

THE INDIAN LAWREPORTS

APPELLATE CIVIL

Before I. D. Dua, J.

SARDHA RAM,—*Appellant*

versus

PARAS RAM,—*Respondent.*

Regular Second Appeal No. 736 of 1960.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 29—East Punjab Urban Rent Restriction Act (III of 1949)—Section 13(1)—Jurisdiction of Civil Courts to entertain claims for ejection of tenants protected under section 29—Whether excluded by East Punjab Urban Rent Restriction Act—Interpretation of new Statutes—Rules as to, stated.

Held, that the persons protected by section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, are placed in a distinct category from the tenants whose cases are governed by the East Punjab Urban Rent Restrictions Act, 1949. If the Parliament had intended to subject the persons, for whose special protection from ejection special provision has been made in section 29, to the provision of the Rent Legislation in the various States and, therefore, to section 13 of the East Punjab Rent Restriction Act, it could have been very easily so stated in section 29 itself. Hence the jurisdiction of Civil Courts to entertain claims for ejection of tenants protected by section 29 is not excluded by section 13 of the East Punjab Urban Rent Restriction Act.

Held, that an extremely important phase of statutory interpretation is that of adopting new legislative measures into the existing scheme of jurisprudence and the Courts

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in this Republic are, generally speaking, inclined to regard new legislation to be governed and restricted by the general pre-existing law unless the former can be held to have been intended to *protanto* override or modify the latter. It would also be permissible to impute to the legislature a probable intent to establish a uniform and logical system of law on a given subject. It may, however, also be assumed that if a statute, which creates a right, does not indicate expressly the remedy, one is, normally speaking, implied, and resort may be had to the general and already established method of obtaining relief relating to the subject-matter in question.

Second appeal from the decree of Shri Pritam Singh Patter, Additional District Judge, Karnal, dated the 25th day, of April, 1960, affirming with costs that of Shri Shamsheer Singh, Extra Sub-Judge, IV Class, Karnal, dated the 13th October, 1959, granting the plaintiff a decree as prayed for with costs and further ordering the defendant to vacate the shop within one month from 13th October, 1959.

S. D. BAHRI AND A. L. BAHRI, ADVOCATES, for the Appellant.

RAJINDAR SACHAR, ADVOCATE for the Respondent.

JUDGMENT

Dua, J.

DUA, J.—This second appeal has been filed in this Court in the following circumstances. Paras Ram, plaintiff instituted a suit, from which this appeal has arisen, for ejection of Sardha Ram, Defendant-Appellant before me, from shop No. C. 681, G.T. Road, Karnal, on the allegation that the shop in question had been purchased by him in an auction held by the Rehabilitation Department and that the defendant had admitted him to be the landlord. The defendant had been in occupation of the shop as a tenant even before the auction and was apparently so at the time of the auction as well. The ejection was sought on the grounds (1) that the defendant had not paid rent for the

period from 25th July, 1958 to 25th March, 1959, which amounted to Rs. 105 at the rate of Rs. 15 per mensem ; (2) that he had sublet the shop without the plaintiff's consent to two persons Sant Ram and Krishan Lal ; and (3) that he had converted the use of the shop which was first being used for carrying on cloth business but is now being used for doing business in shoes. Notice under section 106 Transfer of Property Act was pleaded to have been duly served and it was asserted that the defendant had in spite of it failed to vacate the shop in question.

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The defendant contested the suit controverting all the allegations of the plaintiff and adding a plea that the shop being situated within the local limits of the Municipal Committee, Karnal, the present suit did not lie in the civil Courts. In so far as the allegation with respect to sub-lease to Sant Ram is concerned, the defendant asserted that Sant Ram was his partner in the business which was being carried on in the shop in question. Sub-lease in favour of Krishan Lal, was, however, denied.

The pleadings of the parties gave rise to four issues including the one relating to the jurisdiction of the civil Courts. The Court of first instance relying on the statement of Autar Singh (P.W. 6), came to the conclusion that the shop in question, which was admittedly evacuee property, was auctioned under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, the auction having taken place on 7th May, 1958, and the auction certificate having been granted to the plaintiff on 6th July, 1959. According to section 29 of the above Act, a tenant could only be ejected within two years from the transfer of the property if his case fell within the grounds contained in it. On this reasoning, the

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Court decided in favour of the jurisdiction of the Civil Court to entertain and adjudicate upon the present dispute ; there being no provision in the East Punjab Urban Rent Restriction Act ousting the jurisdiction of the Civil Courts in respect of the cases falling within the purview of section 29. The plaintiff's plea with respect to subletting to Sant Ram was also upheld. In so far as the change in the nature of the business and the purpose for which the shop was initially occupied is concerned, the plaintiff's allegation was negatived. The notice under section 106 Transfer of Property Act, was held to have been validly served. As a result, the plaintiff was granted a decree for ejectment against the defendant who was directed to vacate the shop within one month from the date of the judgment which was dated 13th October, 1959.

