

does support his contention. There will be no question of the order of suspension staying after we have quashed the order of removal.

The learned counsel for the respondent contended that the contention, on the basis of which this petition is being allowed, was not raised by the learned counsel before the learned Single Judge and, therefore, the appellant cannot be allowed to urge the same before the Letters Patent Bench. It may be mentioned that this contention was specifically raised in the Writ petition. But it appears that it was not specifically urged before the learned Single Judge. Moreover, the contention being one purely of law, it can be raised in the Letters Patent appeal. We have accordingly allowed this contention to be raised.

In view of the decision of this Court in *The State of Punjab v. Bakhtawar Singh*, the decision of the learned Single Judge is set aside and the impugned order removing the appellant from the office of the Sarpanch is quashed with order as to costs throughout.

MEHAR SINGH, C.J.—I agree.

K.S.K.

APPELLATE CIVIL

Before Mehar Singh, C.J. and Daya Krishan Mahajan, J.

KISHORE CHAND,—Appellant

versus

DHARAM PAL,—Respondent

Regular Second Appeal No. 2 of 1965.

August 25, 1966

Registration Act (XVI of 1908)—S. 17(1)(d)—Rent note providing that tenant will pay rent month by month and if rent is paid continuously, he will not be liable to ejectment—Whether a lease for a term exceeding one year and requires registration.

Held, that in a lease the right to enjoy the demised property for consideration is transferred by the lessor in favour of the lessee and the lessor lays his conditions of limitation, if any, on the extent of the right transferred. The

Kishore Chand v. Dharam Pal (Mehar Singh, C.J.)

extent of the right transferred is determined by the lessor at the time of the transfer and not by the lessee who merely accepts the conditions subject to which he takes the transfer. If the duration of a lease is to be determined from the contents and context of a rent note or a lease deed, which is otherwise not clear or admits of an argument on the basis of the intention of the parties, then what has to be seen is what was the right and to what extent that rights has been transferred by the lessor to the lessee. Where the rent note recites that the tenant shall make payment month by month and if rent is paid continuously, he will not be liable to ejection, the lessee is to enjoy the demised property for as long a time as he continues to pay the rent and the lessor will have no right to eject him. In other words the lessor transfers to the lessee lease rights in the demised premises indefinitely subject only to the latter continuing to pay the rent from which it follows that the lease in such a case is for a term exceeding one year and the rent-note requires registration in view of section 17(1)(d) of the Indian Registration Act, 1908.

Second Appeal from the decree of the Senior Sub-Judge with Enhanced Appellate Powers, Amritsar, dated the 28th day of November, 1964, reversing that the Sub-Judge, 3rd Class, Amritsar, dated the 11th of August, 1964, and granting the plaintiff a decree for ejection of the defendant from the premises in question and leaving the parties to bear their own costs.

RAM LAL AGGARWAL, ADVOCATE, for the Appellant.

H. L. SARIN, BALRAJ BAHIL AND M. S. JAIN, ADVOCATES, for the Respondent.

JUDGMENT.

The judgment of the Court was delivered by—

MEHAR SINGH, C.J.—The only question for consideration in this reference by my learned brother, Mahajan, J., is whether the rent-note, Exhibit P.1., of June 11, 1961, executed by Kishore Chand, appellant, in favour of Dharam Pal, respondent, taking on lease a part of a house at Amritsar, creates a lease 'for any term exceeding one year' within the meaning and scope of clause (d) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (Act 16 of 1908) ?

The appellant took on lease the demised premises at a rental of Rs. 10 per mensem, executing the rent-note, which, therefore, is a written document as executed by him. This is, for the present purpose, the material portion of the rent-note—

".....will pay rent month by month; if rent is paid continuously, then I will not be liable to ejection; in case of

non-payment of rent, I will be liable to ejection; will not carry out any repairs without the written permission of the owner of the house; will pay the bill for electricity;.....will do nothing against law in the rooms; will not take any sub-tenant and put him in possession."

