25. It would be thus plain that the aforesaid three authorities strenuously relied-on on behalf of the respondent-State, do not in any way aid its stand. In the light of the aforesaid discussion we are constrained to allow this appeal and set aside the judgment of the learned Single Judge. Annexure P/2 is consequently quashed. It was the common case of the parties that the three years' tenure of the appellants would expire on May 12, 1981 and inevitably, therefore, they would not now be entitled to the reinstatement as members of the Board. However, the appellants would be plainly entitled to all the consequential reliefs flowing inevitably from the quashing of the impugned order. In the peculiar circumstances of the case, we leave the parties to bear their own costs.

Surinder Singh, J.—I agree.

H.S.B.

CIVIL APPELLATE SIDE

Before S. S. Sandhawalia C.J. and R. N. Mittal, J.

RAM NIWAS and others,—*Appellants.*

versus

RAKESH KUMAR and others,—*Respondents.*

Letters Patent Appeal No. 291 *of* 1976.

July 16, 1981.

Code of Civil Procedure (V *of* 1908)—*Order* 6 *Rule* 2—*Pleadings*—*Suit for ejectment on the ground of tenancy—Plaintiff pleading title and parties leading evidence thereon—No specific issue framed regarding title—Decree for possession on the basis of title—Whether could be passed in such a suit.*

Held, that it is well-settled that if the parties know that a point arises in a case and they produce evidence on it though it does not find place in the pleadings and no specific issue has been framed on

it, the Court can still adjudicate thereon. None of the parties can be allowed to say that the Court cannot decide the matter because it was not raised in the pleadings. The absence of a specific pleading on the question is a mere irregularity which causes no prejudice to the opposite party. Thus, in a case for ejectment on the ground of tenancy, if the plaintiff has taken a plea about title and the parties go to trial on that question, a decree for possession on the basis of title can be passed. (Paras 5 and 7).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 14th May, 1976, passed by Hon'ble Mr. Justice S. P. Goyal, in Regular Second Appeal No. 601 of 1968 reversing that of Shri Pritam Singh Pattar District Judge, Sangrur, dated the 23rd day of February, 1968 allowing the appeal and the decree of the lower appellate court is reversed and the decree for possession on the basis of title together with damages for use and occupation, as claimed in the plaint, is passed in favour of the plaintiff and against the contesting respondents and the parties are, however, left to bear their own costs throughout.

K. C. Puri, Advocate with R. C. Puri, Advocate, *for the Petitioner.*

J. S. Wasu, Senior Advocate with Rupinder Wasu, Advocate, *for the Respondents.*

JUDGMENT

Rajendra Nath Mittal, J.

(1) This letters patent appeal has been filed by two of the defendants against the judgment of the learned single Judge, dated 14th May, 1976.

(2) Briefly, the facts are that the shop in dispute was sold by Mohinder Singh defendant to Rakesh Kumar plaintiff for a sum of Rs. 5,200 by a registered sale-deed, dated 23rd November, 1958. The shop was on a monthly rent of Rs. 40 with M/s. Om Parkash Ghansham Dass, defendant No. 1. Om Parkash, Ghansham Dass and Pawan Kumar respondents and Ram Niwas appellant are the proprietors of the firm. After the purchase the plaintiff served a notice on the tenant-firm informing it, that he had purchased the shop and asking it to pay the damages and vacate the same. The firm claimed that Smt. Mahinder Kaur was the owner of the property

under whom it was holding the shop as a tenant and consequently the question of vacating it or making payment of rent to him did not arise. The plaintiff, therefore, instituted a suit for ejectment and recovery of Rs. 1,386-10-8 by way of damages.

(3) The suit was contested by the firm and its proprietors. They controverted the allegations of the plaintiff and denied that the plaintiff had become the owner of the shop by purchase from Mohinder Singh. They further pleaded that the suit was filed on the basis of tenancy and, therefore, no decree for possession could be passed in favour of the plaintiff on the basis of ownership.

