

The Indian Law Reports

Punjab Series

APPELLATE CIVIL

Before Harbans Singh, J.

KANSHO DEVI,—Appellant

versus

KISHAN CHAND and others,—Respondents.

Regular Second Appeal No. 1 of 1958.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2)—Code of Civil Procedure (V of 1908)—Order 21, Rule 100—Decree for possession by pre-emption obtained in respect of a shop which was in occupation of a tenant under the vendor—Occupation of the tenant—Whether “in his own right”—Tenant dispossessed in execution of the decree—Whether can take proceedings under Order 21, Rule 100.

1961

August, 30th

Held, that inasmuch as under section 13 of the East Punjab Urban Rent Restriction Act “a tenant in possession of a building shall not be evicted in execution of a decree except in accordance with the provisions of the “aforesaid section”, a right is created in the tenant to continue in possession and because this right enures in his favour even as against the original landlord, he must be treated to be in occupation of the property “in his own right” within the meaning of Order 21, rule 100 of the Code of Civil Procedure. It is open to such a tenant to bring a suit but that does not preclude him from seeking the summary remedy of filing an application under Order 21, rule 100.

Regular Second Appeal from the decree of the Court of Shri Raj Inder Singh, Additional District Judge, Amritsar, dated the 16th December, 1957 affirming that of Shri M. R. Sikka, Sub Judge 1st Class, Amritsar, dated the

30th April, 1957, dismissing the plaintiff's suit with costs and further ordering that defendants Nos. 1 to 3 would bear their own costs.

B. R. TULI AND BHAGIRTH DASS, ADVOCATES, for the Appellants.

H. R. MAHAJAN, ADVOCATE, for the Respondents.

JUDGMENT

Harbans Singh,
J.

HARBANS SINGH, J.—Facts giving rise to this second appeal may briefly be stated as follows:—On 9th of October, 1954, Shrimati Prem Kaur and her sons (hereinafter referred to as the original vendors) sold certain property to Kishan Chand (hereinafter referred to as the vendee). This sale was successfully pre-empted by Shrimati Kanso Devi and a decree for possession by pre-emption was granted in her favour on 18th of November 1955. A shop, being part of the property which was the subject-matter of the sale, was in the occupation of one Brij Lal as a tenant under the vendors. On 4th of February, 1955, this Brij Lal, executed a fresh rent note, copy Exhibit D.8, in which he recognised Kishan Chand as the landlord and the tendency was to date back to 9th of October, 1954, the date of the sale. The actual possession of the shop was with one Bal Krishan. In execution of the decree for possession Shrimati Kanso, the pre-emptor decree-holder, obtained possession of the property which was the subject-matter of the sale including the shop in dispute. Bal Krishan, who was in actual possession willingly surrendered possession. Brij Lal, thereupon filed an application under Order 21, rule 100, Civil Procedure Code, claiming that Bal Krishan was a mere servant of Brij Lal, who had a right to continue in possession as a tenant under Kishan Chand and that his possession should be restored. On behalf of Shrimati Kanso Devi, it was urged that Bal Krishan was, in fact, a sub-tenant of Brij Lal and he having delivered the possession voluntarily, application under Order 21, rule 100, was not competent. This objection application was accepted and possession was ordered to be restored to Brij Lal. Being dissatisfied with this, Shrimati Kanso Devi brought the suit, out of

which the present appeal has arisen, under Order 21, rule 103, Civil Procedure Code. She reiterated her position that Bal Krishan was a sub-tenant and further stated that even if he was only an employee, he having delivered possession on behalf of Brij Lal, the application under Order 21, rule 100 was not competent and that the only remedy which was open to him was to file a suit. The only issue was as follows:—

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“Whether the order, dated 24th of April, 1956, of Shri Des Raj Dhameja, Sub-Judge, Ist Class, Amritsar, restoring the possession of the property in suit to defendant No 4 under order 21, rule 100 of the Civil Procedure Code is illegal and not binding upon the plaintiff for reasons given in para No. 4 of the plaint?”

