

made by a defendant as well. The question that has to be considered before an amendment is allowed is whether it would work injustice to the other side if a new case is permitted to be introduced at the stage at which the amendment is sought to be made. In my opinion, in the instant case by the amendment sought to be made the respondents have attempted to introduce a new case. In dealing with this matter, it must also be remembered that the petitioners have stepped into the litigation as legal representatives of their deceased-father who was the real contesting defendant, and only such defences are open to them as were available to their father. Tara Singh had not only the opportunity to put forward all the defences that were open to him, but, as has been noticed earlier, put in a detailed written statement taking up all sorts of pleas which could be urged in a suit for pre-emption. He had even claimed exemption from pre-emption for a part of the property, and it is unimaginable that if he was a tenant in a part of the suit-land and the sale to that extent was not pre-emptible in view of the provisions of section 17-A of the Punjab Security of Land Tenures Act, he would not have taken it. If the petitioners were permitted to introduce this fresh plea at this stage, it will certainly work grave injustice to the defendant-respondent, which cannot be compensated by costs.

(7) I am, accordingly, of the opinion that the application for amendment has been rightly disallowed. The petition is dismissed with costs. The parties' counsel are directed to cause the appearance of their clients before the trial Court on 12th February, 1971.

B.S.G.

REVISIONAL CIVIL

Before P. C. Pandit, J.

SUHAG RANI ETC.,—Petitioners

versus

SUKHDEV ETC.,—Respondents.

C.R. No. 102 of 1970.

January 27, 1971.

*Transfer of Property Act (IV of 1882)—Sections 106 and 111—East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Landlord filing ejectment application—Tenant in the written statement denying landlord's title—*

Suhag Rani etc. v. Sukhdev etc. (Pandit, J.)

*Such denial—Whether determines tenancy—Issuance of notice under section 106 of the Transfer of Property Act—Whether still necessary.*

*Held*, that the denial of the relationship of landlord and tenant by the tenant in his written statement to a suit for ejectment determines a tenancy forthwith, thus giving the right to the landlord to the possession of the leased property, when the lease is not for a fixed period but from year to year or at will. A year to year tenancy or tenancy at will gets determined by such a denial or renunciation of title. A tenancy under the law can be determined in any of the various methods mentioned in section 111 of the Transfer of Property Act. The landlord is not precluded from showing that in a particular case, the tenancy has been determined irrespective of the fact whether any notice under section 106 of the Act is given to the tenant or not. Hence where a tenant in the written statement to the application for eviction under section 13 of East Punjab Urban Rent Restriction Act, 1949 takes up the plea that the application is not competent because there is no relationship of landlord and tenant existing between the parties and further that the landlord has no locus standi to file the application as he is not a landlord of the premises in question, the tenancy gets determined and it is not necessary for the landlord to issue a notice under section 106 of the Transfer of Property Act to the tenant. (Para 9).

*Petition under Section 15(5) of Act III of 1949 & S. 115, C.P.C. for revision of the order of the Court of Shri Raghbir Singh, Appellate Authority, Gurdaspur, dated 12th December, 1969, reversing with costs that of Shri Y. P. Singh Ahluwalia, Rent Controller, Gurdaspur, dated 1st July, 1968 and accepting the application of the petitioner-landlord and ordering that the respondent shall vacate the house in dispute and put the landlord in possession of it within two months.*

H. L. SARIN, ADVOCATE FOR RESPONDENT NO. 1, for the respondent.

J. N. SETH, ADVOCATE, for the petitioners.

### JUDGMENT

(1) This is a tenant's revision petition against the decision of the Appellate Authority reversing on appeal the order of the Rent Controller dismissing the landlord's application for ejectment.

(2) The house in dispute is situate in Gurdaspur and it was leased out by its owner Shri Moti Ram, Advocate in 1927, in favour of Shri Devi Dayal, Advocate. The latter died somewhere in 1953-54 and thereafter the former continued receiving rent from Shrimati Suhag Rani, widow of Shri Devi Dayal. In 1957, Shri Moti Ram partitioned his entire property and this house came to the share of his son Shri Sukh Dev, Advocate. In January, 1961, Shri Sukh Dev filed an application under section 13 of the East Punjab Urban Rent Restriction

Act, 1949, for the ejection of Suhag Rani from the house in question on the ground of non-payment of rent. Since the arrears of rent were paid by the tenant on the first date of hearing, that application was dismissed. On 7th June, 1967, another application under section 13 of the Rent Act was made by Shri Sukh Dev against Shrimati Suhag Rani, her daughter Shrimati Upma and Shrimati Rani, and three grounds of ejection were taken. One was non-payment of rent since May, 1965, the second was that Suhag Rani had transferred her rights in favour of her daughter Shrimati Upma since 1961 and had sublet a portion of this house to Shrimati Rani without the written consent of the landlord and the third was that Suhag Rani had ceased to occupy the house in dispute since 1971 without any reasonable cause and was staying with her son at Delhi.

