REVISIONAL CIVIL

Before Bhandari, C.J.,

RAM NARAIN DASS ALIAS NARAIN DASS,—*Petitioner.*

versus

RAM PARSHAD,—*Respondent.*

1953

Oct. 27th.

Civil Revision Case No. 266-D of 1952

Code of Civil Procedure (V of 1908)—Order VI Rule 17—Amendment of Plaint—Amendment changing nature of suit, whether permissible—Punjab Urban Rent Restriction Act (III of 1949)—Word "tenant", meaning of—Whether includes a tenant remaining in possession after the contractual tenancy came to an end.

R. P. took on lease premises from R. N. D. R. N. D, issued notice to R. P. on the 5th May 1947 to vacate the premises. Tenancy came to an end on 12th June 1947. R. P. had sublet the premises and delivered possession to R.N.D. on the 12th August 1948. Suit by R.N.D. for rent from 11th September 1946 to 12th August 1948. On the 7th July 1952 R.N.D. made a request in the trial Court for amending the plaint so that the suit for the period from the 12th June 1947 to 12th August 1948 be treated as a suit for damages for use and occupation. This request was rejected, and a decree only for the period 11th September 1946 to 11th June 1947 was granted while for the period from 12th June 1947 to 12th August 1948 was declined as this suit was for rent and not for damages for use and occupation. R.N.D. moved the High Court in revision.

Held, that under Order VI Rule 17 of the Code of Civil Procedure complete discretion now vests in the Court to allow or not to allow an amendment even though the amendment would convert a suit of one character into a suit of another character. The trial court was not therefore justified in declining to allow amendment of the plaint.

Held also, that the word "tenant" is not used in its strict sense but in its popular sense including not only the current tenant but the ex-tenant remaining in occupation. Therefore, even though the contractual tenancy came to an end on the 12th June 1947, the tenant continued to be a statutory tenant until the 12th August 1948 when he delivered possession to the landlord.

Application under Section 25 of Act IX of 1887, for revision of the order of Shri Rameshwar Dayal, Addl. Judge Small Cause Court, Delhi, dated the 17th July, 1952, granting the plaintiff a decree for Rs. 333 with proportionate costs against the defendant.

BISHAN NARAIN, for Petitioner.

BHAGWAT DAYAL, for Respondent.

JUDGMENT

Bhandari, C.J. A. N. BHANDARI, C. J. The short point for decision in the present case is whether the landlord is entitled to recover rent or compensation in respect of the use by the tenant of certain premises during the period commencing with the 12th June 1947 and ending with the 12th August 1948.

It appears that Ram Parshad, hereinafter referred to as the tenant, took on lease certain premises situate in Delhi from Ram Narain Das, hereinafter referred to as the landlord. On the 5th May 1947 the landlord issued a notice to the tenant to vacate the premises and the tenancy came to an end on the 12th June 1947. It appears however, that the tenant had sublet the premises to some one else and did not deliver possession of the premises to the landlord till the 12th August 1948. On the 25th August 1950 the landlord brought the present suit for the recovery of the rent for the period 11th September 1946 to the 12th August 1948 at the rate of Rs. 37 per mensem. The trial Court granted a decree for the period 11th September 1946 to the 11th June 1947 but declined to grant a decree in respect of the period 12th June 1947 to the 12th August 1948. The refusal was based on the ground that the landlord had brought a suit for the "recovery of rent" and had not brought a suit for "recovery of damages on account of the use and occupation" of the premises. The landlord is dissatisfied with the order and has come to this Court in revision.

There can be no manner of doubt that the tenant was in actual or constructive possession of the premises for the period 11th September 1946 to the 12th August 1948. It may be that he sublet the premises on the 12th June 1947 but even so, it was his duty to compensate the landlord either by payment of rent or by payment of damages for use and occupation. It appears that on the 7th July 1952 when the suit was in progress the plaintiff requested the Court for permission to amend the plaint under Order VI, rule 17 of the Code of Civil Procedure. The trial Court, however, declined to accord the permission.

