

Lachmi Narain  
and others  
v.  
The Financial  
Commissioner,  
Punjab  
and others

When a concrete case will come up for decision and it is found that the same has been decided contrary to law, then this Court will interfere. With these observations, the writ petition (Civil Writ No. 1138 of 1963) is also dismissed with no order as to costs.

Pandit, J.

Dulat, J.

S. S. DULAT, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before D. Falshaw, C. J., and Harbans Singh, J.

SOMTI PARKASH,—Appellant

versus

NATHA AND ANOTHER,—Respondents

Letters Patent Appeal No. 77 of 1960

1963.

Oct., 7th.

*Transfer of Property Act (IV of 1882)—S. 111 (g)—Transfer of land by the landlord—Tenant sticking to the original tenancy and questioning the validity of the transfer—Whether entails forfeiture of tenancy on the ground of repudiation of the landlord's title—Suit for ejectment of tenant from agricultural land on the ground of forfeiture of tenancy—Notice in writing preliminary to suit—Whether necessary.*

*Held*, that when a landlord transfers the land in favour of another and in the proceedings for ejectment of the tenant by the transferee, the tenant sticks to his original tenancy and questions the validity of the alleged transfer in favour of the transferee, it does not amount to repudiation of the landlord's title which entails a forfeiture of the tenancy.

*Held*, that the provisions of the Transfer of Property Act, 1882, do not apply to agricultural land and no notice in writing preliminary to the filing of the suit for ejectment as provided in section 111 (g) of the Act is necessary to be given in a case where the Transfer of Property Act is not applicable, as this provision with regard to notice is not based on any principle of justice, equity or good conscience.

*Appeal under Clause 10 of the Letters Patent from the decree of the Hon'ble Mr. Justice Shamsheer Bahadur, dated the 22nd day of December, 1959, passed in R.S.A. No. 31 of 1958, reversing that of Shri Sant Ram Garg, District Judge, Sangrur, Camp Narnaul, dated the 23rd November, 1957, who affirmed that of Shri Vishnu Dutta Aggarwal, Subordinate Judge Ist Class, Narnaul, dated the 9th September, 1957, and dismissing the plaintiffs' suit but allowing the appeal of defendants-tenants for possession of the land in suit.*

J. N. KAUSHAL AND M. R. AGNIHOTRI, ADVOCATES, for the Appellants.

J. S. WASU AND R. S. AMOL, ADVOCATES, for the Respondents.

#### JUDGMENT

FALSHAW, C.J.—This is an appeal filed under clause 10 of the Letters Patent against the order of Shamsheer Bahadur, J., accepting a second appeal and dismissing the suit of Somti Parkash respondent, the decree of the trial Court in whose favour was upheld in first appeal. Falshaw, C.J.

The plaintiff's suit, which was for possession of 26 bighas of land, was filed in the following circumstances. The land in dispute was admittedly owned by Lachhmi Narain, the father of Somti Parkash, but it was transferred by Lachhmi Narain to Somti Parkash and the mutation relating to the transfer was sanctioned on the 22nd of July, 1953. Thereafter Somti Parkash issued a notice of ejectment to Natha and Ram Kumar, the defendants in the suit, who had admittedly been cultivating the land as tenants under Lachhmi Narain. The notice of ejectment was contested by Natha and Ram Kumar by a suit instituted in the Court of the Assistant Collector at Narnaul on the 24th of September, 1953. There is no doubt that in that suit in a sense they denied the title of

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Somti Parkash as landlord since they alleged that the transfer in his favour by his father was not *bona fide* and was intended only to defeat certain provisions of law. It was not specified what these provisions of law were, but it would appear that the tenants had in mind the provisions of the Security of Land Tenures Act by which a ceiling was fixed on the holding of any landowner. The suit of the tenants in the revenue Court was successful on the 30th of August, 1956 and the notice of ejection was cancelled.

The victory of the tenants in the revenue Court was followed by the institution of the suit from which the present appeal has arisen by Somti Parkash in the Civil Court for possession of the land in suit on the ground that the tenancy had been forfeited by the tenants by their denial of the plaintiff's title as landlord. The trial Court and the first appellate Court upheld the plaintiff's plea that the position taken by the tenants in the revenue Court amounted to the repudiation of his title as landlord and incurred a forfeiture of the tenancy.

In second appeal the learned Single Judge was of the view that although in a sense the tenants had denied the title of the landlord it was not such a repudiation as involved forfeiture of the tenancy, and at the same time he held that the plaintiff's suit must fail for want of notice to the tenants of the landlord's intention to exercise his right of forfeiture.

