

land which could not obviously be possessed through cultivation. We are hence of the view that the use of the word "cultivating" can be of no aid to the contention advanced by the learned counsel.

(14) In view of the foregoing discussions we are unable to find any merit in these two appeals which must fail and are dismissed, but without any order as to costs.

P. C. PANDIT, J.—I agree.

N. K. S.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

RAM RANG AND ANOTHER,—Appellants.

versus.

NARAIN SINGH AND OTHERS,—Respondents.

Execution Second Appeal No. 1368 of 1969.

January 27, 1971.

Code of Civil Procedure (V of 1908)—Section 47—Ejectment decree passed against a statutory tenant—Death of such tenant during the execution of the decree—Legal representatives of the deceased tenant—Whether can resist execution.

Held, that on the death of a statutory tenant, the tenancy comes to an end as such a tenancy has no transmittable incidence and cannot be inherited. The legal representatives of such tenant become trespassers in the premises. They cannot refuse to vacate the same when the owner wants its possession in execution of the decree obtained against the statutory tenant. The owner has not to file any other proceedings for that purpose and can continue the execution proceedings of the decree till they are ended. The legal representatives cannot, therefore, resist the execution of the ejectment decree passed against the statutory tenant. (Paras 8 and 9)

Execution Second Appeal from the order of the Court of Shri Gurnam Singh, District Judge, Rohtak, dated 14th May, 1969 reversing that of Shri S. B. Ahuja, Additional Sub Judge, Rohtak dated 30th April, 1968 ordering that the decree in dispute is not executable against the legal representatives of Kesar Singh who was a statutory tenant. The decree is also inexecutable under section 13(1) of the act and the objection petition of Kesar Singh had been wrongly dismissed and leaving the parties to bear their own costs of the appeal.

RAM RANG, ADVOCATE, for the appellants.

R. K. CHIBBER, J. S. WASU, ON 21ST JANUARY, 1971, ADVOCATES, for the respondents.

JUDGMENT

P. C. PANDIT, J.—(1) The dispute in this second appeal relates to house No. 968-B. III, situate on Qilla Road in Rohtak. It was an evacuee property and Kesar Singh was in its occupation in 1949. In 1956, this house was auctioned and purchased by Ram Rang and his son Manohar Lal. On 9th November, 1957, it was provisionally transferred by the District Rent and Managing Officer in their favour and they were authorised to receive its rent from Kesar Singh with effect from that date. Subsequently, both of them served Kesar Singh with a notice terminating his tenancy and on 12th June, 1963, they brought a suit against him in the Court of the Subordinate Judge at Rohtak, for his ejection. It may be stated that at the time the suit was instituted, this property, being evacuee property, was exempt from the operation of the East Punjab Urban Rent Restriction Act, 1949.

(2) A decree for ejection was passed against Kesar Singh by the trial Court on 29th September, 1964. Kesar Singh's appeal against the said decree was dismissed on 24th March, 1965, in view of a compromise having been effected between the parties. Under that compromise, Kesar Singh was allowed to vacate the premises on or before 30th September, 1966. Since he did not do so, Ram Rang and his son Manohar Lal applied for the execution of the ejection decree on 1st October, 1966.

(3) Kesar Singh filed objections against the said execution saying that sale certificate had been issued in favour of Ram Rang and his son Manohar Lal on 9th October, 1964, with the result that the property was no longer exempt from the operation of the Rent Act with effect from that date. By the issue of the sale certificate, title in the property passed to the purchasers and it ceased to be evacuee property. The ejection decree passed by the Civil Court could, therefore, not be executed against him.

(4) On 30th April, 1968, the trial Court dismissed this objection holding that the ejection decree was executable, because when it was passed, the Civil Court had jurisdiction to deal with the property, as the same was evacuee property at that time and exempt from the operation of the Rent Act. The decree was passed by a competent Court and, therefore, it did not cease to be executable. It

was also held that Kesar Singh, judgment-debtor, was estopped by his conduct from raising any such objection, because he himself got time for vacating the premises and did not say at that time that the decree could not be passed by the Civil Court.

