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mensem for Harjinder Kaur would be sufficient. I order accordingly. The recommendation of the learned Additional Sessions Judge is, therefore, partly accepted.

K.S.K.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

RAM SARAN AND OTHERS,—*Appellants.*

versus

HARBHAJAN SINGH AND OTHERS,—*Respondents.*

R.S.A. 56-D of 1963.

1963

Dec., 20th.

Delhi Rent Control Act (LIX of 1958)—S. 2(i)—Premises—Whether include vacant land on which tenant has put up temporary structures for his business.

Held, that in order to determine as to whether the property included in the tenancy is 'premises' or not, it is to be seen what was actually let by the landlord in a particular case. Was it a building or a part of a building or some vacant land ? Where the landlord leases out only a vacant plot of land and the tenant raises some temporary constructions thereon for his own use, the vacant plot does not become 'premises' within the meaning of section 2(i) of the Delhi Rent Control Act and is not covered by the provisions of that Act. A suit by the landlord for ejectment of the tenant under the ordinary law is competent in a civil Court.

Regular Second Appeal from the decree of the Court of Shri D. R. Dhameja, Additional District Judge, Delhi, dated the 1st day of December, 1962 affirming that of Shri T. R. Handa, Sub-Judge, 1st Class, Delhi, dated the 31st May, 1962, dismissing the Plaintiff's suit and leaving the parties to bear their own costs.

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

YOGESHWAR DAYAL, ADVOCATE, for the Respondents.

JUDGMENT

PANDIT, J.—One Suraj Narain was the owner of a plot of land situate on Original Road in Paharganj, Delhi. Half of this plot was leased to one Gurbachan Singh and the other half to Ram Saran, Ganga Bishan and Jaswant Singh, appellants. After taking the plot on lease, Gurbachan Singh raised certain structures, that is wooden *Khokhas* and a tin-shed, on his portion of the plot, Later on, he parted with possession of the portion leased out to him in favour of his brother. Harbhajan Singh, respondent No. 1. As a result, after giving the required notice to quit, Suraj Narain brought a suit in 1956 for ejectment against Gurbachan Singh, Harbhajan Singh and Messrs Universal Timber Traders. The grounds of ejectment were that Gurbachan Singh had sublet the premises to Harbhajan Singh and Messrs Universal Timber Traders and he had raised the above-mentioned constructions without the landlord's consent. The suit was contested by all the defendants. The plea of Gurbachan Singh was that these constructions as also the induction of Harbhajan Singh and Messrs. Universal Timber Traders were with the consent of the landlord. It was also pleaded that the civil courts had no jurisdiction to try this case as the Rent Act applied to these premises. The defence of Harbhajan Singh and Messrs. Universal Timber Traders was that Gurbachan Singh had not sublet these premises in their favour, but as the other hand, they were tenants directly under the landlord since a long time. It was also stated that these constructions had been made by them at a cost of Rs. 1,500. They also ook the plea that the Civil Courts could not deal with the matter, the same being covered by the Rent Act. The suit was compromised on 20th December, 1957 whereby Suraj Narain accepted

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Harbhajan Singh as his tenant and the rate of rent was increased from Rs. 40 to Rs. 50. Thereafter, Suraj Narain sold the entire plot to the appellants by means of a registered deed, which was executed on 14th March, 1959, but registered on 29th May, 1960, for Rs. 20,000. On 12th September, 1960 the appellants gave a notice to Harbhajan Singh, respondent No. 1, determining his tenancy with effect from 30th September, 1960 and calling upon him to hand over vacant possession to them on that date. Since he did not do so, the present suit for ejectment was filed by them in April, 1961, against him and Waryam Singh and Manohar Lal, respondents 2 and 3, as representing Messrs. Universal Timber Tradedrs. The ground of ejectment was that respondent No. 1 had sublet, assigned or otherwise parted with possession of the aforesaid plot to respondents 2 and 3 without the consent of the appellants.

The suit was contested by the defendants who, *inter alia*, pleaded that the premises in question was a building and not a plot and the Civil Courts had no jurisdiction to entertain the same. It was also pleaded that there was no subletting in favour of respondents 2 and 3, who were also the tenants of the appellants. It was further stated that the notice terminating the tenancy given by the appellants was void and illegal and it did not validly terminate the tenancy on 30th September, 1960.

