

THE INDIAN LAW REPORTS

PUNJAB SERIES

LETTERS PATENT APPEAL

Before Bhandari, C.J., and Falshaw, J.

N. H. THADANI,—Appellant

versus

CHIEF SETTLEMENT COMMISSIONER,—Respondent

Letters Patent Appeal No. 36-D of 1956.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Section 29—Protection afforded by—Whether extends to a tenant at sufferance—Landlord and Tenant—Tenant holding over—Position and rights of—Tenancy at will and tenancy at sufferance—When created—Tenant at sufferance and trespasser—Difference between—Payment of rent—Effect of.

1959

Sept., 2nd

Held, that the special protection afforded by Section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 is not available to a tenant at sufferance.

Held, that if a tenant under a lease for a definite period retains possession of the premises after the expiration of the term without a new agreement it is open to the landlord either to treat him as a tenant or to turn him out as a trespasser. If the landlord manifests his intention clearly, effect must be given to it, for it is the intention of the landlord alone which determines the subsequent nature of the relationship between the parties. If the landlord

agrees to the continued occupancy of the tenant the tenancy is one at will. If however, the landlord omits to indicate his intention and neglects to disturb the tenant's possession a tenancy at sufferance arises. It comes into existence only out of the laches of the owner and is regarded as the most shadowy estate recognised at common law. The difference between a tenancy at will and a tenancy by sufferance is that in the one case the tenant holds by right and has an estate or term in the land, precarious though it may be, and the relationship of the lessor and the lessee subsists between the parties; in the other, the tenant holds wrongfully and against the will and permission of the landlord, and has no estate at all in the occupied premises. A tenant at sufferance comes in by right and holds over without right. He stands very nearly on the same footing as a trespasser. He is a wrong doer; he has no term and no estate or title; he has mere occupancy or a naked possession without right and wrongfully. He stands in no privity with the owner who may re-enter when he pleases and so terminate the tenancy without notice. He cannot grant lease in respect of the property of which he is in possession for he has no estate that can be granted to a third person. He is not liable for rent and is not entitled to notice to quit and his continued possession is due wholly to the forbearance of the landlord in not evicting him. Two features distinguish the holding by a tenant at sufferance from the possession of a trespasser. The first is that the landlord may by his acquiescence at any time base on the tenancy at sufferance the relation of landlord and tenant which he cannot establish at law against a trespasser. Secondly, the tenant cannot be subjected to an action for trespass before entry or demand for possession. A tenant at sufferance cannot, by any stretch of reasoning, be regarded as being in lawful possession of the immovable property occupied by him.

Held, that a tenant who continues to remain in possession of the leased premises after the expiry of the lease does not continue to be a tenant unless the landlord consents to his holding over. Such consent may be express or implied but it must be established before the relationship of landlord and tenant can continue. The consent of the landlord is often evidenced by payment and unconditional acceptance of rent. The payment of rent, however, raises only a presumption in favour of the subsistence of

the relationship, but this presumption may be rebutted by the other facts and circumstances of the case and in particular by the conduct of the landlord.

Letters Patent Appeal against the order of Mr. Justice G. D. Khosla, dated the 27th November, 1956, in C. W. No. 46-D of 1956.

HARDYAL HARDY, for Petitioner.

I. D. DUA, for Respondent.

JUDGMENT

BHANDARI, C.J.—This appeal under clause 10 of Bhandari, C. J. the Letters Patent raises the question whether the appellant is entitled to the special protection afforded by section 29 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. This section is in the following terms :—

“29(1) Where any person to whom the provisions of this section apply, is in lawful possession of any immovable property of the class notified under subsection (2), which is transferred to another person under the provisions of this Act, then, notwithstanding anything contained in any other law, such person shall, without prejudice to any other right which he may have in the property, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held the property immediately before the transfer: * * * ”.

Then follows a proviso which is not relevant for the decision of this case.