Sardha Ram, took an appeal to the Court of the District Judge, but the same was dismissed by the Additional District Judge, Karnal, on 25th April, 1960. In so far as the question of jurisdiction of the Civil Courts to entertain the present suit is concerned, reliance was placed in support of the plaintiff's plea on *Debi Pershad v. Messrs. Choudhari Brothers Ltd., etc.*, (1) where Harnam Singh, J., laid down that section 13(1) of the Punjab Urban Rent Restriction Act, merely bars execution of a decree passed in a suit for the eviction of a tenant in possession of a building or rented land before or after the commencement of the said Act, but it does not prohibit institution of a suit for the eviction of a tenant in possession of a building or rented land. The learned Judge further repelled the contention that the decrees contemplated within the meaning of Section 13(1) are merely those

(1) A.I.R. 1949 E.P. 357.

decrees which may be passed after the commencement of this Act in suits which were pending on the date when the Act came into force. The learned Judge, thus did not see any justification to limit the scope of section 13(1) to decrees being passed in suits pending at the time when the Act, came into force. The learned Additional District Judge in the case in hand also referred to section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, No. 44 of 1954 and observed that this section prescribed a special mode of ejection of tenants, who are liable to be ejected within two years of the transfer of property. The grounds contained in section 29 not being similar to those contained in section 13 of the Punjab Urban Rent Restriction Act, the lower appellate Court ruled that the present suit was entertainable by Civil Courts, whose jurisdiction was not barred. The trial Court's decision on the question of change of user of the shop in question and the validity of notice was not assailed in the Court below. Subletting of the *thura* by the defendant to Krishan Lal, however, was not held to have been proved, but in so far as the question of sub-lease in favour of Sant Ram, or delivery of possession to him is concerned, the lower appellate Court upheld the plea of the sub-lease. The defence of a partnership between Sardha Ram and Sant Ram was negatived and it was observed that the partnership was a mere contrivance to evade the law regarding ejection of tenants. On these grounds, the appeal was dismissed and the decision of the Court of first instance affirmed.

It is in these circumstances that Sardha Ram has come up to this Court on second appeal. To begin with his learned counsel contended that section 29 of the Displaced Persons (Compensation and Rehabilitation), Act, empowers only the managing officer or managing corporation to transfer property out of the compensation pool and in support

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of his contention he has referred to section 20 of the Act. The counsel then referred to rule 90 of the rules framed under the Displaced Persons (Compensation and Rehabilitation), Act, which lays down procedure for sale of property by public auction. According to the counsel, title would only vest in the purchaser when the sale certificate is issued to him under sub-rule 15 of rule 90 which according to the counsel was issued on 6th of July, 1959. The suit, according to the counsel, having been instituted in February, 1959, was premature and, therefore, could not be entertained because the plaintiff had on the date of the institution of the suit not acquired full title to the shop in question. This point was neither raised in the pleadings nor was it the subject-matter of an issue nor was it raised in either of the two Courts below. As a matter of fact, the learned Additional District Judge in para 12 of his judgment expressly stated that no other point had been urged before him. It is not suggested that this statement is incorrect. Strictly speaking, the plea taken in the written statement is wholly inconsistent with the point which is now being sought to be raised by the learned counsel. In para 1 of the plaint, it was expressly asserted that the plaintiff was the owner of shop No. C. 681, G. T. Road, Karnal, by purchase in an auction by the Rehabilitation and Settlement Department and that he had been intimated by the said department that he was entitled to rent of the said shop with effect from 25th June, 1958, from the defendant who was the tenant of the said shop. This para was admitted to be correct by Sardha Ram in his written statement, dated 6th of April, 1959, and filed in Court on the 7th of April, 1959. I, therefore, disallowing this point to be raised, repel the contention. In this view of the position, it is hardly necessary to refer to *Messrs. Bombay Salt and Chemical Industries v. L. J. Johnson and*

others (1), where it was held that the declaration of highest bidder at the auction does not amount to a complete sale and transfer of property.

