C. L. Davar
v.
Amar Nath Kapur

Falshaw, C. J.

I also consider that dependence may not in all circumstances be entirely a matter of finance and this would particularly be so in the case of an unmarried daughter who may be employed, but in whose case for various reasons, it would not be desirable for her to attempt to live away from her parents and on her own.

The question whether the son in the present case is dependent on his father was not considered at all by the Controller and no finding has been given on it by the learned Rent Control Tribunal which has evaded the issue by interpreting section 14(1)(e) in the manner I have described above. In my opinion for the proper decision of the case a finding on this point is necessary and in order to arrive at such a finding it will be necessary for more evidence to be recorded regarding the exact position of the son, and since this question will have to be examined it may as well clear up the point regarding whether the son is at present living with his parents in the Connaught Circus flat. I, therefore, consider that the best course would be to send the case back to the Court of the Controller for an enquiry on this matter and report within two months. The parties have been directed to appear in the Court of the Controller on the 26th of March, 1962.

B.R.T.

APPELLATE CIVIL

Before D. Falshaw, C.J.

HAKIM SARDAR BAHADUR,—*Appellant.*

versus

TEJ PARKASH SINGH,—*Respondent.*

Second Appeal from Order No. 145-D of 1961.

1962

March, 16th

Landlord and Tenant—Doctrine of suspension of rent—Applicability of.

Held, that in a case where the landlord tortiously deprives a tenant of the use of a part of the demised premises, so long as the deprivation continues, the landlord cannot even claim the rent for the rest of the premises which the tenant still continues to occupy. The

tenant, in such a case, is entitled to withhold the whole of the rent for the leased premises so long as he is deprived of a part of the leased premises and cannot be compelled to pay the rent for the portion of the leased premises still in his occupation.

Second Appeal, from the order of Shri Pritam Singh Pattar, Rent Control Tribunal, Delhi, dated the 28th August, 1961, reversing that of Shri O. P. Garg, Controller, Delhi, dated the 4th April, 1960, accepting the appeal and setting aside the order directing the appellant-tenant to deposit Rs. 1,550, etc., as arrears of rent and leaving the parties to bear their own costs.

KESHAV DAYAL, ADVOCATE, for the Appellant.

R. S. NARULA, ADVOCATE, for the Respondent.

ORDER

Falshaw, C. J. FALSHAW, C.J.—These two appeals have arisen in the following circumstances:—

In November, 1958, the appellant in both the cases Hakim Sardar Bahadur instituted a suit against his tenant Tej Parkash Singh for Rs. 812 made up of Rs. 700 on account of rent for the premises in suit from the 1st of September, 1957 to the 31st of October, 1958, and Rs. 112 as electric charges for the same period. The tenancy and the rate of rent claimed were not disputed by the tenant, but he claimed that he was entitled to withhold whole of the rent from the landlord on the ground that the latter had unlawfully deprived him of possession of a portion of the leased premises.

On the facts found by it the trial Court held that the doctrine of suspension of rent was applicable in this case and the suit was decreed only to the extent of Rs. 109.91 nP., on account of electric charges. The findings of the trial Court on both facts and law were upheld in first appeal and the first of the two appeals is the landlord's appeal in that suit. The second case arose when in February,

1960, the landlord applied to the Controller under section 14 of the Delhi Rent Control Act of 1958. for the eviction of the tenant for non-payment of rent and he obtained an order from the Controller on the 4th of April, 1960, for the deposit by the tenant of arrears of rent amounting to Rs. 1,550 at the stipulated rate of Rs. 50 p.m. The tenant appealed to the Rent Control Tribunal against that order and the appeal was accepted on the 28th of August, 1961, on the basis of the decision of the civil Court in the other case. The suit was still pending at the time when the order of the Controller was passed, but both the suit and the landlord's appeal had been dismissed by the time the tenant's appeal was decided by the Rent Control Tribunal, which I think must have deferred its decision until the decision of the appeal in the other case.