The facts of the case are simple and not in dispute. A bungalow known as Reay Villa situate

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at Mahableshtar, Bombay, was notified as evacuee property in the year 1951, and was leased out to the appellant for a period of one year from 1st August, 1952, at Rs. 3,750 per annum. This rent was later reduced to Rs. 2,500 per annum. The lease was renewed from time to time and the final renewal took place for a period of three months from 1st January, 1955, to 31st March, 1955. In February, 1955, the Central Government acquired this property under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and shortly thereafter the Regional Settlement Commissioner invited tenders for and on behalf of the President of India for the sale of the said property. One of the conditions of the sale was that the possession of the existing occupant will not be disturbed if he has been in occupation of the property for three years and he would continue as an occupant of the purchaser subject to the provisions of any enactment for the time being in force for control of rent and protection from eviction. The property was sold on the 7th May, 1955, to one Mr. K. J. Somaya for a sum of Rs. 51,000 subject to the rights of the tenants, lessees and allottees of the Custodian, if any.

The appellant submitted a number of petitions to the appropriate authorities against his eviction but a notice was finally given to him on the 5th September, 1955, to vacate the premises failing which coercive action would be taken against him. The appellant disregarded the notice and paid a sum of Rs. 575 on account of rent on the 26th September, 1955, and a sum of Rs. 1,300 on account of rent on the 29th November, 1955. The treasury accepted these payments as rent on behalf of the Regional Settlement Commissioner and issued receipts in respect thereof, but the Deputy Custodian of Evacuee Property declined to withdraw the

notice of eviction and threatened to take coercive action under section 19(3) of the Act of 1954. The appellant accordingly presented a petition under Article 226 of the Constitution and prayed that the respondents be restrained from taking steps to evict the appellant from the bungalow in question. This petition came up for consideration before a learned Judge of this Court and was dismissed on the 27th November, 1956. The appellant is dissatisfied with this order and has presented an appeal under clause 10 of the Letters Patent.

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The one and only question which requires determination in the present case is whether the appellant was in lawful possession of the property in question on the date on which it was sold to Mr. Somaya for, if he was in lawful possession on the said date he is entitled to claim that he is a tenant of Mr. Somaya on the same terms and conditions on which he held the property from the Custodian.

Mr. Hardy, who appears for the appellant, admits that the lease expired on the 31st March, 1955, and that *prima facie* his client had no right to stay on the property after the said date; but he contends that he continued to occupy the property for several months without any objection from the Custodian, that he paid a sum of Rs. 575 on account of rent on one occasion and a sum of Rs. 1,300 on account of rent on another occasion, that the Custodian of Evacuee Property accepted this rent and impliedly acknowledged the appellant as his tenant, and that the omission on the part of the Custodian to order the eviction of the appellant and acceptance by him of the rent of the premises make it quite clear that his client was in lawful possession of the property in question and consequently that it was not within the power of the Custodian

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to order his eviction. He contends that his client was occupying the status of a tenant at sufferance. He has invited our attention to a number of authorities which appear to draw a distinction between a tenant-at-will, a tenant by sufferance and a trespasser. In *Brigadier K. K. Verma v. The Union of India* (1), it was held that whereas the trespasser's possession is never juridical and never protected by law, the possession of an erstwhile tenant is juridical and is protected by law. Therefore, as far as the Indian law is concerned, an erstwhile tenant can never become a trespasser. In *Mozam Shaikh v. Annada Prasad Bhadra* (2), the learned Judges observed that a tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It cannot be created by a contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has determined without the consent of the person concerned.

The legal position as I understand it is briefly this. If a tenant under a lease for a definite term retains possession of the premises after the expiration of the term without a new agreement it is open to the landlord either to treat him as a tenant or to turn him out as a trespasser. If the landlord manifests his intention clearly, effect must be given to it, for it is the intention of the landlord alone which determine the subsequent nature of the relationship between the parties. If the landlord agrees to the continued occupancy of the tenant the tenancy is one at will. If, however, the landlord omits to indicate his intention and neglects to disturb the tenant's possession a tenancy at sufferance arises. It comes into existence only out of the

