

REVISIONAL : CIVIL

Before Mehar Singh, J.

RAM KUMAR,—*Petitioner*

versus

BANWARI LAL AND OTHERS,—*Respondents*

Civil Revision No. 371-D of 1964.

Court-fees (VIII of 1870)—S. 7(v)(e) and 7(xi)(e)— 1964
Tenant illegally ejected from the premises by the landlord and
thereafter premises let out to others—Suit filed by tenant for re- December, 18th
covery of possession against landlord and new tenants—Court-fee
payable—Whether under S. 7(v)(e) or 7(xi)(e).

Held, that a suit by a tenant for recovery of possession of the premises against his landlord and the new tenants inducted thereon is a suit between the tenant and his landlord and the court-fee payable thereon is under section 7(xi)(e) of the Court-fees Act, 1870. If the initial dispossession or eviction of the tenant is by the landlord, then even if subsequently the landlord has inducted other persons on the property, when the tenant claims possession of it within limitation against the landlord, making those other persons as parties to the suit, in substance the suit is no more than a suit between a tenant and a landlord, for as soon as the tenant obtains a decree against his landlord, those who hold the property under the landlord in the circumstances must make the property available to the tenant. If nothing else should happen, a tenant obtaining a decree in such circumstances should be able to evict such persons in execution, for they have no right of their own to remain in possession of the property except through the landlord, whose right is subject to the decree obtained by the tenant. It is only when a person other than the landlord, as a defendant to a suit, can set up his independent title against the tenant that it would be a suit which would not strictly come under section 7(xi)(e). But where a third person cannot set up any title, except under the landlord, and, particularly as in the facts of this case when he enters upon the property some time after the wrongful act of the landlord in dispossessing the tenant and is being made a party to the suit, that leaves the suit still one between a tenant and a landlord.

Revision petition under section 115, C.P.C., and Section 44 of Punjab Courts Act VI of 1918, from the order of Shri Dalip Singh, Sub-Judge, 1st Class, Delhi, dated the 31st August, 1964, directing the plaintiff to amend the plaint, by stating therein the market value of the godown in suit and to pay advalorem court-fee on that market value by the 7th September, 1964, on payment of Rs 10, as costs.

S. K. MUKHIJA, ADVOCATE, for the Petitioner.

D. D. CHAWLA AND S. L. BHATIA, ADVOCATES, for the Respondents.

ORDER

Mehar Singh, J. MEHAR SINGH, J.—This is a revision application by the plaintiff from the order, dated the August 31, 1964, of the First Class Subordinate Judge of Delhi. The plaintiff has alleged in the plaint that Shanti Devi and he have been tenants of the premises under Banwari Lal, defendant. He was out of Delhi and on or about January 16, 1964, Banwari Lal, defendant in collusion with Shanti Devi, took illegal possession of the premises in question and

handed over possession of the same to Rameshwar Dass Jain, and Ghamandi Lal, defendants, obtaining a rent note in his favour from them. The plaintiff has further averred that the three defendants are in illegal occupation of the premises. He sues the three defendants for possession of the premises in question which is a godown.

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The plaintiff has paid court-fee on the yearly rental value of the godown under section 7(xi)(e) of the Court Fees Act, 1870 (Act 7 of 1870). The defendants raised an objection to the proper court-fee that should have been paid by the plaintiff in the suit saying that the allegations in the plaint bring the suit of the plaintiff under section 7(v)(e) and so the court-fee paid should have been on the market value of the godown. The stand taken by the defendants has prevailed with the learned trial Judge, who has directed the plaintiff to make amendment in the plaint and to pay court-fee *ad valorem* on the market value of the godown.

The only question for consideration is whether court-fee is payable by the plaintiff under section 7(xi)(e) or 7(v)(e) of Act 7 of 1870 on the allegations in the plaint. for on the question of court-fee it is those allegations alone that have to be taken into consideration.

