

Hari Kishan judge had erred in so far as he had refused to allow  
 Das him mesne profits on the ground that of the other  
 v. lands which were in his possession he had not render-  
 Rajeshwar ed accounts. In my opinion that is hardly a ground  
 Parshad, etc., for refusing to give a decree for mesne profits.  
 ——— Whether on the evidence which has been led the cost  
 Kapur J. of repairs of the *haveli* was more or less than the  
 amount received as rent, the matter still remains one  
 of accounts, and, therefore, the plaintiff was entitled  
 to have accounts of the rents of that *haveli*, so also in  
 the case of the lands which were in possession of the  
 defendants, the plaintiff was entitled to get a decree  
 for mesne profits.

I, therefore, allow the two appeals to this extent that the plaintiff will be entitled to get the mesne profits as from the date claimed by the plaintiff. The claim in regard to the possession of half the *haveli* and of the land in dispute, however, must be dismissed. In the circumstances of this case the parties will bear their own costs throughout in both the appeals.

Falshaw J.

Falshaw J. I agree.

#### REVISIONAL CIVIL

Before Eric Weston, C.J., and Harnam Singh, J.

R. B. P. C. KHANNA,—Petitioner,

versus

L. MALAK RAM,—Respondent.

Civil Revision. No. 685 of 1949

*Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947), section 9 (i) (e)—Expression "Purely residential premises", meaning of.*

Held, that the expression "purely residential premises" is not a term of art and an attempt to give exact definition of the expression would not serve a useful purpose as each

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case must depend on its own facts. The intention of the legislature when enacting clause (e) was to enable landlords to recover from their tenants for the purpose of their own use for residence in the circumstances set out in the clause genuinely residential premises, but not premises constructed and used substantially for purposes other than residence, although to some, possibly substantial, extent they might be used for residential purposes.

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(This case was referred to the above Division Bench by Mr Justice Harnam Singh,—*vide* his order, dated the 22nd November 1950.)

*Petition under section 44, Act 9 of 1919, for revision of order of Shri S. S. Dulat, District Judge, Delhi, dated the 4th August 1949, affirming that of Shri Tara Chand, Aggarwal, Sub-Judge, 1st Class, Delhi, dated the 30th November 1948, dismissing the plaintiff's suit and leaving the parties to bear their own costs.*

BISHEN NARAIN and P. C. JAIN, for Petitioner.

A. R. KAPUR and NIHAL SINGH, for Respondent.

#### JUDGMENT

E. WESTON., C.J. This revision application under rule 6 framed under section 14(2) of the Delhi and Ajmer-Merwara Rent Control Act, 1947, has been referred to a Division Bench, as the main point arising is one of interpretation of the expression "purely residential premises" in section 9(1)(e) of the above Act, a point upon which there does not seem to be a decision of this Court.

E. Weston C. J.

The applicant before us is the landlord of premises known as No. 7, Hailey Road, New Delhi. The premises stand in a compound of rather more than one acre, and this area was taken by the applicant from Government in the year 1931. It was asserted that one of the conditions of the lease by which the applicant took the land from Government was that residential premises should be built upon the site, and those premises should be used for residential purposes alone. The original lease, said to be

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dated the 16th March 1931, was not produced by the applicant until at a late stage in his suit, when the trial Court refused to admit it in evidence. Whether the plea that it has been mislaid was true or not, it may be that the trial Court took too serious a view of the late production of a document the authenticity of which could hardly be disputed. In this revision application, however, I think we should take the record as we find it.

The applicant, after obtaining the lease of the land, constructed upon it what undoubtedly were residential premises. This is plain from the evidence of one R. N. Mathur, the architect who designed the constructions, who described them as main building, cow-shed, married and single servants quarters and two garages, and who said they were constructed as residential premises. In the year 1940 the present respondent took the premises on lease from the present applicant. The lease was oral, and is said to have been arranged through one Mohamed Suleman, whose evidence at the time of suit was not available. The present applicant in his evidence claimed that there was express agreement with defendant that the premises were to be used for residential purposes only and the respondent in his evidence claimed express agreement by the plaintiff that the premises could be used partly for business purposes. In the absence of other evidence the Courts below have held that no express agreement one way or the other has been proved.