(3) This application was contested by the tenants and on the pleadings of the parties, seven issues were framed. Since the arrears of rent were paid on the first date of hearing, this ground of ejection was no longer available to the landlord.

(4) The Rent Controller dismissed the application holding that Shrimati Suhag Rani had neither transferred her rights in favour of her daughter Upma nor sublet any portion of the house to Shrimati Rani. It was also held that she had not ceased occupying this house since 1961.

(5) Aggrieved by the order of the Rent Controller, the landlord went in appeal before the Appellate Authority. His appeal was accepted and it was found by the said Authority that Suhag Rani had transferred her rights in favour of her daughter Upma and also sublet a portion of the house to Shrimati Rani without the written consent of the landlord. It was also held that Suhag Rani was not living in the house since 1961.

(6) It may be mentioned that before the Appellate Authority, both Suhag Rani and Upma made an application under section 151 of the Code of Civil Procedure praying that they be allowed to raise the plea that since notice under section 106 of the Transfer of Property Act was not issued by the landlord terminating the tenancy before filing the ejection application, the said application should have been dismissed on that ground.

(7) This application was contested by the landlord and the Appellate Authority dismissed the same observing that since no such

plea was taken by the tenant in her written statement and this point was not even debated before the Rent Controller, this objection would be deemed to have been waived by the tenant and could not be allowed to be raised at that stage. For this he placed reliance on my decision in *Raj Kumar v. Major Gurmitinder Singh* (1).

(8) The first contention raised by the learned counsel for the petitioners was that the Appellate Authority had erred in law in rejecting the application filed by the tenant for being allowed to take the additional plea that the ejection application should be dismissed because no notice under section 106, Transfer of Property Act, had been given by the landlord to the tenant before filing that application. Reliance for that submission was placed on my decision in *Smt. Gargi Devi v. Som Datt* (2).

(9) I was inclined to accept this contention when it was brought to my notice that in the written statement filed by Suhag Rani, she had taken up the plea that the eviction application was not competent, because there was no relationship of landlord and tenant existing between the parties and further that the landlord had no *locus standi* to file the application under section 13 of the Rent Act, as he was not a landlord of the premises in question. It has been ruled in a Bench decision of this Court in *Sada Ram and others v. Gajjan* (3), that the denial of the relationship of landlord and tenant by the tenant in his written statement to a suit for ejection determines a tenancy forthwith, thus giving the right to the landlord to the possession of the leased property, when the lease is not for a fixed period but from year to year or at will. A year to year tenancy or a tenancy at will gets determined by such a denial or renunciation of title. On the basis of this authority, by which I am bound, sitting singly, it has to be held in the present case that the tenancy had been determined by Suhag Rani's taking up this plea in the written statement. This is the precise reason for which a notice under section 106, Transfer of Property Act, has to be given by the landlord to the tenant before filing the ejection application under section 13 of the Rent Act. My attention was not invited to any decision where it had been laid down that in a rent case the

---

(1) 1968 P.L.R. 672.

(2) 1969 Rent Control Reporter 904.

(3) 1970 P.L.R. 223.

*only way* the tenancy could be determined was by a notice under section 106, Transfer of Property Act. If the idea of giving a notice under section 106, Transfer of Property Act. is merely to determine the tenancy, then it is also undisputed that a tenancy, under the law, can be determined in any of the various methods mentioned in section 111 of the Transfer of Property Act. The landlord, therefore, is not precluded from showing that in a particular case, the tenancy has been determined irrespective of the fact whether any notice under section 106 of the Transfer of Property Act is given to the tenant or not. According to the decision in *Soda Ram's case* (3); therefore, it has to be held that in the instant case the tenancy had been determined by Suhag Rani's taking the particular plea mentioned above in the written statement filed by her. That being so, it was not necessary for that landlord to issue a notice under section 106 of the Transfer of Property Act to the tenant. This contention of the learned counsel for the petitioners; consequently, fails.

(10) Regarding the grounds of ejectment, it had been found by the Appellate Authority that Suhag Rani had ceased to occupy the house in question for the last about six years without any reasonable cause. It has also been found that she had transferred her rights under the lease to her daughter Upma and that a portion of the premises in dispute had been sublet to Shrimati Rani without the consent in writing of the landlord. All these are findings of fact and they have been arrived at after consideration of the entire evidence produced in the case. It has not been shown by the learned counsel for the petitioners that these findings are in any way vitiated. It is common ground that all these are valid grounds for ejectment under section 13 of the Rent Act.

(11) In view of what I have said above, this revision petition fails and is dismissed. In the circumstances of the case, however, I leave the parties to bear their own costs throughout. The petitioners are given three months' time to vacate the premises, provided they deposit the arrears of rent in the Court of the Rent Controller within six weeks from today.

---

B.S.G.