(1) (1954) 56 Bom. L.R. 308
 (2) A.I.R. 1942 Cal. 341

laches of the owner and is regarded as the most shadowy estate recognised at common law. The difference between a tenancy at will and a tenancy by sufferance is that in the one case the tenant holds by right and has an estate or term in the land, precarious though it may be, and the relationship of the lessor and the lessee subsists between the parties; in the other, the tenant holds wrongfully and against the will and permission of the landlord, and has no estate at all in the occupied premises. A tenant at sufferance comes in by right and holds over without right. He stands very nearly on the same footing as a trespasser. He is a wrong doer; he has no term and no estate or title; he has mere occupancy or a naked possession without right and wrongfully. He stands in no privity with the owner who may re-enter when he pleases and so terminate the tenancy without notice. He cannot grant lease in respect of the property of which he is in possession for he has no estate that can be granted to a third person. He is not liable for rent and is not entitled to notice to quit and his continued possession is due wholly to the forbearance of the landlord in not evicting him. Two features distinguish the holding by a tenant at sufferance from the possession of a trespasser. The first is that the landlord may by his acquiescence at any time base on the tenancy at sufferance the relation of landlord and tenant which he cannot establish at law against a trespasser. Secondly, the tenant cannot be subjected to an action for trespass before entry or demand for possession. A tenant at sufferance cannot, by any stretch of reasoning, be regarded as being in lawful possession of the immovable property occupied by him.

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A tenant who continues to remain in possession of the leased premises after the expiry of the

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lease does not continue to be a tenant unless the landlord consents to his holding over. Such consent may be express or implied but it must be established before the relationship of landlord and tenant can continue. The facts and circumstances of this case make it quite clear that the appellant was holding the property not with the consent, express or implied, of the landlord but without his consent. There is abundant material for holding that the lease of the property expired on the 31st March, 1955, that the property was sold by auction to one Mr. Somaya for a sum of Rs. 51,000, that the appellant submitted a number of representations to the Custodian against his eviction, that these representations were summarily rejected and that the Custodian issued a final notice to the appellant on the 5th September, 1955, to vacate the premises occupied by him failing which coercive action would be taken against him. Notwithstanding the rejection of his representations and the issue of notices of eviction the appellant deposited certain sums of money in the treasury on account of rent of the premises. These facts leave no doubt in my mind that the Custodian did not agree to the appellant retaining possession of the property particularly after it had been sold to another person. It is true that the consent of the landlord is often evidenced by payment and unconditional acceptance of rent. The payment of rent, however, raises only a presumption in favour of the subsistence of the relationship, but this presumption may be rebutted by the other facts and circumstances of the case and in particular by the conduct of the landlord. The other facts and circumstances of the present case leave no doubt in my mind that the appellant was a tenanat-at-sufferance and that he continued in possession after the determination of the lease without the consent of the landlord.

For these reasons I am of the opinion that the Custodian did not agree to extend the lease of the appellant after the 31st March, 1955, and that if the appellant continued to retain possession of the premises thereafter he did so in contravention of the provisions of law. I would accordingly uphold the order of the learned Single Judge and dismiss the appeal with costs. Ordered accordingly.

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FALSHAW, J.—I agree.

Falshaw, J.

B.R.T.

APPELLATE CIVIL

Before A. N. Bhandari, C. J.

AMAR SINGH,—Plaintiff-Appellant

versus

THE STATE OF PUNJAB,—Defendant-Respondent

Regular Second Appeal No. 264 of 1957.

Indian Contract Act (IX of 1872)—Section 62—Novation—Meaning of—Discharge of liability—Various methods of—Words and Phrases—Accord and satisfaction, assignment, compromise and settlements, release—Meaning of.

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Oct., 11th

Held, that a novation is generally defined as a mutual agreement among all parties concerned for the discharge of a valid existing obligation by the substitution of a new valid obligation on the part of the debtor or another or a like agreement for the discharge of a debtor to his creditor by the substitution of a new creditor. But novation is not the only method of discharging liabilities: Liabilities may be discharged by accord and satisfaction, assignments, compromise and settlement, payment or release. In novation a new promise is accepted in satisfaction of a previously existing claim while in accord and satisfaction it is not the new promise itself but the performance of the new promise that is accepted as satisfaction. In an assignment