(5) Aggrieved by this order, Kesar Singh went in appeal before the learned District Judge, Rohtak. It may be mentioned that during the pendency of the said appeal, Kesar Singh died and his legal representatives Narain Singh and others were substituted in his place. On 14th May, 1969, the learned Judge allowed the appeal and held that the property in dispute had ceased to be Government property on 9th October, 1964, and at that time the same was in possession of Kesar Singh as a tenant and the provisions of the Rent Act became applicable to the said property. It was further held that although Ram Rang and his son Manohar Lal had a decree in their favour, they lost their right of executing the same under the provisions of section 13(1) of the Rent Act, which prohibited the making of any order evicting any tenant in execution of a decree passed before or after the commencement of the Rent Act. It was also held by the learned Judge, while repelling the contention on behalf of the landlords that Kesar Singh was a statutory tenant and on his death his legal representatives had no right to remain in occupation of the building in dispute, that Kesar Singh died during the pendency of the ejection proceedings against him, with the result that those proceedings came to an end and the members of his family, who were living with him, could not be evicted in those proceedings and the landlords could secure their eviction by means of appropriate proceedings in a Court of law. The decree in question, according to the learned Judge, was not executable against the legal representatives of Kesar Singh, who was a statutory tenant. Against the decision of the learned District Judge, the present execution second appeal has been filed by Ram Rang and his son Manohar Lal.

(6) Three contentions were raised by the learned counsel for the appellants (i) that the decree of ejection was passed by a competent Court and it was a valid decree. It had not become inexecutable, even though the property covered by it had ceased to be evacuee property at the time when the execution of the said decree was taken out; (ii) that Kesar Singh, judgment-debtor, had himself agreed to vacate the premises on or before 30th September, 1966. It

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was in view of his agreeing to do so that his appeal was dismissed on 24th March, 1965. Under these circumstances, he was estopped by his conduct from raising any objection that the said decree, which had been passed on the basis of the compromise, had become inexecutable; and (iii) that Kesar Singh was a statutory tenant, he being either the allottee or the licensee of the house in question from the Rehabilitation Department. On his death, the statutory tenancy was not heritable and his legal representatives could not take advantage of the same. They could not continue to remain in occupation of the property and urge that the decree, which was being executed, was inexecutable.

(7) Let us take the third contention of the learned counsel, in the first instance. As has already been mentioned above, Kesar Singh was in occupation of this house in 1949, when it was an evacuee property. He was let in possession by the Rehabilitation Authorities and, therefore, he was either an allottee or a licensee from the Rehabilitation Department. As observed by Sarkaria J. in *Harbans Lal v. Ram Dhan* (1), the Managing Officer or the appropriate authority under section 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, could, notwithstanding anything contained in any contract or any other law for the time being in force, cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under that Act was held or occupied by a person, whether such allotment or lease was granted before or after the commencement of the Act. That being so, the conditions governing the occupation of the house by Kesar Singh were regulated not by the terms of any contract, but by statutory provisions. His status, therefore, was not of a contractual tenant. It was only after the house had been permanently transferred in favour of Ram Rang and his son Manohar Lal on 9th October, 1964, that Kesar Singh acquired the status of a statutory tenant to whom the protection granted under section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1964, and the provisions of the East Punjab Urban Rent Restriction Act, 1949, was available. He could, therefore, be called a statutory tenant and it was so held by the learned District Judge. Who is a statutory tenant has been mentioned in the Full Bench decision of

(1) 1969 R. C. R. 207.

this Court in *Bhaiya Ram v. Mahavir Parshad* (2), where it was observed:

“That “statutory tenancy” is a mere misnomer usually adopted because of the statutory definition of the word “tenant” contained in section 2(i) of the East Punjab Urban Rent Restriction Act. Since the statute calls a person whose tenancy has already been determined a tenant for the purposes of the Act, he is given the title of a statutory tenant. In fact it is a mere right or status of irremovability and does not amount to anything more than a restricted statutory protection against eviction to which a tenant has otherwise become liable under the general law.”