In the main case the facts were disputed, but the question of law involved must now be decided in second appeal on the basis of the concurrent findings of fact of the Courts below. The premises actually used for his residence by the tenant are apparently on the first floor of the building, but it has been held that a verandah measuring 9′×7′ on the ground floor which was used by the tenant in connection with his business for the storing of such articles as motor-tyres was part of the leased premises. It has also been found that the tenant has been deprived of possession and effective use of this verandah by the construction of a wall in it by the landlord. In fact it appears that it was because of this deprivation that the tenant stopped paying rent as from September, 1957.

The question involved is whether this deprivation, amounting to eviction, from the verandah forming part of the leased premises brings into operation the doctrine of suspension of rent, and whether the tenant is entitled to withhold the whole of the rent for the leased premises so long as he is so deprived or whether he must still continue to pay such part of the rent as may be found due for the portion of the leased premises still in his occupation.

Hakim Sardar Bahadur
v.
Tej Parkash Singh

'alshaw, C. J.

There is no doubt that under English law under a rule based on justice, equity and good conscience the tenant is entitled to a suspension of the entire rent either if he is evicted from a part of the demised premises or if the landlord fails to deliver possession in the first instance of the whole of the demised premises. This is stated in paragraphs 252 and 253 of Fao's General Law of Landlord and Tenant, Seventh Edition, at page 156. There is, however, no doubt that while this principle has been accepted to a great extent in India, it has been with modifications. Except for one or two cases which I shall discuss this modification has only been applied in cases of non-delivery and generally it has been upheld in cases of eviction from part of the demised premises. In *Sm. Katyayani Devi* v. *Udoy Kumar Das* (1), it was held by their Lordships that the doctrine of suspension of payment of rent, where the tenant has not been put in possession of part of the subject leased, applies where the rent is a lump rent for the whole land leased treated as an indivisible subject. It has no application to a case where the stipulated rent is so much per acre or *bigha*. In a later decision *Ram Lall Dutt Sarkar* v. *Dhirendra Nath Roy and others* (2), it was held by their Lordships that in Bengal the doctrine of suspension of rent should not be applied to cases where the lessor fails to give possession to the lessee of part of the agricultural land demised. In the only case on this point which relates to residential accommodation Guha and Banerjee. JJ.. in *Surendra Nath Bibra* v. *Stephen Court, Ltd.* (3), held that the doctrine of suspension of rent has no application in India in cases where the landlord has failed to give possession of a part of the demised premises to the tenant. On page 931. however, an intention of deciding the applicability of the doctrine to cases of eviction of the lessee by the lesser from the part of the property was expressly disowned.

There is undoubtedly to some extent a conflict of authorities on the latter question, but in

(1) A.I.R. 1925 P.C. 97.
(2) A.I.R. 1943 P. C. 24
(3) 63 C.W.N. 922.

my opinion there is no doubt on which side the weight of authorities lies. There are two decisions of Division Bench in *Dhirendra Nath Roy and others* v. *Bhabarini Debi and others* (4), and *Abhoya Charan Sen and others* v. *Hem Chandra Pal and others* (5). Both these were cases in which the tenant had been dispossessed or deprived of the use of the part of the demised premises and as the rent was a lump sum in each case it was held that the doctrine applied and that the landlord was not entitled to claim any portion of the rent.

In another similar case it was held by R. P. Mookerjee and Lahiri, JJ., In *Nilkantha Pati* v. *Kashitish Chandra Satpati and others* (6), that the mere fact that the area dispossessed is a small one is not of a overriding importance so as to dissuade the Court from applying the principles of justice, equity and good conscience if the Court finds that the act of the landlord was definitely a tortious one and that if and when the landlord chooses to put the tenant again in possession of the portion from which the latter had been dispossessed, he will be entitled to the rent and not till then. In *Dalip Narayan Singh* v. *Suraj Narayan Missir and another* (7), Macpherson and James, JJ., held that the eviction of the tenant, whether from part of the demised premises or from the whole, entails suspension of the entire rent while the eviction lasts whether the tenant remains in possession of the residue or not.

