

## APPELLATE CIVIL

*Before S. S. Dulat and Prem Chand Pandit, JJ.*

KARTAR SINGH,—*Appellant.*

*versus*

BARKAT RAM,—*Respondent.*

Regular First Appeal No. 362 of 1961.

1964

November, 25th *Evacuee Interest (Separation) Act (LXIV of 1951)—S. 23—  
Evacuee Interest (Separation) Rules, 1951, as amended in 1955—  
Rule 11(E) (3)—Custodian leasing out composite property to a tenant—  
Competent officer selling that property—Purchaser of that property—  
Whether entitled to sue for ejectment of that tenant in a civil  
Court.*

*Held*, that by virtue of the provisions of the Administration of Evacuee Property Ordinance, 2 of 1949, all the evacuee property had vested in the custodian and under section 8 of the Administration of Evacuee Property Act 31 of 1950, that property continued to vest in the custodian. Under section 10 of the said Act the custodian was

empowered to manage the evacuee property and was, therefore, competent to create a valid tenancy in respect of the entire composite property which vested in him under the said Ordinance and the Act. Under sub-rule (3) of Rule 11(E) of the Evacuee Interest (Separation) Rules, 1951, as amended in 1955, the purchaser of the composite property could not dispossess the tenant or the allottee of the composite property, as he was to be given only symbolical possession of the same. In other words, the intention of the legislature was that these tenants or allottees should not be treated as trespassers, but they were to remain in possession as tenants of the purchasers instead of the Custodian and they would go on paying rent to them. In case they were to be evicted from the premises, then this could be done only in accordance with the provisions of the East Punjab Urban Rent Restriction Act, 3 of 1949. Clause (b) of this sub-rule, however, gives a further protection to the displaced persons in occupation of such properties inasmuch as they cannot be evicted for a period of two years from the date of sale of these properties except on the grounds mentioned in this clause. A suit for the ejection of such a tenant is not cognisable by a civil Court.

*Regular First Appeal from the decree of the Court of Shri Om Parkash Saini, Sub-Judge, 1st Class, Ludhiana, dated the 9th day of October, 1964, granting the plaintiff a decree for the eviction of the defendant as well as for the recovery of Rs. 640 from him with proportionate costs.*

H. R. SODHI WITH S. S. DHINGRA, ADVOCATE, for the Appellant.

K. S. THAPAR WITH C. B. KAUSHIK, ADVOCATE, for the Respondent.

#### JUDGMENT

PANDIT, J.—The dispute in this case relates to a house situate in Ludhiana. It was admittedly composite property and a portion of the same was allotted by the Custodian to Kartar Singh, appellant, who used to pay a monthly rent of Rs. 42.67 nP. to him. In order to separate the interests of the evacuee and the non-evacuee therein, this house was auctioned by the District Competent Officer on 18th November, 1957, and was purchased by Barkat Ram, respondent, for Rs. 12,000. A sale certificate was also issued in his favour on 14th July, 1959. After purchasing this property, Barkat Ram served a notice on Kartar Singh requiring him to vacate the portion in his occupation and deliver possession of the same to him and also pay Rs. 40 per month as damages for its use and

Pandit, J.

Kartar Singh  
v.  
Barkat Ram  
—  
Pandit, J.

occupation. Since the appellant refused to do so, a suit was brought in October, 1960, against him for the possession of that portion and also for the recovery of Rs. 1,360 on account of damages. It was alleged that Kartar Singh was not his tenant and his possession was that of a trespasser, after the purchase of the property by the respondent. It was also alleged in the alternative that even if it be found that the appellant was a tenant, he had forfeited the tenancy rights on the various grounds set out in para 2 of the plaint. It was further claimed that the appellant was liable to pay damages for use and occupation at the rate of Rs. 40 per mensem with effect from the date of sale, namely, 18th November, 1957.

The suit was resisted by the appellant on a number of grounds. He pleaded, *inter alia*, that the suit was not triable by a Civil Court, as he was in possession of the house in dispute as a tenant and his eviction could only be ordered by a Rent Controller. It was further pleaded that the respondent was not entitled to recover any amount on account of damages for use and occupation, because the appellant had been paying rent regularly to the District Rent and Managing Officer.

It may be stated that originally the plaintiff had filed a suit for possession of the portion of the house in dispute, but later, on the objection of the defendant that he was a tenant and not a trespasser, the plaint was amended and it was prayed that the defendant be ejected from the property in dispute. It may also be mentioned that the plaintiff was made to pay court-fee on the market value of this property.