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The counsel then referred to the question of jurisdiction of the Civil Courts and indeed this was the point on which most emphasis was laid on behalf of the appellant. It was contended that section 13 of the East Punjab Urban Rent Restriction Act by necessary intendment excludes the jurisdiction of the Civil Courts to entertain a claim for ejectment of tenants in territories to which this Act is made applicable. Section 29 according to Mr. Bahri, merely lays down that the person who happens to be in lawful possession of any immovable property and to whom this provision of law applies should be deemed to be tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which they held properties immediately before the transfer and that this section does no more than by a fiction of law incorporate the provisions contained therein in the East Punjab Rent Restriction Act. The only special protection which persons in lawful possession of immovable property covered by section 29 are granted is that for a period of two years they cannot be ejected except on certain specified grounds and that they are deemed to be tenants of the transferees on the same terms and conditions as to payment of rent or otherwise on which they were holding properties immediately before the transfer. Apart from this protection, the forum in which proceedings for their eviction can be initiated has not been changed. It is thus submitted that section 29 does not exclude the operation of the provision of the East Punjab Rent Restriction Act. In so far as the ratio of the decision of Harnam Singh, J., in

(1) A.I.R. 1958 S.C. 289.

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Debi Pershad's case is concerned, the counsel challenged its correctness and contended that the conclusion of the learned Judge, that there is no implied prohibition to the institution of suits in the ordinary Courts, discernible in section 13 of the Rent Act, was arrived at without considering and taking into account some of the well recognized canons of interpretation of statutes and also without properly adverting to the possible anomalies which are likely to arise from the construction adopted in that case. It is further stressed that merely because passing of decrees after the enforcement of the Rent Act is contemplated does not by any means necessarily lead to the conclusion that even after the enforcement of the Act a landlord has a choice to go to the Civil Court and initiate proceedings with a prayer for ejection according to the procedure prescribed for regular suits, and this according to the counsel, is the main if not the sole basis for the conclusion of the learned Single Judge. It is emphasized that the legislature could never have intended to leave an option to litigants either to go to Civil Courts or to the Rent Controller because such a situation must tend to lead not only to confusion but also to serious complications on account of conflict of jurisdiction.

Another point was also sought to be raised by Mr. Bahri, namely, that the sub-lease, if any, had been effected before the auction purchase with the result that the plaintiff, whose right came into existence after the sub-lease, could not possibly have any cause for grievance. In this connection, it is urged that the partnership deed was executed on 1st May, 1958, and the bid at the auction was given on 7th May, 1958. This argument can be disposed on the short ground that it depends on facts and that this precise plea having not been urged in either of the two Courts below it cannot be permitted to be raised for the first time on

second appeal. The plea in the Courts below was one of partnership and this has been negatived. Whether on the date which the deed of partnership bears should be the date of the sub-lease or of the parting of possession by the tenant is essentially a matter of evidence and, therefore, if no precise plea is raised by the tenant asserting that the lease had been effected before the transfer in favour of the purchaser, the tenant cannot be permitted now to raise this plea and make out an entirely new case. The sole object of pleadings is that each side may be fully alive to the precise questions which are about to be canvassed in order that they may have an adequate opportunity to adduce such evidence as may be necessary and appropriate to the issues raised thereby. The contention that pleadings in this country should not be strictly construed (even if this rule holds good today when the system of pleadings has been in vogue for a very large number of years, on which question I express no opinion) does not call for any serious comment because the present is a case of complete absence of the plea now sought to be raised, which, in my opinion, is not permissible.

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On behalf of the respondent, it was strongly urged that for securing relief under section 29 a Civil Court is the only forum and unless this jurisdiction, which is otherwise inherent, is taken away expressly or by necessary intendment a party cannot be refused relief by the Civil Courts. Ouster of the jurisdiction of Civil Courts, according to Mr. Sachar, is not to be readily inferred and even when it is excluded, it should be so held only within the limits clearly described. Reference has in this connection been made to the following decisions: *Rallu v. The Additional Financial Commissioner* (1), in which Bishan Narain, J., held that

(1) I.L.R. 13 Punjab, 247.