The present applicant was an officer in the Indian Railways Administration. In July 1947 he was transferred to Delhi as Chief Administrator of the East Punjab Railway. It is said that he was accommodated in a Government flat, but later was required to give this up as the authorities were not prepared to allot accommodation to officers who owned residential property in Delhi. He gave notices to the respondent on the 30th August 1947, and on the 4th October 1947, and on the 3rd November 1947, he filed the suit in ejectment from which the present revision

matter has arisen. The plaintiff placed his case under section 9(1) (e) of the Delhi and Ajmer-Merwara Rent Control Act, 1947, claiming that he required *bona fide* the premises as residence for himself and his family, and he neither had nor was able to secure other suitable accommodation. In an answer he had sent to the notices mentioned above the defendant had challenged the right of the plaintiff to evict him, not on the ground that the premises were other than "purely residential", but on the ground that the plaintiff had other suitable accommodation. In the written statement, however, the defendant took the plea that the premises were not "purely residential", and the plaintiff, therefore, could not seek eviction under clause (e) of section 9 (1) of the Act.

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The material part of section 9 (1) is as follows:—

"9. *Eviction of tenants.* Notwithstanding anything contained in any contract, no Court shall pass any decree in favour of a landlord, or make any order, in favour of a landlord whether in execution of a decree or otherwise, evicting any tenant, whether or not the period of the tenancy has terminated, unless it is satisfied either—

- (a) \* \* \*
- (b) \* \* \*
- (c) \* \* \*
- (d) \* \* \*
- (e) that purely residential premises are required *bona fide* by the landlord who is the owner of such premises for occupation as a residence for himself or his family, that he neither has nor is able to secure other suitable accommodation, and that he has acquired his interest in

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the premises at a date prior to the beginning of the tenancy or the 2nd day of June 1944, whichever is later or, if the interest has devolved on him by inheritance or succession, his predecessor had acquired the interest at a date prior to the beginning of the tenancy or the 2nd day of June 1944, whichever is later ; \*

\* \* \*

The trial Court and the District Judge in appeal have accepted the defendant's contention on this point and have dismissed the suit. The reasoning of the decisions shortly is that whether the premises are "purely residential" within the meaning of section 9(1) (e) must be judged by actual user at the date of suit. It was found that the registered offices of the All-India Glass Manufacturers Association and of three companies were at No. 7, Hailey Road. The extent of user claimed for these "offices" appears to be confined to one of the garages and two or three out-houses, although the defendant in his concluding evidence alleged some rather indefinite user of a verandah or part of the main house. No indication appears of the real nature of the user. The word "office" used by the defendant's witnesses was not explained by them. Two clerks said they worked on the premises, but said nothing about furniture, files or other appurtenances of a real office being used by them. There is no suggestion that business was done on the premises by visits of customers. The All-India Glass Manufacturers Association was admitted to do no business. The other companies, although their names were imposing, with one exception were not more than partnerships between the defendant and his brother, who apparently also lived on the premises. No attempt was made to indicate the scope or extent of the activities of any of these companies. The fact that the registered offices of these companies were given as No. 7, Hailey Road, of itself means nothing.

The expression "purely residential premises" in section 9(1)(e) of the Act does not appear, so far as we have been able to ascertain, in any other of the many enactments in force in India dealing with rent control. The trial Court and the District Court in appeal have relied for their strict interpretation of the word "purely" largely upon clause (d) of section 9(1). This clause enables a landlord to seek eviction of his tenant when there has been non-occupation by the tenant for a period of six months of premises "let for use as a residence". The learned Judges considered that had the intention of the Legislature been that eviction under clause (e) should be allowed when premises were "let for use as a residence" the language of clause (d) would have been followed. This argument is unexceptional, but the further conclusion that letting purpose must be irrelevant, and actual user at the time of suit only must be looked to in cases under clause (e) seems to me to go too far.

The expression "purely residential premises" is not a term of art. It seems likely that the intention of the Legislature when enacting clause (e) was to enable landlords to recover from their tenants for the purpose of their own use for residence in the circumstances set out in the clause what I might call genuinely residential premises, but not premises constructed and used substantially for purposes other than residence, although to some, possibly substantial, extent they might be used for residential purposes. Most persons resident in New Delhi are concerned in making their living in some way or other, and no person who has to make his living ordinarily can divest himself of all connection with his business or profession when he goes to the place where he resides. The business or professional man will make and answer telephone calls and will receive and possibly answer letters connected with his business or profession, and he may have visits paid to him at his residence which are not private social calls. If the word "purely" is