Section 7(v)(e) is in this form—"The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

(e) where the subject-matter is a house or garden: According to the market value of the house or garden" and section 7(xi)(e) reads—"In the following suits between landlord and tenant:—(e) to recover the occupancy of immovable property from which a tenant has been illegally ejected by the landlord,—according to the amount of the rent of the immovable property to which the suit refers, payable for the year next before the date presenting the plaint." If the present is a suit by a tenant against the landlord then obviously it is section 7(xi)(e) that alone applies, but if it is either not a suit between landlord and tenant or is a suit which can be considered as between tenant and landlord with some other persons, which means that while the landlord is a defendant to the suit, the claim of the tenant as a plaintiff against the other persons is against them as trespassers, then obviously it is section 7(v)(e) that applies. In the latter case the claim against

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the other persons is not on account of any relationship arising out of the tenancy but just for possession of the property on the ground that those other persons have no right to the same as against the plaintiff. I am of the view that if the facts alleged in the plaint are as by the present plaintiff that the initial dispossession or eviction of the tenant was by the landlord, then even if subsequently the landlord has inducted other persons on the property, when the tenant claims possession of it within limitation against the landlord, making those other persons as parties to the suit, in substance, the suit is no more than a suit between a tenant and a landlord, for as soon as the tenant obtains a decree against his landlord, those who hold the property under the landlord in the circumstances must make the property available to the tenant. I think that if nothing else should happen, a tenant obtaining a decree in such circumstances should be able to evict such persons in execution, for they have no right of their own to remain in possession of the property except through the landlord whose right is subject to the decree obtained by the tenant. It is only when a person other than the landlord as a defendant to a suit can set up his independent title against the tenant that it would be a suit which would not strictly come under section 7(v)(e). But where a third person cannot set up any title, except under the landlord, and, particularly as in the facts of this case when he enters upon the property some time after the wrongful act of the landlord in dispossessing the tenant and is being made a party to the suit, that leaves the suit still one between a tenant and a landlord. On this view the order of the learned trial Judge cannot be sustained and the court-fee paid by the plaintiff has been correct under section 7(xi)(e).

Now for some of the cases cited by the learned counsel for the parties. There is *Furzand Ali v. Mohanth Lal Puri* (1), in which two landlords collusively executed a lease deed in favour of a third person, and then all the three dispossessed the tenant. The learned Judges held it was not a case under section 7(xi)(e). I think on the facts it is obvious that it could not be, for the dispossession was not by the landlords alone and dispossession by the third person was an independent act of his own against whom the tenant sought a decree in so far as his act was

(1) I.L.R. (1905) 42, Cal. 268.

concerned. This case was considered by the learned Judges in *Secretary of State v. Dinshaw Navroji* (2), and was not followed on the ground that in that case the third party had come into the picture after the landlord had dispossessed the tenant. The learned Judges held that it was case of section 7(xi)(e). This last mentioned case has not been, and the first mentioned case has been, followed in *Bhagobai Devisingh v. Shamlal Dwarkaprasad* (3), *Kuppuswami Pillai v. Taj Fraksha Thaikhal Estate* (4), and *Mohammed Yusuf v. Muthasaddilal* (5) in the last mentioned case some other cases on the same line have also been referred to. But in none of these cases the plaintiff's allegation was a clear allegation as in the present case that the landlord dispossessed him and after dispossessing him inducted third persons into the property. So on facts none of those case is near the present case. No doubt in those cases the learned Judges did not follow *Secretary of State v. Dinshaw Navroji's* (2) case, but to my mind that makes no difference because this is a matter which has to be decided on the allegations of the plaintiff in a particular plaint. In the present plaint the plaintiff has clearly alleged that he was dispossessed by his landlord. His cause of action immediately arose against the landlord. If the landlord after that inducted others on to the property that has not given a new or a separate cause of action to the plaintiff. Those others must go to vacate the property should the plaintiff succeed against the landlord as the landlord must do pursuant to the decree against him, for those others have no claim to the property against the plaintiff except the claim of the landlord. The suit is, therefore, essentially and in substance no more than one between a tenant and a landlord. Any other approach to facts like these would mean that a landlord can, by the device of introducing a third person on to the property, compel the tenant to pay court-fee of a prohibitive amount if he should want to recover the property, which would mean that a landlord can compel a tenant into an unjust situation out of which the benefit goes so far as the court-fee is concerned to the State, and so far as the landlord is concerned the tenant is placed at a disadvantage. I do not think that the Court Fees Act

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(2) A.I.R., 1925, Sind, 275.

(3) A.I.R., 1933, Nag. 312.

(4) A.J.R., 1946, Mad. 322.

(5) A.I.R., 1951, Hyd. 53.

Ram Kumar is meant to be such a tool in the hands of a party. On the
v. facts of this case I have no doubt in my mind that it is
Banwari Lal and section 7(xi)(e) that applies and the plaintiff has paid the
others correct court-fee on the plaint. This revision application
_____ is accepted and the order of the learned trial Judge is set
Mehar Singh, J. aside. There is no order in regard to costs in this revision
application.

B.R.T.