

dissolved by a decree of divorce on the ground that the other party “* * * (ix) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree.

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As I read this clause I cannot import the construction which the learned counsel for the appellants wants me to place on this provision. The compliance has to be by the Judgment-debtor. The decree-holder does not come in the picture at all. Therefore, the argument that the decree-holder had to execute the decree or to otherwise seek its compliance is untenable. The construction derives further support from clause (viii) of section 13(1) of the Act, which reads thus—

“13(1) (vii) has not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party; or”

The obligation under this provision is on the judgment-debtor. I cannot conceive that the Legislature was trying to put different standards with regard to a decree for judicial separation and a decree for restitution of conjugal rights. In this view of the matter, there is no force in this appeal. The same fails and is dismissed, but there will be no order as to costs.

B.R.T.

REVISIONAL CIVIL

Before A. N. Grover, J.

MASTER UMRAO SINGH,—Petitioner.

versus

S. P. KAUSHIK,—Respondent.

Civil Revision No. 490-D of 1961.

Landlord and tenant—Change of identity of the premises—meaning of—Substitution of a kitchen by bath-room—Whether alter the identity of the premises so as to entitle landlord to have the fair rent fixed again.

1963

March, 4th.

Held, that there must be something fundamental transforming the general structural character of the house as an entire entity in order to attract the doctrine of the change of identity and the change must be more radical than mere improvements or structural alterations or the blocking up of a connecting door and that the Court 'must be astute to see that the landlord is not evading the restrictions upon increases of rent imposed by the statute by . . . small, and possibly colourable, alterations of the structure, or by a mere sub-dividing of the tenement'. Nor will there necessarily be a change of identity if one room out of three is replaced by another room of a similar size in the same house, or if the area of the house and the site on which it stands are both increased, with the addition of an outside water-closet and the constructions of a paved yard. There is hardly any change of identity where instead of the kitchen, which previously formed part of the tenancy premises, a bath-room is included in it so as to make the premises different from those which were in the occupation of the previous tenant. The fair rent of the premises will be the same as was fixed for the premises when the kitchen instead of the bath-room formed part of the premises.

Application for revision under section 35 of Act 38 of 1952 of the order of Shri M. S. Joshi, Additional Senior Sub-Judge, Delhi, dated the 9th June, 1961, reversing that of Shri S. S. Kalha, Sub-Judge, 1st Class, Delhi, dated 26th April, 1960 and dismissing the plaintiff's suit for ejectment and fixing the standard rent of the premises in dispute at Rs. 162 per annum effective from 15th May, 1957, i.e., the date of institution of these proceedings.

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

H. R. DHAWAN, ADVOCATE, for the Respondent.

ORDER

Grover, J.

Grover, J.—The petitioner instituted a suit for recovery of Rs. 420 from the respondent who is his tenant as arrears of rent and also for ejectment from the premises in his occupation on the grounds of non-payment of rent, substantial damage to the

premises and requirement by the landlord for his personal use. The respondent controverted the allegations and pleaded that the rent demanded by the petitioner was in excess of the standard rent. The suit was decreed by the trial court but on appeal it has been held that the standard rent of the premises was 13-8-0 per month and that the requirement of the petitioner was not *bona fide*.

It is common ground that the premises in dispute were in the tenancy at one time of Partap Singh who had one room, a kitchen and verandah. At that time proceedings for fixation of fair rent were taken and it was fixed at Rs. 12 per month. The premises which are in occupation of the respondent consist of the same room and the verandah and a bath-room. In other words, instead of the kitchen, which formed part of the premises when it was let out to Partap Singh, a bath-room has been given to the respondent. There can be no manner of doubt that if the present premises are the same for which the fair rent had been fixed, then the standard rent shall have to be determined according to it with certain amount of increase permissible under the Delhi Rent Control Act of 1958. If, however, the premises are different now, the standard rent shall have to be determined afresh in accordance with the provisions contained in the aforesaid Act. The lower appellate Court was of the view that merely because the landlord has substituted bath-room which is smaller in size for a kitchen which was larger, the identity of the premises cannot be said to have been changed or destroyed. In the Rent Act by Megry, Eighth Edition, the doctrine of the change of identity of the premises has been discussed at pages 103 to 105. It is stated that there must be something fundamental transforming the general structural character of the house as an entire entity in order to attract the doctrine of the change of identity