(8) It has been held by a Bench Decision of this Court, consisting of Falshaw C.J. and Mehar Singh J. in *Shama Charan v. Ved Paul and another* (3), that on the death of a statutory tenant, his tenancy comes to an end and such a tenancy has no transmittable incidence and cannot be inherited. That being so, the appellants before the lower Appellate Court and respondents in this Court, cannot take benefit of that tenancy and remain in possession of the house in question. They, being trespassers, have no *locus standi* to raise any objection and refuse to give possession of the house to its owner. In *Kesar Das and others v. Jaisa Ram and others* (4), Gurdev Singh J., observed—

“That, the status of a person, who was a tenant under the Custodian or had occupied the evacuee property not as a tenant under the Custodian, but as an allottee who according to the definition of that word given in the Evacuee Property Act, meant nothing more than a licensee, would be covered by section 29 of the Displaced Persons (Compensation and Rehabilitation) Act. He could claim the status of a tenant under the purchaser of the property and could not be evicted except in accordance with the provisions of the East Punjab Urban Rent Restriction Act.

That an allottee or a licensee under the Custodian by virtue of section 29 of the Displaced Persons (Compensation and

(2) 1968 P.L.R. 1011.

(3) 1966 P.L.R. 69.

(4) 1967 P.L.R. 499.

Rehabilitation) Act becomes a tenant under the purchaser of the evacuee property. He could not be dispossessed or evicted because of the protection granted to him under section 29 of the said Act and the provisions of the East Punjab Urban Rent Restriction Act. His position is that of a statutory tenant. The tenancy is not heritable and after his death his heirs become trespassers and can be dispossessed by a Civil Court."

(9) The learned District Judge erred in law when he remarked that since Kesar Singh died during the pendency of the ejectment proceedings against him, those proceedings came to an end and the members of his family, who were living with him, could not be evicted in those proceedings and the landlords could secure their eviction by means of appropriate proceedings in a Court of law. As I have already observed above, Kesar Singh was only a statutory tenant. On his death, the tenancy came to an end and his legal representatives became trespassers in the house and they could not refuse to vacate the premises when the owner wanted its possession. The owner has not to file any other proceedings for that purpose, because the execution proceedings were still going on and had not ended. The legal representatives could not resist the execution of the ejectment decree passed against Kesar Singh.

(10) It was argued by the learned counsel for the respondents that Kesar Singh's appeal against the ejectment decree passed against him on 29th September, 1964, was dismissed on 24th March, 1965, in view of the compromise having been effected, under which Kesar Singh was allowed to remain in the premises up to 30th September, 1966. By virtue of that compromise, according to the learned counsel, a new contractual tenancy came into existence between the parties after the relationship of landlord and tenant had ended between them by the passing of the ejectment decree on 29th September, 1964.

(11) There is no merit in this contention. Even assuming for the sake of argument that a new tenancy had come into being, that also came to an end on 30th September, 1966, up to which date Kesar Singh was allowed to remain in the premises. Thereafter, he merely got the statutory protection against eviction, to which he had otherwise become liable under the general law, under the provisions of the East Punjab Urban Rent Restriction Act and thus became a statutory tenant.

(12) Learned counsel for the respondents then relied on four authorities—(i) *Gurupadappa Shivlingappa v. Akbar Sayad Budan Kadri* (5); (ii) *Manick Chandra Pal and others v. Hari Pada Roy* (6); (iii) *Nihal Chand v. Shiv Narain and others* (7), and (iv) *Sunder Singh v. Madusudan Singh and others* (8).

In *Gurupadappa's case* (5), Shah J. held:—

“When in an ejectment suit a consent decree is passed creating a fresh contractual relation of landlord and tenant the defendant gets the rights and privileges of a tenant under the Act and unless the protection of the statute is properly and validly withdrawn, he would not be liable to deliver possession in spite of the terms of the decree. Where, therefore, the consent decree creates a tenancy for a fixed period, the defendant will be entitled to the benefit of section 12(1) even after the expiry of the period.

A term in a consent decree which requires the defendant to do a certain act on the assumption that he will not claim or that he will not be entitled to claim the benefit of a statute is not “lawful” within the meaning of Order 23, rule 3 and the executing Court is not bound to execute that part of the decree contrary to the terms of the statute.”