(4) It was held by the trial Court that the plaintiff failed to prove the tenancy as alleged by him, rather the firm was a tenant under Mohinder Kaur. It further held that Mohinder Singh was not an exclusive owner of the shop and, therefore, he could not transfer it to the plaintiff. The suit was, therefore, dismissed by it. The learned District Judge, in appeal, upheld the findings of the trial Court and confirmed its decree. The plaintiff came to this Court in second appeal. The learned Single Judge affirmed the findings of the District Judge that the plaintiff failed to prove that the firm was a tenant under Mohinder Singh. He, however, came to the conclusion that Mohinder Singh was entitled to sell the property and, therefore, a valid title was acquired by the plaintiff. He then held that an overall reading of the plaint showed that the suit was for possession on the basis of title and that even otherwise there was no bar to grant a decree for possession on the basis of title as the plaintiff had made necessary averments in the plaint in that regard. Consequently, he accepted the appeal and decreed the suit of the plaintiff. The firm and Ram Niwas, one of its proprietors, have filed this letters patent appeal.

(5) The main question which arises for decision is that if in a suit for ejectment on the ground of tenancy, the plaintiff pleads title and the parties lead evidence in that regard, can a decree for possession on the basis of the title be passed. According to the learned counsel for the appellants, it cannot be done. It is well-settled that if the parties know that a point arises in a case and they produce evidence on it, though it does not find place in the pleadings and no specific issue has been framed on it, the Court can still adjudicate thereon.. None of the parties can be allowed to say

that the Court cannot decide the matter because it was not raised in the pleadings. The matter is not *res integra.* A similar question arose before the Privy Council in *Rani Chandra Kunwar* vs. *Narpat Singh* (1). In that case, the defendants at the time of trial raised a contention that the plaintiff had been given away in adoption and was, therefore, not entitled to inherit. This plea was neither taken in the written statement nor an issue had been framed thereon. The contention was raised before the Privy Council by the plaintiff that in view of the pleadings, the question of adoption could not be gone into. It was held by Lord Atkinson that as both the parties had gone to trial on the question of adoption and as the plaintiff had not been taken by surprise, the plea as to adoption was open to the defendants. The objection was consequently overruled. The view of the Privy Council was followed by the Supreme Court in *Nagubai Ammal and others* vs. *B. Shama Rao and others* (2). In that case, no specific plea that the sale in favour of the defendants was affected by the doctrine of *lis pendens* was taken in the plaint and no specific issue had been framed on the question. However, the defendants went to trial with full knowledge that the question of *lis pendens* was in issue, had ample opportunity to adduce their evidence thereon and fully availed themselves of the same. Venkatarama Ayyar, J. speaking for the Court, observed that the principle that the evidence lead on issues on which the parties actually went to trial should not be made the foundation for decision of another and different issue, which was not present to the minds of the parties, has no application to a case where the parties go to trial with the knowledge that a particular question is in issue, though no specific issue has been framed thereon and adduce evidence relating thereto. The absence of a specific pleading on the question is a mere irregularity which causes no prejudice to the defendant.

(6) In the present case, a plea regarding title had been taken in the plaint and the appellants knew very well that the question of title was involved in the case. The plaintiff-respondent had led evidence in affirmative and the appellants in rebuttal in that regard. Now, they cannot be allowed to say that the question of

(1) 34 Indian Appeals 27.
(2) A.I.R. 1956 S.C. 593.

title cannot be gone into. The observations of the Supreme Court are fully applicable to the case.

(7) There is another angle from which the matter can be looked into. It is, that in a case for ejectment on the ground of tenancy, if the plaintiff has taken a plea about title and the parties go to trial on that question, a decree for possession on the basis of title can be passed. In the aforesaid view, we are fortified by the observations of a Full Bench judgment of the Allahabad High Court in *Balmakund* v. *Delu* (3). In that case, the plaintiff filed a suit alleging that he was the proprietor of the property a part of which he had leased out to the defendant. The latter had refused to pay the rent agreed upon and therefore, he was entitled to recover its possession by ejectment of the defendant. It was held that even though the plaintiff had failed to make out his case as to the letting, he nevertheless should got a decree on the basis of his title unless the defendant could show a better one. The fact that no distinct issue as to the plaintiff's title had been framed could not be construed to the prejudice of the plaintiff inasmuch as the issue had in fact been tried and it could not be said that the defendant had been in any way taken by surprise. The above view was followed in *Saral Sonar* v. *Sudama Singh* (4) and *Paramananda Das and another* vs. *Sankar Rath* (5). We are in respectful agreement with the view expressed in the above cases.

