

interest of either landlords or tenants as a whole to interfere with the passing of such orders which I am given to understand is quite common. The fact remains, however, that the final order of the Competent Authority must be one granting or refusing permission, and in these circumstances I am of the opinion that the view of the Administrator was correct that when such an order is passed it must, in the first place, be an interim order allowing the tenant time to carry out a certain condition and then after the expiry of the period fixed, the final order must be passed granting or refusing permission when it is ascertained whether the tenant has fulfilled the condition imposed on him. In my opinion the executing Court can only proceed to execute the decree when an order definitely granting the landlord permission has been passed by the Competent Authority and it cannot decide whether permission should be given or not. I accordingly dismiss the writ petition, but leave the parties to bear their own costs.

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APPELLATE CIVIL

Before Shamsher Bahadur, J.

DAULAT RAM AND OTHERS,—Appellants.

versus

BHAGWANTI AND OTHERS,—Respondents

Execution Second Appeal No. 989 of 1962.

*East Punjab Urban Rent Restriction Act (III of 1949)—S. 2(i)—Tenant—Heirs of the deceased tenant—Whether become tenants—Decree for ejectment obtained against the tenant—Whether can be executed against his heirs in possession of the premises.*

1963  
March, 20th

*Held*, that the heirs of a deceased tenant cannot be deemed to be statutory tenants within the concept of the term as defined in section 2(i) of the East Punjab Urban Rent Restriction Act, 1949.

*Held*, that the landlord-decree-holder who has obtained a decree for ejection against the tenant is entitled to execute the decree against his heirs who continue to remain in occupation of the premises after his death. The concept of a 'representative' in section 47 of the Code of Civil Procedure is not to be equated with that of a 'legal representative'. The expression used in section 47 is of wider connotation and content than the term 'legal representative'. A person who claims or steps in the shoes of another is his representative. Again, any one who intermeddles with the property of another is also a representative. The heirs of a deceased tenant do not become trespassers after his death and the execution application is maintainable against them as representatives of the judgment-debtor under section 47 of the Code of Civil Procedure.

*Execution Second Appeal from the order of Shri Salig Ram Seth, Senior Sub-Judge with Enhanced Appellate Powers, Ambala, dated the 5th May, 1962 reversing that of Shri H. S. Ahluwalia, Sub-Judge 1st Class, Ambala Cantt. dated the 29th January, 1962 and setting aside the order of possession for the suit premises passed in favour of the respondents by the executing Court.*

S. K. JAIN, ADVOCATE, for the Appellant.

B. S. CHAWLA, ADVOCATE, for the Respondent.

#### ORDER

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SHAMSHER BAHADUR, J.—This is an decree-holder's appeal from the judgment of the lower appellate Court which set aside the order of possession for the suit premises passed in their favour by the executing Court.

The facts which are not in dispute may be briefly set out. The three appellants, Daulat Ram,

his brother Roshan Lal and their mother Bhagwanti have become owners of evacuee property consisting of house No. 225 in Regiment Bazar, Ambala Cantonment by allotment. Before the allotment was made in their favour one of the rooms in the house came into occupation of Anant Ram (now deceased) as a tenant under the District Rent and Managing Officer. In an application for ejectment brought by the owners there was a compromise on 11th of August, 1961, under which Anant Ram agreed to vacate the room in his occupation on or before the 4th of October, 1961. Sometime between the compromise of 11th of August, 1961, and 4th of October, 1961, which was the date fixed for the ejectment of the tenant, Anant Ram committed suicide and the appellants immediately made an application on 9th of October, 1961, for execution of the decree which had been obtained for ejectment of the tenant. The execution proceedings were directed against Bhagwanti, widow of Anant Ram, and her two sons Gauri Shankar and Rattan Lal, who were in occupation of the room which Anant Ram had agreed to vacate by the compromise decree. It was pleaded on behalf of Bhagwanti and her sons that Anant Ram had been pressured into the compromise and under the consequent stress he committed suicide. The right of the owners to eject them under the compromise decree against Anant Ram was denied and the occupants set up their own right to remain in the suit premises as statutory tenants under the District Rent and Managing Officer. The following two issues were framed by the executing Court:—

- (1) Whether the objectors are the tenants under the District Rent and Managing Officer ?
- (2) Whether the order of eviction is not executable against them ?

