether the lease was created with or without the consent of the Trust. Secondly, there is not an iota of evidence on the record to justify the conclusion that the Trust ever threatened to evict either the plaintiff or the defendant.

Assuming for the sake of argument that the Trust held out a threat directly or indirectly, to evict the defendant, the question arises whether that threat could entitle the defendant to deny the landlord's title and to attorn to the paramount

landlord ? Section 116 of the Indian Evidence Act is in the following terms:—

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“116. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person, who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

This section accords statutory recognition to the well-known doctrine that during the existence of the relationship of landlord and tenant the tenant is estopped from denying his landlord's title or from asserting that another person has a better title than the landlord. This doctrine has no application where the landlord's title has expired or been extinguished or where there has been a fraud on the part of the landlord in the execution of a lease, or where the tenant did not obtain or retain possession under the lease or by virtue of it, or where he has been evicted by title paramount. A person who is evicted by such a title is at liberty to deny his landlord's title, for an eviction is equivalent to a termination of the tenancy. Even if a tenant is not actually evicted, but if a judgment of eviction has been passed against him a tenant is justified in treating the relation of tenancy at an end and at liberty to give a new and rightful character to his possession. In *Lunsford v. Turner*

(1) the Court observed :—

“Wherever, it is ascertained by a competent judgment or decree that the landlord's

(1) 20, American decisions, 248

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title is insufficient for the security of the tenant, the relation between them may be renounced, and the tenant may protect himself by taking shelter under the paramount title. In this respect a judgment of eviction against the tenant would be as effectual as an actual eviction.”

The defendant in the present case was neither evicted from the premises occupied by him nor was a judgment of eviction ever passed either against the plaintiff or against the defendant. It may be that the defendant was under an apprehension that a suit of eviction might be brought by the paramount landlord, but that fact alone could not justify the defendant in denying the title of the plaintiff and attorning to the Trust. Three authorities have been cited by the learned counsel for the defendant, namely, *Kumar Raj Krishna Prosad Lal Singh Deo v. Barabani Coal Concern Ltd.*, and others (1); *S. Chokkalingam Pillai and another v. M. S. S. M. Ganesa Shanmugasundaram Pillai* (2); and *Kabiruddin v. Emperor* (3), but none of these authorities supports the proposition put forward by him. The language of section 116 of the Evidence Act is clear and unambiguous and the defendant was precluded during the continuance of the tenancy from denying that the plaintiff had at the beginning of the tenancy a title to lease the premises out to him.

For these reason, I would uphold the orders of the Courts below and dismiss the petition with costs.

B.R.T.

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- (1) A.I.R. 1935 Cal. 368
(2) A.I.R. 1951 Mad. 284
(3) I.L.R. 35 Cal. 368