(13) This case is, however, of no assistance to the respondents, because there the precise question, with which we are concerned in this appeal, namely, whether the legal representatives of a statutory tenant can refuse to give possession of the house to its owner after the death of the statutory tenant, was not under consideration.

(14) In *Manick Chandra Pal's case* (6), also, the point for decision in the instant case, was not debated.

In *Nihal Chand's case* (7), Mehar Singh, J. held:

“Where the heirs of a tenant are in possession of the premises under the contractual tenancy, which has devolved upon

(5) A.I.R. 1950 Bom. 252.

(6) A.I.R. 1949 Cal. 151.

(7) A.I.R. 1958 Pb. 263.

(8) 1967 P.L.R. S. N. 7.

them on the death of the last tenant then they are persons who stand in the position of one "who takes on rent any premises for his own occupation" and so they are tenants within the scope of section 2(d)."

(15) It would thus be seen that the rights of the legal representatives of a statutory tenant did not arise for decision in this case.

(16) In *Sunder Singh's case* (8), a Single Judge of this Court observed—

"That, on the death of a statutory tenant, his tenancy comes to an end. Such a tenancy has no transmittable incidence and cannot be inherited.

Also that legal representatives of the deceased statutory tenant could not be impleaded as tenants after his death and no order of eviction could be passed against the deceased tenant nor against his legal representatives since the tenancy did not survive in their favour."

(17) Even if the law laid down in this authority were to be applied to the facts of the instant case, then after Kesar Singh's objection to the execution of the ejection decree had been dismissed by the trial Court, his appeal against that order before the District Judge, Rohtak, could not have proceeded after his death and his legal representatives could not continue the said appeal, with the result that the order passed by the trial Court, which was under appeal before the learned District Judge, became final. That being so, the execution of the ejection decree had to proceed, Kesar Singh's objections against the same having been dismissed by the trial Court.

(18) No other point was urged by the learned counsel in reply to this contention.

(19) I would, therefore, hold that after the death of Kesar Singh, who was a statutory tenant, his tenancy came to an end and did not pass on any rights to his legal representatives to remain in occupation of the house. They would be considered to be trespassers and could not refuse to deliver possession of the house to its original owners in execution of the ejection decree.

(20) In this view of the matter, it is not necessary to decide the other two contentions raised by the learned counsel for the appellants.

(21) The result is that this appeal succeeds, the decision of the learned District Judge is reversed and that of the trial Court restored. In the circumstances of this case, however, I leave the parties to bear their own costs in this Court as well.

N. K. S.

REVISIONAL CIVIL

Before Harbans Singh, Chief Justice.

GURMUKH SINGH,—*Petitioner.*

versus.

DALIP SINGH, ETC.,—*Respondents.*

C. R. No. 1170 of 1970.

January 29, 1971.

Code of Civil Procedure (Act V of 1908)—Section 115 and Order 6 Rule 17—Punjab Pre-emption Act (I of 1913)—Section 15—Suit for pre-emption of land on ground of relationship with the vendor—After the expiry of limitation for the suit, plaintiff seeking amendment of the plaint to introduce new ground of pre-emption of being co-sharer in the land—Such amendment—Whether to be allowed—Order allowing amendment of plaint to introduce new ground of pre-emption after the period of limitation for the suit—Such order—Whether revisable by the High Court under section 115.

Held, that where a plaintiff files a suit for pre-emption of land on the basis of his relationship with the vendor, and then after the expiry of the period of limitation for the suit seeks amendment of the plaint to introduce a new ground of pre-emption of being a co-sharer in the land sold, such an amendment cannot be allowed. There is no connection between the ground originally taken and the ground that is sought to be added. It is also not an attempt to explain the ground already taken. Originally the claim is on the basis of relationship alone and it cannot be doubted that, if that relationship is not proved, the suit of the plaintiffs is bound to fail, but, if the amendment is allowed, then, even if the plaintiff fails on the question of relationship, he can fall back upon the other ground of being cosharer which he is taking for the first time after the period of limitation has expired. Hence the amendment sought by the plaintiff to introduce the new ground of being cosharer after the period of limitation should not be allowed. (Para 13).