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No evidence was led at all by the parties and the executing Court held that there was no material on record in support of the allegation made by the occupants that they had acquired the right of statutory tenants under the District Rent and Managing Officer. On the second issue, which is one of law, the point taken up by Bhagwanti and her sons was that though they are the legal representatives of Anant Ram they cannot be treated as tenants under the decree-holders. Repelling this contention and holding that there was no evidence to support the objectors on the first issue the order for possession was made in favour of the decree-holders on 29th of January, 1962, and warrants for possession were issued. In an appeal filed by the widow of Anant Ram in which her two sons were impleaded as *pro forma* respondents, the learned Senior Subordinate Judge held that the contractual tenancy between Anant Ram and the owners had come to an end on 11th of August, 1961, after which he had become a statutory tenant. The sons and widow, in the opinion of the lower appellate Court, also become statutory tenants and as such they were not liable to be dispossessed from the room in their occupation as legal representatives of Anant Ram even though under the compromise decree he was to vacate the premises on 4th of October, 1961.

From this order of the lower appellate Court the owners have come in appeal to this Court and in the contentions raised by their learned counsel, Mr. S. K. Jain, it is urged firstly that Anant Ram held a contractual tenancy which was not terminated by his death and the rights and incidents of this tenancy devolved on his heirs as legal representatives. It is further submitted by Mr. Jain that the respondents in any event could not enjoy better rights of tenancy than Anant Ram himself

whose representatives they are. As the respondents have chosen to denounce the tenancy they are in no better position than trespassers who had no right to appeal under section 47 of the Code of Civil Procedure. Mr. Chawla, the learned counsel for the respondents, no longer bases the claim of the widow and sons of Anant Ram as statutory tenants under the District Rent and Managing Officer, but contends that Anant Ram who had become a statutory tenant after 11th of August, 1961, had transmitted his status as such after his death to his heirs, who are entitled to remain in occupation of the room as statutory tenants. Should the Court come to a conclusion that the respondents are trespassers then the right of possession can be enforced only through a suit and not in execution proceedings. Instead of the appeal being declared incompetent the entire execution proceedings initiated at the instance of the decree-holders should be set aside. It is not disputed by Mr. Chawla that if Anant Ram is held to have retained the status of the contractual tenant even after 11th of August, 1961, his heirs as legal representatives cannot resist dispossession in execution proceedings.

In my opinion, the decree-holders must succeed even on the assumption that Anant Ram became a statutory tenant after 11th of August, 1961. The right of a statutory tenant is personal and cannot be transmitted to his heirs. Under clause (i) of section 2 of the East Punjab Urban Rent Restriction Act, 1949, the tenant means "any person by whom or on whose account rent is payable for a bulidng . . . and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building . . . by its tenant, unless with the consent in writing of the landlord . . .". The widow and sons of Anant Ram

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cannot be deemed to be statutory tenants within the concept of the term as defined in the Act, Mr. Chawla seeks the aid of English decisions where a widow has been treated as a statutory tenant after the death of her husband who was living in the premises under that status. The question in *Roe v. Russell* (1), was whether a person in occupation of a few rooms in a house under a sub-lease by a person who himself had only a tenancy under the Rent Restriction Act could be ejected from the premises where he was in occupation without the consent of the landlord. The learned counsel has brought to my notice certain observations of Scrutton, L.J., in regard to the contingency where the statutory tenant dies intestate. The learned Lord Justice in that case was dealing with the English statute which had defined tenant as "including persons from time to time deriving title under the tenant". It was observed that this definition showed that in some instances the statutory tenant might pass on his statutory interest to others and reliance was placed for this conclusion on a provision in the statute which laid down that the widow of a tenant dying intestate residing with him at the time of his death will get the right of her husband. Obviously, this *dictum* of Lord Justice Scrutton has no application to the present case because the tenant as defined under the East Punjab Urban Rent Restriction Act does not envisage an heir of a tenant who dies intestate. Indeed, it had been held in the earlier English cases of *Keeves v. Dean*, *Nunn v. Pellegrini* (2), that "the right of a statutory tenant under the Increase of Rent, etc., Act, 1920, is merely a personal right to retain possession of the premises, and cannot be assigned to another person". When

(1) (1928) 2 K.B. 117.