On the pleadings of the parties, the following issues were framed:—

(1) Whether the property included in the tenancy is 'premises' ? If so, to what effect ?

(2) Whether defendants Nos 2 andd 3 are in possession of the suit property as direct

tenants under the plaintiffs ? If so, to what effect ?

(3) Whether the notice of ejectment served by the plaintiffs on defendant No. 1 is illegal and void ?

(4) Relief.

The trial Judge held that the property included in the tenancy was "premises" as defined in the Delhi Rent Control Act, 1958, On issue No. 2, it was conceded on behalf of the respondents that it was respondent No. 1, only, who was the tenant of the appellants, and respondents No. 2 and 3 were on the premises through him. On issue No. 3, it was held that the notice of ejectment served by the appellants on the respondents was quite valid and legal. As a result of the finding on issue No. 1, however, the suit was dismissed.

When the matter went in appeal before the learned Additional District Judge, Delhi, he affirmed the findings of the trial Court on issue 1 and 3 and dismissed the same. Against this, the present second appeal has been filed by Ram Saran and others.

The main question for decision in this case is whether the demised property comes within the definition of the word "premises" as given in section 2(i) of the Delhi Rent Control Act, 1958.

The findings of fact arrived at by the lower appellate Court are:—

(1) it was only a plot of land, which was originally let out on rent to Gurbachan Singh by Suraj Narain;

(2) it was Gurbachan Singh, who raised these super-structures, namely, *khokhas*

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and the tin-shed, on the plot after the same had been leased in his favour;

(3) in the suit for ejectment filed by Suraj Narain; Harbhajan Singh, respondent No. 1 was accepted as a tenant in place of Gurbachan Singh by the landlord;

(4) the appellants purchased only the plot of land and not the super-structures from Suraj Narain;

(5) these structures originally belonged to Gurbachan Singh and later on became the property of respondent No. 1;

(6) the appellants never let out or demised the structures to respondent No. 1; and

(7) when Suraj Narain, who was the predecessor-in-interest, of the appellants accepted respondent No. 1 as tenant of the plot in question, these structures belonging to the tenant already existed there.

It may be mentioned that the respondents are carrying on the work of timber merchants on the plot in question. The trial Court had inspected the spot and had found that the area in the tenancy of respondent No. 1 was about 80′ x 20′. There were two wooden *khokhas*, each measuring 6′ x 7′ and 6 feet in height. There was also a shed consisting of a tin roof, supported by wooden *ballies*. It was not enclosed and measured about 50′ x 12′. Section 2(i) of the Delhi Rent Control Act, 1958, is in the following terms:—

"*S. 2.* In this Act, unless the context otherwise requires,—

* * *

* * *

(i) 'premises' means any building or part of a building which is, or is intended to be, let separately for use as

a residence or for commercial use or for any other purpose, and includes—

(i) the garden, grounds and outhouses, if any, appertaining to such building or part of the building;

"(ii) any furniture supplied by the landlord for use in such building or part of the building;

but does not include a room in a hotel or lodging house;"

It is common ground that if the property in dispute comes within the above-mentioned definition of the word 'premises', then the tenant would be protected from eviction, except in certain contingencies, and the Civil Courts will have no jurisdiction to try the suit. If, on the other hand, it is not so, then the appellants would be entitled to the decree prayed for, in case the finding of the Courts below on issue No. 3 is correct. The learned Additional District Judge has held:—

"The definition or premises is wide enough to include not only a building but also a part of the building. The part in its turn may be a portion of a superstructure or it may be by the site only of a structure. The site would be as much a part of the building as any of the walls or the roof. Therefore, though the plaintiffs' (present appellants) predecessor-in-interest was not the owner of the superstructure, but at the time he accepted defendant No. 1 (present respondent No. 1) as his tenant, the site which he let out to defendant No. 1 (present respondent 1) was part of a building because the super-structures were in existence."

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He also relid on the decision of the Madras High Court in *J. H. Irani and others* v. *T.S.PI.P. Chidambaran Chettiar and others* (1).