On the pleadings of the parties, a number of issues were framed.

The trial Judge came to the conclusion that the appellant was not occupying the house in dispute as a tenant under the respondent and, therefore, the civil Court had jurisdiction to try the suit. It was further found that the suit, having been brought after the expiry of more than two years from the date of sale, was not premature. It was held that the appellant was justified in paying rent to the Custodian up to the date of the confirmation of the sale, but thereafter he should

have paid the same directly to the respondent and in case he had been paying it to a wrong person, that could not absolve him from his responsibility of paying the rent due to the respondent. Since the sale in favour of the respondent had been confirmed on 23rd June, 1959, the appellant was liable to pay damages for use and occupation at the rate of Rs. 40 per mensem from that date to the date of the filing of the suit. Calculated on this basis, the amount came to Rs. 640. It was further found that the District Rent and Managing Officer was not a necessary party to the suit. As a result of these findings, a decree for the eviction of the appellant as well as for the recovery of Rs. 640 with proportionate costs was passed in favour of the respondent. Against this, the present appeal has been filed in this Court.

The main controversy in this case centres round the decision of issue No. 2, which runs as under—

“Whether this Court has no jurisdiction to try this suit?”

The trial Judge was of the opinion that the civil Court was the only proper forum for the ejection of the defendant in the present case. His reasoning was that under the scheme of the evacuee laws, there were two types of properties, namely, evacuee and composite. Both types vested in the Custodian, who allotted the same to displaced persons. The evacuee property was later on acquired by the Central Government and formed part of the compensation pool. This property was managed by the Managing Officers and when the same was sold, the person occupying the property before sale was to be deemed to be a tenant under the purchaser thereof on the same terms and conditions on which he was occupying that property under the Custodian,—vide section 29(1) of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Such a tenant was further given a special protection against eviction for two years and he could be evicted only when he committed one of the defaults detailed in this sub-section. Regarding the composite property, according to the trial Judge, the same vested in the Competent Officer, who was charged with the duty of separating the evacuee and non-evacuee interest therein under the provisions of the Evacuee Interest (Separation) Act, 1951. This Act did not confer the status of a tenant on the person occupying such a

Kartar Singh

vs.  
Barkat Ram

—  
Pandit, J.

Kartar Singh  
v.  
Barkat Ram  
—  
Pandit, J.

property. Under sub-rule (3) of Rule 11(E), as amended in 1955, framed under this Act, however, protection was given to the occupiers of such property against ejection for a period of two years. The occupiers of such properties were not given the status of a tenant under the purchaser or the transferee of this property. The purchaser or the transferee could seek eviction of the person in possession within a period of two years on the grounds enumerated in this sub-rule. The argument of the trial Judge thus was that the occupier of an evacuee property was deemed to be a tenant under the purchaser of that property, while such a status was not conferred on the occupiers of the composite property. That being so, in the present case, the defendant was not holding this property as a tenant under the plaintiff and, therefore, the civil Courts had jurisdiction to try the suit. The entire approach of the learned trial Judge, in my opinion, was incorrect. The main point for decision is whether the appellant was a tenant of the property in dispute or not. If he was, then the application for his eviction would, admittedly, lie before the Rent Controller, but if he was not then the suit for his ejection could be filed in a civil Court. The appellant had produced Raj Kumar, a Clerk in the District Rent and Managing Officer's Office, as D.W. 1, who had stated that the property had been allotted to the appellant and the rent in respect thereof up till August, 1959, had been received, while instalments for the balance had been fixed. These instalments, according to this witness, were being paid regularly by the appellant. Besides this witness, one Ram Sarup, a Clerk in the Office of the District Rent and Managing Officer, has appeared as C.W. 1. He has deposed that the appellant was a *tenant* under the Custodian and was paying rent at the rate of Rs. 42.67 nP. per mensem. The evidence of these two witnesses leaves no manner of doubt that the appellant was a tenant of the Custodian and was paying rent to him. It has not been pointed out to us as to how this tenancy came to an end after the property was purchased by the respondent. It was contended by the learned counsel for the respondent that the Custodian could not create a valid tenancy with regard to the non-evacuee interest in the house in dispute and could not by his act bind the non-evacuee interest therein. The moment the evacuee interest was

separated by the sale of the property and the Custodian was paid his share, his interest came to an end. There is no force in this contention, because by virtue of the provisions of the Administration of Evacuee Property Ordinance, 1949 (Ordinance 2 of 1949), all the evacuee property had vested in the Custodian. The term "evacuee property" as defined in this Ordinance meant any property in which an evacuee had any right or interest, whether personally or as a trustee or as a beneficiary or in any other capacity. Later on the Administration of Evacuee Property Act, 1950 (Act 31 of 1950), repealed this Ordinance and sub-section (2) of section 8 of this Act reads as under:—

Kartar Singh  
v.  
Barkat Ram  
—  
Pandit, J.