(2) (1924) 1 K.B. 685.

such a right cannot be transferred by voluntary assignment during the lifetime of a statutory tenant no presumption can be raised that such a right has devolved on the legal heirs of the deceased statutory tenant.

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What then is the status of the respondents ? In order to be bound by a decree which is sought to be executed it is not essential that they should be the legal representatives of the deceased judgment-debtor. Section 47 of the Code of Civil Procedure says that "all questions arising between the parties to the suit in which the decree was passed, or their representatives shall be determined by the Court executing the decree and not by a separate suit". The concept of a 'representative' in section 47 is not to be equated with that of a 'legal representative'. The expression used in section 47 is of wider connotation and content than the term 'legal representative'. It cannot be denied that the widow and sons of Anant Ram have continued to remain in occupation of the room after his death. A person who claims or steps in the shoes of another is his representative. Again, any one who intermeddles with the property of another is also a representative. It was held by Wort, J., in *Rameshwar Prasad Singh and another v. Basdeo Singh and others* (3), that where the nephew of the deceased were in possession of his property they were intermeddling with the estate and were therefore representatives within the meaning of section 47. Rangnekar, J., held in *Hanmanta-gouda Nagangouda Hiregoudar v. Shivappa Dundappa Manwi* (4), that the word 'representative' as used in section 47 of the Code of Civil Procedure means a person in whom the interest of a party to

(3) A.I.R. 1936 Pat. 126.

(4) 42 B.L.R. 1123.

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the suit has vested either by an act of the party or by operation of law, which ordinarily means and includes cases of testamentary and intestate succession upon the death of the party to the suit or upon his insolvency, or cases of forfeiture. The decree against Anant Ram could be enforced against his representatives who have continued to remain in possession of it after his death. In a Division Bench of the Calcutta High Court (Mitter, A.C.J. and Sharpe J.) in a *Jamini Kanto Harendra Lal Shaha v. Bonomali De* (5), it was held that "for the purpose of section 47 of the Code of Civil Procedure, 1908, a sub-tenant is a representative of the tenant-judgment-debtor, against whom the landlord obtains a decree for ejectment". In a Supreme Court decision of *Shri Jagadguru Gurushiddaswami Guru Gangadharswami Murusavirmath v. The Dakshina Maharashtra Digambar Jain Sabha* (6), the principle was affirmed that "a sub-lessee would be bound by a decree for possession obtained by the lessor against the lessee, no matter whether the sub-lease was created before or after the suit, provided the eviction is based on a ground which determines the sub-lease also". It might well be asked that when a sub-lessee is in no better position than a tenant how could the widow and sons of Anant Ram continue to remain statutory tenants when he himself was certainly liable to ejectment. The independent right under which the respondents claim to remain in possession of the suit property not having been made good they must be deemed to be there as representatives of Anant Ram. In my opinion, there is no reason to deny to the appellants the right to obtain possession of the suit premises in execution proceedings. In my view

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(5) I.L.R. 1948 (1) Cal. 146.

(6) A.I.R. 1953 S.C. 514.



the respondents are not trespassers and the execution application as also the appeal were maintainable under section 47 of the Code of Civil Procedure.

The appeal is accordingly allowed and while the order of the lower appellate Court is set aside that of the executing Court is restored. There would be no order as to costs of this appeal.

*B.R.T.*

REVISIONAL CIVIL

*Before D. Falshaw, C.J. and Tek Chand, J.*

KEHAR SINGH,—Petitioner.

*versus*

PURAN SINGH,—Respondents.

Civil Revision No. 416-D of 1958.

*Code of Civil Procedure (Act V of 1908)—S. 60(1)(h)—  
Bonus paid to labourer—Whether exempt from attachment.*

1963

March, 25th.

*Held*, that bonus, which is paid as a result of an agreement between an employer and his employee, becomes part of the wages and is exempt from attachment under section 60(1)(h) of the Code of Civil Procedure, 1908.

*Petition under section 25 of Act IX of 1887 for the revision of the order of Shri Om Parkash Saini, A.J.S.C.C. Delhi, dated the 5th August, 1958, holding that the bonus payable to the J.D. is a part of his wages and is not attachable in the execution of this decree and accepting the objection petition.*

DEVINDER KAPUR, ADVOCATE, for the Petitioner.

DUNI CHAND KAPUR, ADVOCATE, for the Respondent.

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