

REVISIONAL CIVIL

*Before Bhandari, C.J.*BAKSHI RAM *alias* BAKHSHA,—*Petitioner**versus*BUTA SINGH,—*Respondent*

Civil Revision No. 17 of 1956

Landlord and Tenant—Relationship between—How created—payment of rent—Whether an essential incident of tenancy—The East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Mortgage with possession—Mortgagor retaining possession by executing rent note in favour of the mortgagee and undertaking to pay rent—Whether relationship of landlord and tenant created.

1956

Sept., 12th

Held, that the relationship of landlord and tenant comes into being when one party agrees to divest himself of the possession and the other agrees to come into it for a determinate term. The agreement may be express or implied but the relationship cannot exist without such agreement. No particular form of words is necessary to constitute an instrument of a lease but it will be deemed to be a lease if a perusal of the whole instrument or transaction makes it quite clear that the intention of the parties was to create the relationship. Payment of rent is a usual though not an essential incident of tenancy.

When a mortgagee in possession allows the mortgagor to remain in occupation of the mortgaged property as a tenant and the mortgagor duly executes and registers the lease, the relationship of landlord and tenant comes into existence between the parties and the mortgagor cannot be allowed to turn round and plead that the deed executed by him should not be interpreted as a lease.

Asa Ram v. Kishan Chand (1), followed. *Baij Nath Prasad v. Jang Bahadur Singh* (2), referred to.

Petition under Article 227 of Constitution of India for revision of the order of Shri Hans Raj Khanna, District Judge, Ferozepore, dated the 1st December, 1955, affirming that of Shri E. F. Barlow, Rent Controller, Ferozepore, dated

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

(2) A.I.R. 1955 Patna 357.

the 24th August, 1955, ordering that the petitioner shall deliver possession of the house to the respondent within one month from the 24th day of August, 1955, failing which the respondent shall be entitled to eject the petitioner in execution of his order and further ordering the petitioner to pay costs of that application to the respondent.

Application under section 13 of the East Punjab Urban Rent Restriction Act, 1949, for ejection of the petitioner from a house situated in Basti Shekhanwali dakhli, Ferozepore City.

ABNASHA SINGH, for Petitioner.

J. N. SETH, for Respondent.

JUDGMENT

Bhandari, C. J. BHANDARI, C.J.—This petition raises the question whether a certain agreement entered into between one Buta Singh and Bakhsha constitutes a deed of lease or a deed which merely secures the rent of the property.

It appears that one Bakhshi Ram *alias* Baksha is the owner of a certain house situate in Ferozepur. On the 12th January, 1946, he executed a deed of mortgage in a sum of Rs. 1,200 in favour of Buta Singh. This was followed by a rent note, dated the 15th July, 1946, by which he agreed to pay a sum of Rs. 6 per mensem by way of rent in respect of this property. The house in question was later destroyed by floods and Bakhsha constructed a new house on the same site. On the 13th November, 1948, Bakhsha executed a fresh deed of mortgage in a sum of Rs. 2,600 in favour of Buta Singh and on the same day he agreed orally to pay rent at the rate of Rs. 8 per mensem to Buta Singh who was the mortgagee with possession. Bakhsha failed to pay the rent which was due from him and Buta Singh accordingly secured an order for the ejection of Bakhsha which was

later confirmed by the District Judge in appeal. Bakhshi Ram Bakhsha has now presented an application under *alias* Bakhsha Article 227 of the Constitution.

v.
Buta Singh

Mr. Abnasha Singh, who appears for the petitioner in the present case, invites my attention to *Baijnath Prasad v. Jang Bahadur Singh* (1), in which a Division Bench of the Patna High Court held that where a mortgagor took a lease of the mortgaged properties by executing a *kirayanama* in favour of the mortgagee and the so-called rent payable under it in fact represented the interest payable on the mortgage money and not a rent for use and occupation, the *kirayanama* was merely a service for regular payment of interest on the mortgage money and not a lease of the properties.

Bhandari, C. J.

The relationship of landlord and tenant comes into being when one party agrees to divest himself of the possession and the other agrees to come into it for a determinate term. The agreement may be express or implied but it cannot exist without such agreement. No particular form of words is necessary to constitute an instrument of lease but it will be deemed to be a lease if a perusal of the whole instrument or transaction makes it quite clear that the intention of the parties was to create that relationship. Payment of rent is a usual though not an essential incident of a tenancy.

The circumstances of the present case make it quite clear that the relationship between the parties to this litigation is that of landlord and tenant. Bakhsha who is the owner of the house in question mortgaged it with possession to Buta Singh and several months later he executed a rent note in favour of the mortgagee. He thus became a tenant of the mortgagee. The house was later destroyed by floods and a fresh deed of mortgage was executed. As the mortgage was with possession and as the owner of

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

Bakhshi Ram the house continued to stay on in the premises, it
alias Bakhsha seems to me that he occupied the premises not in his
 v. capacity as owner but in his capacity as a tenant of
 Buta Singh the person with whom the property was mortgaged.

Bhandari, C. J. When a mortgagee in possession allows the mortgagor
 to remain in occupation of the mortgaged properties
 as a tenant and the mortgagor duly executes and re-
 gisters the lease, the relation of landlord and tenant
 comes into existence between the parties and the
 mortgagor cannot be allowed to turn round and plead
 that the deed executed by him should not be interpret-
 ed as a lease, *Asa Ram v. Kishan Chand* (1).

For these reasons I am of the opinion that the
 Courts below have come to a correct determination
 in point of law and the only order that can be passed
 on this petition is that it must be dismissed with costs.
 I would order accordingly.

REVISIONAL CRIMINAL

Before Bhandari, C.J. and Khosla, J.

GURDIAL SINGH,—Petitioner

versus

THE STATE,—Respondent

Criminal Revision No. 1029 of 1954.

Punjab Gram Panchayat Act (IV of 1953)—Whether
ultra vires the Constitution of India.

1956

Sept., 17th

Held, that the Punjab Gram Panchayat Act of 1953 is
 not *ultra vires* the Constitution of India.

(Case referred to Division Bench for decision by Hon'ble
 Mr. Justice Kapur, on the 11th March, 1955.)

Petition under section 439 of Criminal Procedure Code
 for revision of the order of Shri Raghbir Singh, District
 Magistrate, Ludhiana, dated the 29th May, 1954, affirming
 that of the Gram Panchayat Nasrali, dated the 22nd Janu-
 ary, 1954, convicting the petitioner.

K. S. THAPAR and H. L. SARIN, for Petitioner.

S. M. SIKRI, Advocate-General for Respondent.

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