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to be taken in its strict literal meaning that not the slightest matter connected with business or profession can intrude into residential premises without the premises losing the character contemplated by clause (e) of section 9(1), then except when his tenant is an idler or a confirmed invalid a landlord would not be able to base a case for eviction upon this clause. I do not think such a result was intended. I think it is open to us to give a broad interpretation to expressions used in the Act. On a strict construction of the definitions in section 2 of the Act it might be said that the suit premises are not premises covered by the Act, for "premises" are defined as a building let or intended to be let for use as a residence or for commercial use or for any other purpose. If it is found that no particular letting purpose is proved, and if from the circumstances none could be inferred, then would the suit premises satisfy the definition? Letting purpose also appears in the definition of "tenant" in section 2(d), and if the present defendant is not a tenant under the Act he has no protection under the Act.

The premises in this case undoubtedly were constructed solely for the purposes of residence. No structural alteration has taken place. I do not think a professional estate agent called upon to inspect the premises before advertising them for sale or letting would hesitate in classifying them as "purely residential" even if he saw them in the occupation of the defendant and being put to such use as the evidence discloses. It has been urged before us that there was acquiescence by the plaintiff in use of the premises for business for a number of years, for he is admitted to have visited them several times while in occupation of the defendant. But as I have mentioned the defendant made no attempt to show that his use of some outhouses was something substantial which the plaintiff must have noticed. On the evidence I cannot accept that any case whatever of acquiescence has been made out. Also there was no pleading or issue on acquiescence.

The position seems to be this. The premises at the time of their construction undoubtedly were "purely residential" even on the strictest interpretation of the phrase. There is nothing to show that the letting purpose when the defendant went into possession was anything other than the purpose for which the premises had been constructed. Later the defendant has made some use of a small part of the premises for purposes connected with his business. This is not shown to have been agreed to by the plaintiff. The plaintiff undoubtedly requires the premises as "purely residential premises". On these facts I think there is no sufficient reason for holding that the premises have lost their original character and are now anything other than "purely residential". I think, therefore, the plaintiff should not be defeated on the plea which has prevailed in the Courts below.

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The English cases to which we have been referred dealing with the expression "let as a dwelling house" illustrate the difficulties of construing expressions which legislatures have found it necessary to use in rent control legislation. I do not think an attempt to give exact definition to the expression "purely residential premises" would serve a useful purpose. Each case must depend on its own facts.

The only further point in the argument of Mr Kapur for the defendant is that under the proviso to section 9(1) an eviction should not be decreed. *Bona fide* requirement may not be identical with necessity, but the plaintiff's necessity, however, appears from his evidence. The defendant on the other hand admitted that he owns residential premises in Karol Bagh, New Delhi. He said that no part of this is vacant, but did not reveal what difficulty there was in his obtaining possession. On these facts it is plain that the balance in equity is on the side of the plaintiff and that in the words of the proviso it is reasonable to allow the eviction which he seeks.



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I think, therefore, that this application should be allowed, the decree of the Courts below set aside, and the plaintiff given a decree for possession from the defendant of the suit premises. Under the second proviso to section 9(1) the plaintiff will be entitled to obtain possession three months from today. The plaintiff to obtain his costs in this Court which we assess at Rs 75.

Harnam  
Singh J.

HARNAM SINGH, J. I agree.

### APPELLATE CIVIL

*Before Falshaw and Kapur, JJ.*

BISHAN NARAIN, AND ANOTHER,—Appellants,

*versus*

OM PARKASH AND OTHERS,—Respondents.

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#### Regular First Appeal III of 1951

*Civil Procedure Code (V of 1908), section 2 (II) and Order 22, Rule 3—Hindu Women's Right to Property Act (XVIII of 1937), section 3—Whether the sons and the widow of a deceased Hindu Coparcener are his legal representatives.*

S. S. constituted a joint Hindu family with his sons and grandsons. On the death of S. S. his sons and his widow applied for being brought on the record as his legal representatives. This application was opposed on the ground that the sons and the widow were not his legal representatives. This contention was upheld by the trial Court and the suit was dismissed as having abated. The sons and the widow appealed to High Court.

*Held*, that on the death of a Hindu his sons who take by survivorship and his widow who takes under Statute, are his legal representatives and the suit does not abate if they apply to be brought on the record as his legal representatives.

Case-law reviewed.

*Jamburao Satappa Kochari v. Annappa Ramchandrapa Kabbur and other (1), Amar Chandra Kundu v. Sebak Chand*

(1) I. L. R. (1941) 65 Bom. 177