Dayal Singh and others
v.
Des Raj Vij and others

Mahajan, J.

For the reasons given above, both these appeals fail and are dismissed with costs.

An oral prayer has been made for leave to appeal under clause 10 of the Letters Patent, and I grant the same.

R.S.

REVISIONAL CIVIL

Before Daya Krishan Mahajan, J.

GIAN SINGH,—*Petitioner.*

versus

SURRINDER LAL AND OTHERS,—*Respondents.*

Civil Revision No. 540 of 1961.

1962

Nov., 19th

Delhi and Ajmer Rent Conrol Act (XXXVIII of 1952)—S. 13(h)—Premises built by a tenant before becoming tenant—Landlord—Whether can evict him on the ground that the tenant has built premises of his own—Code of Civil Procedure (V of 1908)—S. 149—Appeal filed within limitation with copies of judgments and decree insufficiently stamped—Deficiency in court fee allowed to be made good after limitation—Whether makes the appeal within limitation.

Held, that a landlord can maintain a suit for eviction against his tenant on the ground that the tenant has built premises of his own, even if he had built the same when he was not the tenant of the landlord who is seeking his eviction.

Held, that when an appeal is filed with copies of judgment insufficiently stamped, the appellate Court has the power to allow time to the appellant to make good the deficiency in courtfee under section 149 of the Code of Civil Procedure. Such an order can be made at any stage of the proceedings and in case the deficiency in courtfee is made good, the appeal would be taken to have been filed on the date when it was originally filed though with deficient courtfee.

Application for revision under section 35 of the Delhi and Ajmer Rent Control Act, 1952 of the order of Shri Om Parkash Sharma, Senior Sub-Judge, Delhi, dated the 20th October, 1961, affirming with costs that of Shri V. D. Aggarwal, Sub-Judge, Ist Class, Delhi, dated the 30th November, 1960, granting the plaintiff a decree for eviction of defendant No. 1, from the premises in suit with costs

G. S. VOHRA, Advocate, for the Petitioner.

DAYA KRISHAN AND M. L. AGGARWAL, ADVOCATES, for the Respondents.

JUDGMENT

MAHAJAN, J.—Facts giving rise to this petition for revision, which has been filed by a tenant under section 35 of the Delhi and Ajmer Rent Control Act, 1958, are as follows : Shri Mohan Lal, Advocate, who is the owner of the premises, according to him as the *Karta* of the joint Hindu family, let out one flat out of a building consisting of four flats to Gian Singh and Siri Ram in the year 1952 at a monthly rent of Rs. 150. The premises are situate in Karol Bagh. The tenancy was for a period of three months. It may be mentioned that Siri Ram surrendered possession of his portion to Gian Singh with the result that Gian Singh has been the sole occupant as a tenant of the premises from the year 1955 onwards. On the 21st March, 1958, there was a family partition of the joint Hindu family of which Shri Mohan Lal was the *Karta* and a decree was obtained. Under this decree the flat in question fell to the share of his son Surinder Lal. The tenant started attorning to him with effect from the 1st of April, 1958. The present petition for ejectment of the tenant was filed by the son, Surinder Lal, under section 13(1)(c) and section 13(1) (h) of the Act. The grounds were that the landlord required the premises for his own use and for the

Mahajan, J.

Gian Singh
v.
Surinder Lal and others

Mahajan, J.

use of his family and that the tenant had built premises after the coming into force of the 1952 Act, that is, in the year 1955. Both these grounds prevailed with the trial Court and a decree for eviction followed. On appeal by the tenant, the decision of the trial Court was affirmed. The present petition for revision is by the tenant, Gian Singh.

It may be mentioned that the lower appellate Court dismissed the appeal as barred by time. The ground on which the appeal was held to be barred by time was that the copies of the judgment and decree were insufficiently stamped. Though the appeal was filed within limitation but as the deficiency was made good after the period of limitation, therefore, the appeal, according to the lower appellate Court, would be treated as having been filed when the deficiency was made good. So far as this matter is concerned, the deficiency can be allowed to be made good at any stage of the proceedings and once it is allowed the appeal would be taken to have been filed on the date when it was originally filed though with deficient court fee. If reference is made to section 149 of the Code of Civil Procedure, the matter can admit of no doubt whatever. I, therefore, hold that the decision of the lower appellate Court that the appeal is barred by time is absolutely erroneous.

So far as the merits of the matter go, it appears to me that the decision of the Courts below is correct and must be upheld. Mr. Vohra, learned counsel for the petitioner, urges that under clause (h), which is in these terms:—

> "(h) that the tenant has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted, a suitable residence;"

a tenant is only liable to eviction if he builds premises when he is a tenant of the landlord, who is seeking his eviction. I, however, find no warrant for this contention. The term 'tenant' is defined as follows :—

> "2. (j) 'tenant' means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have derived title under a tenant under the provision of any law before the commencement of this Act."

Turning to section 13, which is the section dealing with the grounds on which a tenant can be evicted, the proviso in which the various eviction clauses figure provides—

> "that nothing in this sub-section shall apply to any suit or other proceeding for such recovery of possession if the Court is satisfied * * * *"

and then follows clause (h) and according to this clause all that has to be seen is whether the person who is sought to be evicted is a tenant of the landlord and if he is a tenant, has he built his own premises either before or after the commencement of the Act. If so clause (h) will straightway come into operation. There is no warrant for holding, as the learned counsel for the petitioner would like me to hold, that the premises must be built by the tenant when he was the tenant of the landlord. That being so, there is no merit in this contention. I would accordingly dismiss this petition and in view of the fact that on one matter the tenant has succeeded, that is, the limitation, I would make no

Gian Singh
v.
Surinder Lal and others

Mahajan, J.

order as to costs in this Court, but the order as to costs in the Courts below will stand.

I allow the tenant three months' time to vacate the premises.

R. S.

CIVIL MISCELLANEOUS

Before Tek Chand and P. D. Sharma, JJ.

BHAGWAN KAUR,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ 235 of 1961.

1962

Nov., 26th

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 32-B—Scope of—Landowner or tenant not holding any land under personal cultivation—Whether entitled to make application under—Inequities resulting from plain meaning of the statute—Whether can be ameliorated by Court—Interpretation of Statutes—Rules as to, when meaning is plain and unambiguous—Constitution of India (1950)—Art. 14—Whether infringed by two Acts on same subject *continuing in force in different parts of the State—States Reorganisation Act XXXVII of 1956)—S. 119—Object and effect of.*

Held, that a return under section 32-B of the Pepsu Tenancy and Agricultural Lands Act, 1955, has to be submitted within the prescribed period by a person who personally cultivates land whether he owns it as land-owner or holds it as a tenant. In other words, whether the person who submits the return happens to be a land-owner or a tenant of the land, he must be personally cultivating it. If such a person cultivates personally an area within the permissible limit, that is, up to 30 standard acres, he may not submit any return, but if he is personally cultivating a larger area over and above the permissible limit, then he is required to furnish to the Collector a return giving the required