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Admittedly, Suraj Narain had only leased out a plot of vacant land to Gurbachan Singh. It was the latter who had raised these temporary structures on the same for doing his business, even though respondent No. 1's case in the previous suit was that he had constructed these structures at a cost of Rs. 1,500 and he was the tenant of Suraj Narain and working in partnership under the name and style of Messrs Universal Timber Traders. The fact, however, remains that these constructions were not made by Suraj Narain, but had been raised by the tenants for their own benefit. For the purpose of determination as to whether the property included in the tenancy is 'premises' or not, we have to see as to what was actually let by the landlord in a particular case. Was it a building or a part of a building or some vacant land ? In the present case, there is no manner of doubt that the landlord had only leased out a vacant piece of land and it is nobody's case that he had constructed any building on the same. The mere fact that same temporary constructions have been raised by the tenants for their own use on the vacant site leased out to them would not in any way convert the same into a building. On 20th December, 1957, when the compromise was effected between the parties in Suraj Narain's suit and respondent No. 1 was accepted as a tenant by the landlord, no doubt these temporary structures were already in existence. This does not, however, mean that the landlord was letting something more than the vacant piece of land, because he was not the owner of these structures. Even assuming for the sake of argument that these temporary

(1) A.I.R. 1953 Mad. 650

structures belonged to him, in my opinion, it could not be held that he was letting out a building or a part of a building as contemplated by the provisions of section 2(i) of the Delhi Rent Control Act, 1958. Sometimes it so happens that the landlord, while leasing out a vacant piece of land, also constructs certain temporary structures like *khokhas,* etc., for the convenience of the tenants. That, however, cannot convert a vacant land into a 'building'. In the present case, the fact remains that these structures have not been raised by the landlord and belong to the tenants. Learned Counsel for respondent No. 1, it may be mentioned, submitted that these *khokhas* belonged to the landlord, because they had been constructed by Gurbachan Singh and on the termination of his tenancy on 20th December, 1957 they became the property of the landlord under the provisions of section 108(h) of the Transfer of Property Act, because they had not been removed by the tenant. This was never the case of respondent No. 1. On the other hand, as already mentioned above, he was claiming that the entire constructions had been made by him at a cost of Rs. 1,500. Besides, there is the finding of the lower appellate Court that these structures, though originally the property of Gurbachan Singh, later on became that of respondent No. 1. Under these circumstances, there is no escape from the conclusion that what was actually leased out in the present case was a vacant piece of land and not a building or a part of a building. As regards *J. H. Irani and others'* case, it is of no assistance to the respondents, because there the lease demised the lands as well as pucca buildings standing thereon, which belonged to the lessor. This authority, therefore, has no application to the facts of the present case. The finding of the lower appellate Court on issue No. 1 was, therefore, incorrect in law.

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Learned counsel for the respondents then submitted that the decision of the Courts below on issue No. 3 was wrong. He contended that the notice did not expire with the end of the month of the tenancy as contemplated by section 106 of the Transfer of Property Act, and therefore, the same was invalid.

It may be mentioned that in the written statement respondent No. 1 had not mentioned the date on which the tenancy commenced. It was only at the time of arguments in the trial Court that his counsel submitted that the month of tenancy was from the 29th to 28th according to the English calendar, as the sale-deed regarding the property in dispute in favour of the appellants was registered on 29th May, 1959. The appellants, on the other hand, pleaded that the tenancy was a monthly one commencing from the first of each month. Both the Courts below have found in favour of the appellants on this point. This is a finding of fact and the same has not been shown to be vitiated by any error of law. The same is, consequently, binding in second appeal.

The result is that this appeal is accepted, the decree of the lower appellate Court is set aside and the plaintiff's suit is decreed. In the circumstances of this case, however, I will leave the parties to bear their own costs, in this court as well.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Harbans Singh, J.

M/s. KHUSHI RAM-BEHARI LAL AND Co.,—*Petitioner.*

versus

THE ASSESSING AUTHORITY, SANGRUR, AND ANOTHER,—*Respondents.*

Civil Writ No. 413 of 1962.

1963

Dec., 31st.

East Punjab General Sales Tax Act (XLVI of 1948)—Ss. 2(d) and 16—Proceedings for assessment initiated against a firm—Firm dissolved, thereafter—Notice under S. 16 not given—Proceedings—Whether can be continued.