These are the conditions accepted by the appellant in the rent-note. The respondent instituted a suit for ejection of the appellant on the ground, among others, of having served notice under section 106 of the Transfer of Property Act, 1882 (Act 4 of 1882), terminating the tenancy. One of the defences of the appellant was that the tenancy is to continue till he continues to pay the rent, in other words, according to him, it is not a case of a lease from month to month. In his plaint the respondent, without giving the detailed terms of the rent-note, has made reference to it and relied upon it. In his written statement the appellant has admitted the execution of the rent-note but again without referring to the material terms of the same. So that without reference to the terms and conditions in the rent-note, Exhibit P. 1, effect cannot be given to the defence of the appellant. It appears that in the trial Court no question about the inadmissibility of the rent-note for want of registration arose. The suit of the respondent having been dismissed by a decree, made on August 11, 1964, by a Third Class Subordinate Judge of Amritsar, the respondent filed a first appeal against the decree, which was heard and disposed of by the Senior Subordinate Judge, at Amritsar, on November 28, 1964, and the judgment of the learned Judge shows that the question of registration of this document did come in for consideration before him. He was of the opinion that the tenancy created by the rent-note was a tenancy-at-will. On that consideration, of course, the rent-note did not require registration. The appeal of the respondent was accepted and his suit was decreed by the learned Senior Subordinate Judge. In second appeal by the appellant, the question has arisen whether the rent-note, Exhibit P. 1, is not admissible in evidence for want of registration? My learned brother, Mahajan, J., has considered this question and in view of certain conflict of authorities, has made a reference of this question alone to a larger Bench, and this is how this second appeal comes before us for disposal of this question.

A lease, according to section 105 of Act 4 of 1882, is a transfer for consideration of a right to enjoy the demised property. Obviously

Kishore Chand v. Dharam Pal (Mehar Singh, C.J.)

the right transferred in such a property is transferred by the lessor in favour of the lessee. As in any other transfer, so in this type of transfer, the transferor or the lessor lays his conditions of limitation, if any on the extent of the right transferred. The right vesting in the lessor can thus only be limited at the time of the transfer, for the matter of the transfer, by him, and equally obviously enough not by the transferee or the lessee. The latter can, of course, accept any conditions subject to which he takes the transfer, but the extent of the right transferred is determined by the transfer in that respect made by the lessor, and not by the lessee. On this consideration, if the duration of a lease is to be determined from the contents and context of a rent-note or a lease deed, which is otherwise not clear or admits of an argument on the basis of the intention of the parties, then what has to be seen is what was the right and to what extent that right has been transferred by the lessor to the lessee. In the present case, on the conditions and terms as reproduced above, it is abundantly clear that the respondent, as lessor, transferred the lease rights in the demised premises to the appellant, as lessee, to be enjoyed by the latter for as long a time as he continued to pay the rent. This means that so long as the appellant paid rent to the respondent, the latter had no right to eject the former from the demised premises. In other words, the respondent transferred to the appellant lease rights in the demised premises indefinitely subject only to the latter continuing to pay the rent. This means that the lease was for a term exceeding one year. On this conclusion it required registration in view of section 17(1)(d) of Act 16 of 1908.

The learned counsel for the appellant cites some cases, which, according to him, take a view entirely different, and which he says have held that on terms, such as in the present case, the lease must be held to be month to month and not for a term exceeding one year. The first such case is *Ex parte VOISEY*. *In re KNIGHT* (1) but in that case it was found that the tenancy was from month to month or a monthly tenancy, and the facts do not conform to the facts of the present case. In *Boyd v. Kreig*, (2), it was held that a lease for one year, containing an optional renewal for a further period of one year, is not a lease for a term exceeding one year, and the learned Judges followed *Hand v. Hall* (3), according to which option to renew a lease after notice required coming into existence of a new

(1) (1882) 21 Ch. D. 442.

(2) I.L.R. (1890) 17 Cal. 548.

(3) (1877) L.R. 2 Ex. D. 355.

lease. So that this case is on facts not helpful. The decision in *Benin Menahim Yousaf v. John Poleologo* (4), was on a reference based on *Boyd's case* and the learned Judges accepted the reference. In the fourth case of *Umar Bakhsh v. Baldeo Singh* (5), this observation of the learned Judges makes it clear that it does not apply to the present case.—“The deed is obviously a lease as a lease is generally understood in the Punjab. It starts with the recital that the defendant has taken the house on lease and continues with an undertaking to pay rent monthly and in any case to settle up all the arrears of payment at the end of a year. No doubt the parties contemplated, and, indeed, the language of the document suggests, that the lease was to last for an indefinite period, but we are clear that there is nothing in the language of the lease which would have precluded the plaintiff from ejecting the defendant at the end of any month, or would have prevented the defendant from quitting the house by terminating the lease at the end of any month. It is only when a lease is a lease for more than a year, or from year to year, in express terms, that it is compulsorily, registrable”. It is apparent that in *Umar Bakhsh's case* the landlord had not, as in the present case, precluded himself from ejecting the defendant. And so this case is not helpful. In *Attrra v. Mangal Singh* (6), the monthly rent of the hut was eight annas, with liability of the tenant to ejectment on default, and a further provision that rupees six were payable by the tenant at the time of Nimani (month of June), and the learned Judges held that this did not entitle the tenant to remain a tenant of the hut as long as he wished. It is apparent that this case does not assist the appellant's case either. Another case is *Kashi Nath v. Abdur Rahman Khan* (7), in which the site was let for eight annas a year and the obligation was that the tenancy would come to an end if the tenant failed to pay eight annas in any one year if he failed to make incidental payments for marriages and the like. Other condition was that the lease was also to come to an end if the lessee did not conduct himself properly towards the Zamindar. On these facts the learned Judges held that there was no certainty that the lease was to last beyond the term of one year, though it might in fact continue for an undefined number of years. This again is not near the present case. The last case in this respect