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(1) (1949) 2 All. E.R. 1107.

of the tenancy premises, a bath-room was included in it. This would not amount to any such change of identity so as to make the premises in dispute different from those which was in occupation of Partap Singh when the fair rent was fixed. Mr. Narula has relied a good deal on a decision of Weston, C.J., in *Attar Singh v. Kesho Ram* (Civil Revision No. 395 of 1950) made on 27th December, 1950, in which it was observed that the first letting of the premises in clause 1(c)(ii) of the Second Schedule of the Delhi and Ajmer Merwara Rent Control Act of 1947 which was in force at that time must refer to the actual premises, be they the whole of a building or a part of a building, the standard rent of which was fixed. It is contended what has to be seen is which were let at the previous stage and whether exactly the same were being let at the subsequent stage. In other words, according to Mr. Narula, the rooms or the other amenities in a particular residential accommodation must identically and precisely be the same on both occasions to attract the applicability of the rule that there has been no change of identity. He says that in the present case instead of the kitchen a bath-room was included in the tenancy premises and thus the premises let to the respondent were new. This is not a matter which engaged the attention of the learned Chief Justice in the case referred to and on facts that is clearly distinguishable. There a part of the middle storey had been let at one time to one Pehlad Singh. This consisted of four rooms and the point that had to be decided was whether there had been a partial letting of the premises for the purposes of clause 1(c)(ii) of the Second Schedule. It was in that connection that the observations referred to before were made. I am, therefore, satisfied that the conclusion of the lower appellate Court that there had been no change of identity is correct. If that be so, it

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is common ground that the standard rent of the premises would be Rs. 13-8-0 per month.

The next question which was seriously raised before me relates to the matter of ejection. Mr. Narula says that the family of the petitioner consists of himself, the wife and 11 children out of whom a daughter is stated to be married and two of the sons of marriageable age and the accommodation in which all of them are living is so small that it is not possible for them to live therein. The lower appellate Court has referred to certain facts which show that even when accommodation became available in the building belonging to the petitioner in 1956 he let out the same and did not occupy it himself. Mr. Narula has referred to some errors in the statement of these facts in the judgment of the Court below, but to my mind the whole matter is clinched by Exhibit D. 7, which is a notice sent by the counsel for the petitioner to the respondent, dated 28th July, 1956. It is stated therein as follows:—

“* * * * *

You do not pay the rent for the premises to my client month by month and rent is due from you to my client for the premises from 1st March, 1956. Your conduct is such that it is a nuisance and causes annoyance to the occupiers of the neighbouring premises and other occupiers of the same premises. You have caused substantial damage to the premises. You are liable to be evicted from the premises for reasons mentioned above. * * *

The present suit for eviction was filed in May, 1957. Now, if the petitioner had *bona fide* required the

premises in question for his personal necessity in May, 1957, he would not have omitted to mention prominently in the notice which was sent only some months earlier that he was in dire need of the aforesaid accommodation because of the size of his family and personal requirements. This omission from Exhibit D. 7 casts a serious reflection on the *bona fides* of the petitioner. Actually what appears to have happened is that the respondent was paying agreed rent at the rate of Rs. 30 which he stopped paying in March, 1956. This was followed by the notice for ejection, Exhibit D. 7. To that the respondent sent a reply, Exhibit D. 8, in which he asserted that the fair rent of the premises in dispute had been fixed at Rs. 12 per month and that the demand which was being made for the rent was illegal and the threat for eviction for the same reason was also unlawful. This reply was sent on 24th August, 1956, by the respondent and in May, 1957, the present suit was instituted in which for the first time the petitioner introduced the ground relating to personal requirement. I am, therefore, not at all satisfied that the petitioner had made out a case that the premises in dispute were required *bona fide* for his personal use or the use of his family.

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In the result, this petition is dismissed, but in view of all the circumstances I leave the parties to bear their own costs throughout.

REVISIONAL CRIMINAL

Before H. R. Khanna, J.

HUKAM SINGH,—Petitioner.

versus

NIRANJAN SINGH AND ANOTHER,—Respondents.

Criminal Revision No. 1364 of 1962.

Code of Criminal Procedure (V of 1898)—Ss. 133, 137
and 133-A—Order passed by magistrate under S. 137(2)—

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March, 6th.