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“if a landlord makes an application under section 14-A of the Punjab Security of Land Tenures Act, an information would be sent to the authority under the Punjab Tenancy Act to stay further proceedings, and that filing of a petition under section 14-A does not result in automatic abatement of the previous proceedings taken under the Punjab Tenancy Act. It is open to the landlord to take proceedings either under the Punjab Tenancy Act or under the Punjab Security of Land Tenures Act because the remedies available to him are parallel and it is open to him to avail of either remedy”. I do not think the ratio or reasoning of this case is of any material assistance in deciding the exact point which calls for determination before me. It is difficult for me to impute to the legislature an intention to provide for remedies under the ordinary Court and before the Rent Controller to be parallel, remedies co-existing at the same time giving to the parties to a lease an option to resort to either of them. *Umesh Jha v. The State and another* (1) has also been referred to at the Bar for the proposition that a distinct and unequivocal enactment is required for the purpose of excluding the jurisdiction of a civil Court and that the exclusion of its jurisdiction is not to be readily inferred; it must either be explicitly expressed or clearly implied. This rule is unexceptionable but the difficulty which usually arises is in its application to the facts of a given case. For the same purpose, reliance was placed on *A. R. Sarin v. B.C. Patil and another* (2) In that case, however, the Court came to the conclusion that the scheme of the Payment of Wages Act was to set up a special tribunal, confer a special jurisdiction upon that tribunal and to oust the jurisdiction of ordinary civil Courts but the jurisdiction so conferred upon the special tribunal must

(1) A.I.R. 1956, Patna 425.

(2) A.I.R. 1951 Bom. 423.

be strictly construed. Chagla, C.J., who prepared the judgment on behalf of the Bench, at page 425 spoke thus :—

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“The jurisdiction of a special tribunal cannot be inferred by implication. Jurisdiction must be expressly given and we must find from the language of the statute itself that there is express ouster of the jurisdiction of the civil Courts and an express conferment of such jurisdiction upon the special tribunal set up under the Act”.

Mr. Sacnar has laid great emphasis on this observation. Reference was also made to *Ram Parshad Halwai v. Mukhtar Chand* (1), where it had been observed that the right of a landlord to recover possession of his property from the tenant is a substantive right, and it was argued that the Court should not further curtail the already truncated right of the landlord to evict his tenant, by adding to Section 29 by implication, words excluding the jurisdiction of the civil Courts to entertain suits for eviction.

After bestowing my best attention to the arguments of the counsel for the parties, I think that the appellant's contention must ultimately fail. It is true that an extremely important phase of statutory interpretation is that of adopting new legislative measures into the existing scheme of jurisprudence and the Courts in this Republic are, generally speaking, inclined to regard new legislation to be governed and restricted by the general pre-existing law unless the former can be held to have been intended to *protanto* override or modify the latter.

(1) 1958 P.L.R. 332.

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It would also be permissible to impute to the legislature a probable intent to establish a uniform and logical system of law on a given subject. It may, however, also be assumed that if a statute, which creates a right, does not indicate expressly the remedy, one is, normally speaking, implied, and resort may be had to the general and already established method of obtaining relief relating to the subject-matter in question. The problem, which arises in the instant case, however, is whether the mode of securing eviction of tenants provided by the East Punjab Rent Act is to be considered to be the general method or the one provided by the Code of Civil Procedure by approaching the civil Courts. Fairly plausible arguments may perhaps be advanced in support of either contention. Whereas, on the one hand, it may be urged that the jurisdiction of civil Courts should not be lightly taken away, on the other, it may be contended that the Displaced Persons Act (No. 44 of 1954) and particularly Chapter 5, in which section 29 occurs, contains many provisions which merely add to the general law of the land and that the scheme of relief to tenants by a Rent Controller, under Rent Acts being now an essential part of our system of jurisprudence, section 29 should, for reasons of uniformity, be deemed to be merely supplementary to the Rent Act. In this context, it is desirable to consider the scope of the Punjab Rent Act.