"Where immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising powers of Custodian under any law repealed hereby, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act and shall continue to so vest."

Section 10 of this Act empowered the Custodian to manage the evacuee property. The Custodian was, therefore, managing the entire composite property, which had vested in him, and during this period he was quite competent to create a valid tenancy. This is what happened in the present case. Now we have to see as to what was the position of the transferee, when this property was sold under the provisions of the Evacuee Interest (Separation) Act, 1951 (64 of 1951). For that purpose, it will be proper to set down sub-rule (3) of Rule 11(E) framed under section 23 of Act 64 of 1951, as amended in 1955, which deals with this matter—

"(3) (a) Where the property sold or transferred on partition or otherwise is in the occupancy of a tenant, allottee or other person entitled to occupy the same, the competent officer shall, on the application of the purchaser or transferee, order symbolical possession of the property to

Kartar Singh  
v.  
Barkat Ram  

---

Pandit, J.

be delivered with immediate effect, by affixing a copy of certificate of sale or order of transfer in some conspicuous place on the property and by serving a notice in form 'M' on the occupant of the property, or by publication thereof in a newspaper having circulation in the locality and expenses incurred in this connection shall be paid by the applicant.

- (b) Notwithstanding anything contained in these rules or in any other law for the time being in force, a displaced person, within the meaning of clause (v) of section 2 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (44 of 1954), who may be in the authorised occupation of any composite property shall not be liable to be evicted by any purchaser or transferee thereof for a period of two years from the date of sale or transfer, as the case may be, except on any of the following grounds, namely—
- (i) that he has neither paid nor tendered the whole amount of arrears of rent due after the date of sale or transfer within one month of the date on which a notice of demand has been served on him by the purchaser or transferee in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882),
- (ii) that he has, without obtaining the consent of the purchaser or transferee in writing—
- (a) sublet or otherwise surrendered the possession of the whole or any part of the property; or
- (b) used the property for a purpose other than the purpose for which he was using it immediately before the sale or transfer;
- (iii) that he has committed any act which is destructive or permanently injurious to the property.”

Kartar Singh  
 v.  
 Barkat Ram  
 \_\_\_\_\_  
 Pandit. J.

Under this sub-rule, whether we consider the appellant to be an allottee or a tenant, the purchaser of the composite property will not be able to dispossess him, but would be given only symbolical possession of the same. In other words, the intention of the Legislature was that these tenants or allottees should not be treated as trespassers, but they were to remain in possession as tenants of the purchasers instead of the Custodian and they would go on paying rent to them. In case they were to be evicted from the premises, then this could be done only in accordance with the provisions of the East Punjab Urban Rent Restriction Act (3) of 1949. Clause (b) of this sub-rule, however, gives a further protection to the displaced persons in occupation of such properties inasmuch as they could not be evicted for a period of two years from the date of sale of these properties except on the grounds mentioned in this clause. This clause however, is not applicable to the facts of the present case, because the period of two years had already elapsed, when the application for ejection of the appellant was made. Under these circumstances, on the date of the purchase of the property by the respondent, the appellant became his tenant and he could only be evicted in accordance with the provisions of Act No. 3 of 1949. The application for his ejection could be filed only before the Rent Controller and the civil Courts had no jurisdiction to try this case.

It may be mentioned that the learned counsel for the respondent relied on a single Bench decision of D. K. Mahajan J. in *Ram Sarup v. Chanan Singh and others* (1), but this authority has no application to the facts of the present case.

No other question was argued before us.

In view of what I have said above, I would accept this appeal, set aside the judgment and decree of the trial Court and dismiss the plaintiff's suit. In the circumstances of this case, however, I will leave the parties to bear their own costs in this Court.

S. S. DULAT, J.—I agree.

B.R.T.

Dulat, J.