All these cases except the one in which I have mentioned the facts refer to leases of agricultural land, but there is a case on this point relating to a house. This is the case of *Jatindra Kumar Seal* v. *Raimohan Rai* (8). In that case the landlord had dispossessed the tenant from a room in the leased house and prevented its use by the tenant by storing logs in it. In these circumstances Sarjoo Prosad, C.J., held that the act of the landlord was

(4) A.I.R. 1929 Cal. 395.
(5) A.I.R. 1929 Cal. 568.
(6) A.I.R. 1951 Cal. 338.
(7) A.I.R. 1935 Pat. 38.
(8) A.I.R. 1961 Assam 52.

Hakim Sardar Bahadur v. Tej Parkash Singh

a tortious one and there had been actual dispossession of the tenant and the rent payable being for the whole holding, the landlord was not entitled to any rent until the mischief was removed.

Falshaw, C. J.

The only Court which appears to have taken a contrary view in a case of dispossession by the landlord is the Madras High Court. In *Meenakshi Sundara Nachiar* v. *Sa. Rm. Ch. Chidambaram Chety* (9), Benson and Sundara Aiyar, JJ., while expressing the view that the obstructing of a tenant's enjoyment without actually evicting or turning him out was known as constructive eviction and that in such cases the tenant enjoys immunity from the payment of rent until the landlord again permits him to have quiet enjoyment, they held at the same time that the tenant is not entitled to withhold of the rent due to the landlord where the obstruction caused by the latter has entailed on the tenant damages in a lesser amount than the amount of rent due by him. They further held that where a tenant remains in a portion of the premises leased after obstruction by the landlord, the landlord is entitled to rent for that portion either on the contract of lease or as compensation for use and occupation and in such cases the tenant is estopped from pleading that he is not liable for the rent of that portion. This view has been followed byRamaswami J., in *B. Ahmed Maracair v. Muthuvallippa Chettiar* (10), in which a Single Judge of the Madras High Court naturally followed the view expressed in an earlier case by a Division Bench of the same Court.

These, however, are the only two cases from which the landlord in the present case can deprive any support, and in my opinion the preponderence of authorities is clearly in favour of the view that in a case where the landlord tortiously deprives a tenant of the use of a part of the demised premises, so long as the deprivation continues the landlord cannot even claim the rent for the rest of the premises which the tenant still continues to occupy. I am, therefore, of the opinion that the matter has

(9) 25 I.C. 711.
(10) A.I.R. 1961 Mad. 28.

been correctly decided by the Courts below and dismiss both the landlord's appeal, but in the circumstances I leave the parties to bear their own costs.

B.R.T.

Falshaw, C. J.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

MESSRS GOPI NATH-MADAN GOPAL,—*Petitioner.*

versus

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

Civil Writ No. 1790 of 1960.

1962

March, 16th

Punjab Entertainment Duty Act (XVI of 1955)—Sections 12 and 20—Punjab Entertainment Duty Rules (1956)—Rule 36(3)(a)—Whether ultra vires *the Act.*

Held, that sub-rule (3)(a) of Rule 36 of Punjab Entertainment Duty Rules, 1956, is *ultra vires* the Punjab Entertainment Duty Act as it is not covered by sub-section (1) of section 20, of the Act, nor does section 12 of the Act contain any provision under which such a rule could be sustained. On the contrary, the legislature had placed no such limitation or restriction in the substantive provision itself, namely, section 12 and the right of revision was left wide and unfettered by any limitations. It may be that revision and appeal stand on somewhat different footing as in one case there is a substantive right to approach the Appellate Authority whereas in the case of revision it is for the Revisional Authority to satisfy itself as to the legality and propriety of the order. Nevertheless the sub-rule, as framed, purports to stand in the way of that power being exercised as provided by the statute and it must by struck down on that ground.

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the order, dated 28th October, 1960, passed by respondent No. 2, and directing him to