The above Act has been enacted to restrict the increase of rent of certain premises in urban areas and the eviction of tenants therefrom. The Controller is authorised by section 4 to fix fair rent of certain buildings, etc. Increase of fair rent of these buildings is permissible only within the limits prescribed in section 5 and landlords are debarred from demanding anything in excess of fair rent fixed under section 4. For the purpose of

of dealing with the question of eviction the powers of the Controller are circumscribed by section 13(2) and (3) and for some other ancillary purposes provisions are made by sub-sections (4) and (5) of section 13. It is true that under section 13 some of the grounds on which a landlord is entitled to seek ejectment are almost identical with or similar to those contained in the proviso to section 29(1) of the Displaced Persons Act 44 of 1954, but it is also obvious that under section 13 there are some additional grounds which are not to be found in section 29 ; at the same time sub-section (1) of section 29 is clearly indicative of its over-riding effect with the result that determination of fair rent within the contemplation of section 4 of the Punjab Rent Act must be considered to have been expressly excluded. This factor is a direct interpretative aid and serves to a considerable extent as a safe index of the legislative intent in excluding the operation of the East Punjab Rent Restriction Act so far as the restriction on increase of rents is concerned. The question would, therefore, directly arise that if the Parliament has chosen to exclude the properties covered by section 29 from the operation of the provisions of the Punjab Rent Act dealing with restrictions on increase of rent, then can we reasonably impute to the Parliament, by pressing into service the rule of necessary intendment, an intention to subject such properties to section 13, so as to exclude the jurisdiction of the civil Courts from entertaining suits for eviction of tenants therefrom. In the absence of express language or of some other compelling reason, I do not find it easy to impute such an intention to the Parliament. To accede to the argument advanced by Mr. Bahri, would, in my view, not only mean assigning to the Parliament arbitrariness and inconsistency in enacting section 29 but it would also lead to considerable amount of confusion, which the Parliament could hardly have designed. If the

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Parliament had intended to subject the persons, for whose special protection from ejection provision has been made in section 29, to the provisions of the Rent Legislation in the various States and, therefore, to section 13 of the Punjab Rent Act, it could have been very easily so stated in section 29 itself, for when the Parliament enacted the Displaced Persons (Compensation and Rehabilitation) Act it must have known that in most of the States Rent Legislation has made special provisions for the protection of tenants. The rule of necessary intendment as an aid to the discovery of legislative intent can, generally, be pressed into service, only if, without having resort to this rule, the statutory provision tends to lead to some anomaly, injustice or to absurd consequences. Nothing of this kind has been suggested on behalf of the appellant. On the other hand, it seems to be reasonable to assume that the Parliament placed the persons protected by section 29 in a different and distinct category from the tenants whose cases are governed by the Punjab Rent Restriction Act and has afforded them special protection uniformly throughout the Republic.

In the light of the above discussion, in my view, the jurisdiction of the civil Courts has not been ousted and the Courts below cannot be held to have usurped jurisdiction not vesting in them. I am, however, expressing no considered opinion as to whether or not the decision by Harnam Singh, J., in *Debi Pershad's* case lays down a rule of law, that notwithstanding the East Punjab Rent Restriction Act it is open to a landlord at his sweet will to go to a civil Court and secure a decree for ejection as is contended by Mr. Sachar, or that if this decision does lay down such a rule of law, then it requires re-consideration, as is contended by Mr. Bahri. It is unnecessary to deal with these

rival contentions for the purposes of the present case.

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For the reasons given above, this appeal fails and is hereby dismissed. The respondent is entitled to his costs in this Court.

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APPELLATE CIVIL

Before G. D. Khosla, C.J., and Tek Chand, J.

SARDARI LAL AND OTHERS,—Appellants

versus

SHAKUNTALA DEVI,—Respondent.

Regular First Appeal No. 90 of 1951.

Transfer of Property Act (IV of 1882)—Section 54—Scope of—Section 53-A—Doctrine of Part Performance Applicability and scope of—Contract Act (IX of 1872)—Section 74—Advance paid towards purchase price—Whether can be forfeited—Damage—Extent of—Fall in price—Judicial notice—Whether can be taken.

Held, that the provisions of section 54 of the Transfer of Property Act, 1882, as to the mode of transfer are exhaustive and do not admit of a sale being effected in any other manner. Thus, title to the land cannot pass by mere admission when the statute requires the execution of a deed. In those parts of the Punjab, where the provisions of this Act are not in force, an oral sale is valid but in the places where the provisions of section 54 of this Act are in force, the title by sale cannot pass to the vendee in the absence of the execution and registration of the deed of sale. If section 54 is applicable, there is no scope for importing the doctrine of equitable ownership of English Law.

Held, that section 53-A of the Transfer of Property Act, 1882 has imported the English doctrine of part performance with certain distinctive features. In England the phrase "part performance" is commonly used as a short

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