(8) The Counsel for the appellants has tried to distinguish *Balmakund's case* (supra) on the ground that in 1903 the same court-fee was payable in a suit for ejectment on the basis of tenancy and a suit for possession on the basis of title. He has submitted that the Court Fee Act was later amended and now different court-fees are payable on the abovesaid suits. According to him, the ratio of the Full Bench judgment is not applicable after the amendment of the Court Fees Act. We do not find any force in the submission of the learned counsel. The Court, in case full court-fee has not been paid by the plaintiff, has ample powers under section 149 of the Code of Civil Procedure, to allow him to pay the court-fee at any time. He should not be asked to litigate again on that ground, if he is ready to pay the court-fee. It is also well-settled that the

(3) (1903) I.L.R. 25 Allahabad 498.
(4) A.I.R. (33) 1946 Patna 103.
(5) A.I.R. (38) 1951 Orissa 11.

question of court-fee is between him and the State and the defendant does not suffer, if proper court-fee has not been paid. The objection, in our opinion, is of a highly technical nature and, therefore, we reject it.

(9) The learned counsel for the appellants made a reference to *Shib Ram* v. *Faqira and another* (6) and *Govinda Kumar Sur and others* v. *Mohini Mohan Sen and others* (7). The abovesaid cases are distinguishable and he, in our view, cannot get any benefit from the observations made therein.

(10) The second question that requires determination is as to whether the suit was filed by the plaintiff for possession on the ground of title or on the basis of tenancy. The counsel for the appellants has urged that the learned Single Judge has misconstrued the plaint and held that the suit was for possession. In view of the finding on the earlier point that even if the suit be deemed to be on the basis of tenancy a decree could be passed in favour of the plaintiff on the basis of title, this question loses significance and it is not necessary to go into it.

(11) Faced with the aforesaid difficulty, Mr. Puri sought to urge that the learned Single Judge, erroneously held that Mohinder Singh had the right to sell the plot and the shop. He urges that in doing so, he has not taken into consideration copy of the application, Exhibit D. 15, dated 11th November, 1952, made by Mohinder Singh against his father Kartar Singh to declare him as his Manager and Exhibit D. 17, the list of properties attached to that application. According to him, the property in dispute was not shown to be belonging to Kartar Singh and, therefore, Mohinder Singh had no right in the property. We have given due consideration to the argument but regret our inability to accept it. Admittedly, a compromise had been arrived at between Mohinder Singh and Smt. Mohinder Kaur in the High Court in (*Smt. Mohinder Kaur* vs. *Mohinder Singh*) (8) wherein it was agreed that Khasra No. 152 on which the property in dispute was situated was the joint property of the parties and that Mohinder Singh had the right to

(6) A.I.R. 1925 Allahabad 705.
(7) A.I.R. 1930 Calcutta 42.
(8) R.S.A. 454 of 1958.

sell it. Thus, it is evident that Mohinder Singh had a right to sell the plot. If he sold it after constructing a shop, it cannot be held that the sale is invalid. That is why even Smt. Mohinder Kaur has not challenged the validity of the sale in favour of the plaintiff. Thus, the appellants cannot be allowed to challenge the sale by Mohinder Singh in favour of the plaintiff. The compromise between the parties is subsequent to the dates of the abovesaid two documents. Consequently, the learned counsel for the appellants cannot derive any benefit from them.

(12) For the aforesaid reasons, there is no merit in the letters patent appeal and the same is dismissed with costs. Counsel fee Rs. 300.

S. S. Sandhawalia, C. J.—I agree.

N. K. S.

Before S. S. Sandhawalia, C.J. and S. P. Goyal, J.

NARAIN SINGH,—*Appellant.*

versus

BAKSON LABORATORIES and another,—*Respondent.*

Civil Revision No. 386 *of* 1976.

July 28, 1981.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(2) (iii)—Scope of—Conversion of a Verandah into a room without the sanction of the landlord—Such act—Whether could be said to have impaired materially the value or utility of the building.

Held, that the legislature has designedly used the word 'likely' in section 13(2) (iii) of the East Punjab Urban Rent Restriction Act, 1949. The statute has not used pre-emptory or categoric language. Therefore, it is not that the impugned acts must have conclusively diminished the value or utility of the building, but it would be within the mischief of the statute if they are likely to do so. A closer look at the provision would, therefore, indicate that it is tilted in favour of the landlord because even if the acts may not conclusively impair the value or utility but merely have a tendency to