(4) (1906) 8 Bom. L. R. 580.

(5) 97 P.R. 1915.

(6) I.L.R. (1921) 2 Lah. 300.

(7) A.I.R. 1922 All. 54.

Kishore Chand *v.* Dharam Pal (Mehar Singh, C.J.)

cited on behalf of the appellant is *Devidas Zowkiram v. Aluwalla Brothers* (8), in which case the lease was first for six months and after the expiry of six months it was provided that the lessee may continue to occupy the premises at the same rent and on the previous terms as long as he may desire, provided he continued to pay the monthly rent strictly in advance but it was further provided that should the lessor happen to sell the building to any one at any time after the expiry of six months from the date of the lease, the lessee was bound to vacate the premises on receipt of a month's clear notice. Although one of the terms was that after the expiry of the first six months the lessee could continue as long as he desired providing he paid monthly rent in advance, but having regard to the further condition that in case of sale he was liable to be evicted on a month's notice, the learned Judges held that the document provided two agreements, one of them being a lease for a period of six months binding on both the parties, and the other an agreement permitting the tenant to continue in occupation so long as he wished but subject to his tenancy being terminable at the wish of the lessor in the event of the latter selling the property, and thus following *Hand v. Hall* (3), they held that as the second tenancy came into existence separately after the first tenancy of six months, it was not a lease for an indefinite period and not a lease for any time exceeding one year. Not one of these cases thus, on facts, advances the argument on the side of the appellate or supports what has been urged on his behalf by his learned counsel.

The decisions cited by the learned counsel for the respondent are more exactly in point. The first case is *Sheokholam v. Buddree Nath* (9), in which the learned Judges held that "by the terms of the lease, it is not limited to a year; on the contrary, it is to remain in force so long as the lessee or tenant continues to pay the stipulated rent, such a lease must be registered under section 17, and, not being registered, cannot be received in evidence under section 49 of the Registration Act of 1866". The next case is *Martha Pool v. The Secretary of State for India in Council*, (10), in which after reviewing the authorities the learned Judges observed "The above authorities seem to show that where the possible extension of the term beyond one year depends upon the option of the landlord, or

(8) A.I.R. 1932 Sind 217.

(9) (1872) 4 N.W.P. (Allahabad) High Court Reports 36.

(10) 68 P.R. 1886.

upon something being done before the term can be extended, the lease is construed to be for one year only, and registration is optional; but if the term is extensible at the option of the tenant, the lease is not limited to one year, and requires registration. The lease in the present case is one of the latter kind. It vests in the lessee a right to continue tenant for a longer period than one year independently of the will or permission of the landlord. Nothing had to be done by the tenant to give effect to it, no fresh document or title was required, no notice had to be given. The defendant had simply to hold on under the same document and title from year to year". Such a lease deed was held by the learned Judges as compulsorily registrable. These observations of the learned Judges aptly apply to the present case, because here also the appellant has a right to continue the lease for an indefinite period without reference to the landlord, without any fresh document or acquiring any fresh title or giving any notice. As pointed out by the learned Judges, in that case, in the present case the appellant simply holds on to the property as lessee under the very same rent-note. In *Parshotam Vishnu v. Nana Prayag* (11), the lease provided that the lessee shall continue to pay each year certain amount of rent in a given month and shall enjoy the land as long as he lived, and on these terms it was held by the learned Judges that it was a lease for the life of the lessee and hence a lease for a term exceeding one year, as it entitled him to hold the land for more than that period if he lived so long. Exactly similar view, on the same facts, has been taken in *Pagi Mania Jaga v. Desai Lallubhai Dwarkadas*, (12). In *Firm Karim Bakhsh-Taj-ud-Din v. Natha Singh*, (13), the lease was on a certain rental per month, payable monthly, but so long as the tenant occupied the shop the landlord was not to eject him except in case of refusal to pay rent. On those conditions the learned Acting Chief Justice held that the lease was a totally fresh lease not being limited to one year, and was inadmissible in evidence for want of registration. In *Ganpat Balaji Choufule v. Kasturchand Premchand Javeri*, (14), the lease for an unspecified period, as long as the house was not sold in execution of the decree, was held inadmissible in evidence for want of registration. All these cases negative the argument on the side of the