I do not think that the decision of the learned Single Judge on the latter point can be sustained since, apart from the fact that this point does not seem to have been raised in the Courts below, the decision appears to run counter to the decision of the Supreme Court in *Namdeo Lokman Lodhi v. Narmadabai and others* (1). The provisions of the Transfer

(1) A.I.R. 1953 S.C. 228.

of property Act do not apply to agricultural land and it had been held by a Division Bench in *C. Rama Iyengar v. Anga Gurusami Chetti and others* (2), with reference to section 111(g) of the Transfer of Property Act, which requires notice in writing by the lessor of his intention to determine the lease in case the lessee renounces his character as such by setting up a title in a third person or claiming title in himself, that in cases not governed by the Transfer of Property Act the institution of a suit in ejectment is a sufficient determination of the lease where the lessee has forfeited the lease by denial of the landlord's title. This decision was approved by the learned Judges of the Supreme Court in the case cited above, and it was held that the provision in section 111(g) as to notice in writing as a preliminary to a suit for ejectment based on forfeiture of a lease is not based on any principle of justice, equity or good conscience.

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However, I am of the opinion that the decision of the learned Single Judge on the other point is correct, and that the denial of the landlord's title by the tenants in the revenue Court was not of the kind which entails a forfeiture of the lease. The tenants were not in any sense of the word claiming any title in the land in themselves, and they were evidently prepared to admit that they were still the tenants of Lachhmi Narain. Their plea in the revenue Court amounted to saying that although there was a mutation in favour of Somti Parkash and he was shown as the owner of the land in the *jamabandi* which followed the mutation, the alleged transfer by his father in his favour was either only a colourable transaction or was otherwise invalid.

The learned counsel for the appellant relied on a further observation of the learned Judges in the

(2) A.I.R. 1919 Mad. 897.

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Madras case already cited to the effect that section 111(g) of the Transfer of Property Act applies not only to disclaimer of landlord's title, but also to the title of his heirs, transferees and assigns, but I think that this broad proposition requires some qualification. The learned counsel also cited the case of *C. Venkatachariar v. Rangaswami Ayyanger and another* (3), in which a different Division Bench held that a denial of a derivative title will work a forfeiture as much as the denial of the original landlord's title, but this case was also cited by the learned counsel for the respondents because the learned Judges went on further to observe that if a tenant honestly doubtful, and not intending to identify himself with a third party who sets up a title in himself against the real landlord, merely puts his alleged derivative landlord to the proof of the latter's title before recognizing him as such, such conduct may not work a forfeiture of the tenancy and may not constitute such disclaimer of the title of the landlord as would work a forfeiture.

This appears to be on the same lines as the decision of a Division Bench in *Abdulla v. Mohammad Muslim* (4). In that case the tenant denied the execution of a *Kabuliyat*. He did not deny the title of the original lessor, but denied the right of the purchaser and the setting up of the right of one of the heirs of the original lessor, and it was held that in these circumstances the denial of the right of an assignee from the original lessor by the tenant does not work a forfeiture of the tenancy. Similarly, Maclean, C.J., and Coxe, J., in *Farman Bibi and another v. Sheikh Tasha Hadal Hussain* (5), held that when the tenants did not repudiate their lease, but rather stuck to it and only questioned the right of the plaintiffs as transferees

(3) A.I.R. 1919 Mad. 266.

(4) A.I.R. 1926 Cal. 1205.

(5) 12 Cal. Weekly Notes 587.

from their lessor, there was no denial of landlord's title to cause a forfeiture of the tenancy.

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The only other case relied on by the learned counsel for the appellant was the decision of Chaturvedi, J., in *Ram Das v. Shree Ram Lakshman Janki* (6). In that case a woman who owned a house had bequeathed it by will to a deity, Shree Ram Lakshman Janki, at the same time appointing one Durga Parshad as *sarbarkar* of the idol. The defendant in the suit was a tenant in the house and after he had paid rent for one month to Durga Parshad, he refused to pay any more rent, and when sued in the Small Cause Court for rent denied the plaintiff's title. He was given notice of forfeiture and was then sued for possession. On the facts of that case the learned Judge held that there had been a repudiation of the landlord's title entailing forfeiture of the tenancy, but it is clear that the defendant had denied the execution of the will and claimed that the house had been taken on the death of the original owner by her daughter to whom he was paying a rent as landlord. There was thus in that case not only a denial of the landlord's title but also an attempt to set up a title in a third party.

In my opinion the law has been correctly stated in the judgments of the Calcutta High Court and the second of the Madras cases to the effect that where a tenant sticks to his original tenancy and merely questions the validity of the alleged transfer in favour of the assignee, this does not amount to repudiation of the landlord's title which entails a forfeiture of the tenancy. The result is that I would dismiss the appeal, but leave the parties to bear their own costs.

HARBANS SINGH, J.—I agree.

Harbans Singh, J.

K.S.K.