The trial Court held that Bal Krishan was a mere servant and the possession obtained from him was a collusive one because Bal Krishan was given back the possession of the shop two months after the alleged delivery of possession in execution proceedings and that Brij Lal held the property on his own account and, consequently, possession had been rightly ordered to be restored to Brij Lal. This order was confirmed by the lower appellate Court.

The main point urged by Mr. Tuli, the learned counsel for the appellant, is that even if Brij Lal be said to be a tenant holding under Kishan Chand, he cannot be said to be in possession of the property “on his own account”. For this, he placed reliance mainly on *Jairam v. Nowroji* (1), a judgment by Macleod, C. J. The head-note runs as follows:—

“A sub-tenant cannot claim to be in possession of property on his own account within the meaning of Order 21, rule 99, and if his immediate landlord is the tenant and judgment-debtor he cannot be in possession on account of some person other than the judgment-debtor.

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(1) A.I.R. 1922 Bom. 449(2).

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The words 'on his own account' in rule 99, can only refer to a person who claims to be in possession on his own title, or as tenant of some person other than the judgment-debtor."

This was relied, upon in *Appa Rao v. Venkappa*, (1), in which Ramesam J. observed as follows :—

"Tenants or servants of a judgment-debtor unless they are occupancy tenants are bound by the decree against the judgment-debtor."

Prima facie, these two rulings do support the contention of the learned counsel for the appellant.

The learned counsel for the respondent, however, urged that in view of section 13(2) and other provisions of the Urban Rent Restriction Act a tenant has a right to continue in possession in his own right even as against the original landlord and that, consequently, in the present case Brij Lal being a tenant even under the original vendors, Kishan Chand vendee could not eject him and that the pre-emptor, who only steps into the shoes of the vendee, cannot possibly get a better title or right to eject the tenant than the original vendee or the vendor. He referred to a Calcutta case reported in *S. N. Talapatra v. B. B. Ware House* (2). In that case A, a landlord, obtained a decree for ejection against his tenant B. The possession was actually with C, a sub-tenant from B. C resisted delivery of possession in execution of the decree obtained by A against B but he was ousted with the police help. C thereafter applied for restoration of possession to him under Order 21, rule 100 and section 144 of the Civil Procedure Code and section 13(2) of the West Bengal Premises Rent Control (Temporary Provisions) Act (17 of 1950). This section 13(2) treated certain types of sub-tenants as if they were tenants directly under the landlords. C happened to be that type of sub-tenant. It was

(1) A.I.R. 1931 Mad. 534.

(2) A.I.R. 1953 Cal. 598.

held that in order that the landlord may recover possession from the sub-tenant he must show that he has a right to treat the sub-tenancy at an end and to recover possession from the sub-tenant on the footing that the sub-tenancy no longer exists. It was further held that in view of the provisions of section 13(2), C, who was a sub-tenant under the tenant of the first degree, would be deemed to be a tenant under the landlord A, and A cannot, therefore, treat the petitioner C as trespasser. This ruling clearly supports the contention of the learned counsel for the respondent that inasmuch as under section 13 of the Punjab Urban Rent Restriction Act "a tenant in possession of a building shall not be evicted" in execution of a decree except in accordance with the provisions of the "aforesaid section", a right is created in the tenant to continue in possession and because this right enures in his favour even as against the original landlord he must be treated to be in occupation of the property "in his own right" within the meaning of Order 21, rule 100. I feel there is force in this contention. No doubt, it is open to such a tenant to bring a suit but that does not preclude him from seeking the summary remedy of filing an application under Order 21, rule 100.

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The other point urged by the learned counsel for the appellant was that Bal Krishan was not a mere servant and he had willingly surrendered possession. In view of the clear finding of the learned lower appellate Court, which was arrived at after considering the evidence on the record, that Bal Krishan was a mere servant and that the so-called possession was obtained collusively, I find that the plaintiff-appellant, Shrimati Kanso, cannot derive any benefit from such a surrender.

In view of the above, therefore, I feel that the judgment and the decree of the learned lower appellate Court is well founded and there is no force in this appeal which is dismissed. In the peculiar circumstances of the case, however, there will be no order as to costs.

K.S.K.