(11) I.L.R. (1894) 18 Bom. 109.

(12) (1900) 2 Bom. L.R. 488.

(13) (1922) 66 I. C. 904.

(14) A.I.R. 1964 Nag. 102.

Kishore Chand *vs.* Dharam Pal (Mehar Singh, C.J.)

appellant, and the position is made really clear in the second of the above cited cases.

The learned counsel for the appellant has referred to a judgment of Bhide, J., in *Ralia v. Bodh Raj* (15), to contend that if in addition to the condition that the tenant may occupy the demised premises as long as he continued to pay the rent, there are other conditions the breach of which may entail eviction of the tenant, even then the tenancy cannot be said to be for a term exceeding one year. In that case the District Judge did find that the tenancy was for an indefinite period, and the landlord had a right to eject the tenant in case of non-payment of rent, but after referring to some of the cases, already cited, the learned Judge goes on to say—"In the present instance, all that the lease says is that the landlord will be entitled to eject the tenant in the case of non-payment of rent. It does not appear to me to follow from the wording of the lease that the tenant could not be ejected on any ground at all so long as he paid his monthly rent." The learned Judge held that the lease deed in that particular case was not compulsorily registrable, but the facts are not very clear from the judgment and the case appears to be not to be helpful in the decision of the present case. In *Munshi Lal v. Gopi Ballabh* (16), the learned Judges have observed that "the 'term' of a lease for purposes of registration must be understood to mean the period for which the lessee is protected against dispossession at the will and pleasure of the lessor, or, in other words, the length of time for which the lessee is entitled to continue in possession provided he himself fulfils all the stipulated conditions", and, if I may say so with respect, this is the correct and the sound statement of the law. In the wake of this statement the second set of cases relied upon by the side of the respondent stand explained that in each one of those cases, like the present case, the lessee had the protection against his dispossession at the will and pleasure of his lessor provided he fulfilled all the conditions stipulated by him, and the first set of cases cited on the side of the appellant, on facts, are not paralleled to the present case.

On the terms and conditions of tenancy in the present case, the appellant has had protection against dispossession at the will and

(15) A.I.R. 1928 Lah. 937.

(16) A.I.R. 1914 All. 120.

pleasure of the respondent provided he fulfilled all the conditions stated in the rent-note as conditions laying obligations on him, and merely because for breach of one of the conditions he may have made himself liable to ejection, that does not alter the nature of the duration of the tenancy as one not being for a term exceeding one year. The answer to the question in this case then is that the rent-note, Exhibit P. 1, is a lease for a term exceeding one year and is compulsorily registerable under section 17(1)(d) of Act 16 of 1908.

The learned counsel for the appellant has referred to his application, under section 151 and Order 41, rule 27, of the Code of Civil Procedure for leading additional evidence in this case and he says that, that has something to do with his argument with regard to the doctrine of part performance. My learned brother, Mahajan, J., has pointed out in his order of reference that this is a matter that was never raised before any of the Courts below. Anyhow, now that the one question referred to a larger Bench has been answered, any further matter, that needs to be urged on behalf of the appellant, may be urged at the hearing of this second appeal.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

KARNAIL SINGH,—*Petitioner*

versus

MAGISTRATE, 1ST CLASS, HOSHIARPUR AND OTHERS,—*Respondents*

Civil Writ No. 2638 of 1965

August 25, 1966

Punjab Gram Panchayat Act, 1952 (IV of 1953)—Person entered as ghair maurusi in respect of land owned by Panchayat in the khasra girdawari—Whether entitled to stand for election as, or continue to be, a Sarpanch or Panch of the Panchayat—Ghair maurusi—Meaning of—Mere entry as Ghair maurusi tenant—Whether sufficient to establish tenancy at will—Rent column left blank or stating zero rent payable—Whether means no rent payable.