Rule 17 of Order VI is in the following terms :—

> "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

Mr. Bhagwat Dyal has invited my attention to certain authorities which declare that permission to amend should not be given in cases when the effect of amendment is likely to convert a suit of one character into a suit of another and inconsistent character. The position has now been altered for a complete discretion now vests in the Court to allow or not to allow an amendment even though the amendment would convert a suit of one character into a suit of another character. In *Chintaman Khushal* v. *Shanker and others* (1), *Sm. Bimala Bala Devi* v. *Khoka Parui and others* (2), *Gobinda Sundar Sinha Chowdhury* v. *Sri Krishna Chakravarti and others* (3), and *Khiaram Pariomal and others* v. *Chhatomal Tirithmal and others* (4), the Court saw no hesitation in according the necessary sanction. Following these decisions I would hold that the trial Court was not justified in declining to allow amend-

(1) A.I.R. 1951 Nag. 128
(2) A.I.R. 1951 Cal. 448
(3) 3 I.C. 346
(4) 20 I.C. 570

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ment. I would accept the petition, set aside the order of the trial Court on this point and direct that the amendment be allowed.

The question now arises whether having allowed the amendment of the plaint, it would be desirable to modify the decree. It is common ground that the tenant took the premises on lease from the landlord and that a contractual tenancy came ino existence. It is also admitted that if the tenant had continued to remain in occupation of the premises after the contractual tenancy had come to an end, he would have become a statutory tenant had he not sublet the premises to another tenant. In *Remon* v. *City of London Real Property Co.* (1), Bankes, L.J., observed as follows:—

> "It is however clear that in all the Rent Restriction Acts the expression 'tenant' has been used in a special, a peculiar sense, and as including a person who might be described as an ex-tenant, some one whose occupation had commenced as tenant and who had continued in occupation without any legal right to do so except possibly such as the Acts themselves conferred upon him."

This decision was cited with approval by their Lordships of the Privy Council in *Karnani Industrial Bank, Ltd.* V. *Satya Niranjan Shaw and another* (2) where it was observed that in order to give any working effect to the Calcutta Rent Act, 1920, the words 'landlord and tenant' in section 15 (1) of the said Act must include, as they often do in ordinary parlance, ex-landlord and ex-tenant. A similar view was taken by a Full Bench of the Punjab High Court in *Sham Sundar* v. *Ram Das* (3) where it was held that in section 9(1) of the Delhi and Ajmer-Merwara Rent Control Act, 1947, the word "tenant" is not used in its strict sense but in its popular sense including not only the current tenant but the ex-tenant remaining in occupation. In *Brown* v. *Draper* (4), the Court of

(1) (1921) 1 K.B. 49 at p. 54
(2) A.I.R. 1928 P.C. 227
(3) (1951) 53 P.L.R. 159
(4) (1944) 1 A.E.L.R. 246

Appeal held that unless and until a tenant yields up possession or has an order for possession made against him, the protection of the Rent Restrictions Acts extends to protect a licensee of the tenant, not because the licensee can claim the protection of the Acts personally, but because the possession of the licensee must be taken to be the possession of the tenant. In the Rent Acts by Megarry the learned author observes that a tenant whose contractual tenancy has come to an end can lose the protection of the Acts either by giving up possession or if an order is made against the tenant for the recovery of possession or if a dwelling-house ceases to exist. In the present case, it seems to me that even though the contractual tenancy came to an end on the 12th June 1947, the tenant continued to be a statutory tenant until the 12th August 1948 when he delivered possession to the landlord.

For these reasons, I would accept the petition, set aside the order of the trial Court and modify the decree by directing that in addition to the amount already decreed in favour of the plaintiff there shall be granted to the plaintiff a further decree at the rate of Rs. 37 per mensem for the period 12th June 1947 to the 12th August 1948. The plaintiff will be entitled to the costs of this petition.

APPELLATE CRIMINAL

Before Kapur and Dulat, JJ.,

Mst. Dato,—*Convict-Appellant.*

versus

THE STATE,—*Respondent.*

Criminal Appeal No. 410 of 1953

1953

Oct. 27th.

Evidence Act (I of 1872)—Section 118—Child of tender years—Evidence of—Rule of caution stated—Accused, a woman having a child, one year old—Whether good ground for reducing sentence from death to transportation for life.

A girl of 5 years appeared as a witness and stated that the accused, her step-mother, had thrown her and her younger sister aged about 3 years into the well. The question arose whether she was a competent witness because of her tender age.