

APPELLATE CIVIL.

*Before Kapur J.*MELA SINGH AND ANOTHER.—*Defendants-Appellants*

D. 1954

THE PUNJAB STATE.—*Plaintiff-Respondent.*

Regular Second Appeal No. 6 of 1954.

Lease—Whether lessor has a right to sue for the ejection of a lessee after leasing out the property to another lessee—Rule stated—Transfer of Property Act (IV of 1882). Sections 100 and 111

1954

July, 20th

Lease of lands by Government for one year to eleven persons from 1st April, 1950 to 31st March, 1951. Notice of ejection given by Government on 12th October, 1951, after the Government had leased out the lands to one Atma Singh on 18th June, 1951. On 14th February, 1952, Government filed the suit for ejection of the eleven lessees. The lessees raised an objection that as the Government had leased out the lands to one Atma Singh it could

not maintain the suit. The trial Court rejected this objection which, however, prevailed with the District Judge on appeal. Government appealed to the High Court.

Held, that under section 109 of the Transfer of Property Act if a lessor has transferred any interest in the property demised to someone else, that someone else possesses all the rights in the absence of a contract to the contrary. But does this section imply that if a person has let out his property on lease to A and then during the pendency of the lease creates a lease in favour of B, then the landlord has no interest at all in the possession of the property demised, because if that is so, it will lead to many anomalies. If the right to sue for possession passes exclusively to a tenant in whose favour landlord transfers a right of reversion for a term of years, then the lessor will never be able to eject a trespasser and the lessor will have no right left in him. This is contrary to precedent and is not in accord with the principles dealing with the rights of lessors. The suit by the lessor for the ejectment of the first lessee whose term had expired was competent.

Damodar Prasad Tewari v. Lachhmi Prasad Singh (1), and *Somai Ammal v. Vellayya Sethurangam* (2), relied on.

Second Appeal from the decree of *Shri Pitam Singh Jain*, 1st Additional District Judge, Ludhiana, dated the 24th October, 1953, affirming that of *Shri Chandra Gupta*, Sub-Judge, 1st Class, Ludhiana, dated the 29th June, 1953, granting the plaintiff a decree for the eviction of the defendants by removal of the superstructures standing on the site in suit with costs to be borne by the parties.

Claim : For the ejectment of the defendants from the plots 2, 3, 4, 32/1 and 32/2 in suit measuring 41/4/15 sq. feet in area situated in the abadi of Ludhiana City known as old Police Lines Nazul property under the ownership of the Punjab State Plaintiff, as shown in the plan attached to the plaint, after removing the temporary shed or malba if any on the spot the defendants have made.

MELA RAM AGGARWAL, for Appellant.
S. M. SIKRI, Advocate-General for Respondent.

JUDGMENT

Kapur, J.

KAPUR, J. These eleven appeals have been brought, five by the tenants and six by the landlord, against an appellate decree of Additional

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District Judge Pitam Singh Jain, dated the 24th October 1953, confirming the decree of the trial Court in respect of the tenants' appeals, i.e., R.S.A. 6 to 10 of 1954, and varying the decree in regard to the appeals which have here been brought by the landlord, the Punjab Government, R.S.A. 49—54 of 1954.

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and others
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State
—
Kapur. J.

Some time before the 1st of April 1950, the Punjab Government gave on lease for one year various plots of land to eleven persons which was to run from the 1st of April 1950 to 31st of March 1951. Some time later on the 18th June 1951, the part of the land which was leased out to these tenants was given over by the Punjab Government to the Rehabilitation Department and another portion was leased out for thirty years to one Atma Singh for the purposes of building a cinema. On the 12th of October, 1951, the Punjab Government gave notice of ejection against all the tenants and on the 14th February 1952, they brought suits for ejection against all the tenants.

In regard to the land which was required by the Rehabilitation Department and which is covered by R.S.A. Nos. 6 to 10 of 1954, the objection which is now relevant for the purposes of the appeals is that the Deputy Commissioner had no power to bring the suit and that is based on the fact that under Order 27, rule 2, of the Code of Civil Procedure, the Deputy Commissioner can bring a suit only if he is authorised by the Punjab Government through its Legal Remembrancer or Financial Commissioner. The letter of authority which has been signed by the Legal Remembrancer is contained in memorandum No. 5700/C.O. 254-51, dated the 5th September 1951, and runs as follows:—

“Subject:—Institution of Civil Suit for ejection against the occupants of the Old Police Lines, Ludhiana. You are instructed to institute immediately the above noted cases on behalf of the Punjab State in a competent Court of Law.”

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In these appeals before me Mr. Mela Ram has urged that the Deputy Commissioner could not bring the suits as he had no authority to do so. Under Order 27, rule 2, persons being *ex-officio* or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents Now according to the letter which has been filed in this case it is clear that the Deputy Commissioner had been authorized to institute suits for the ejection of tenants of the land named "Old Police Lines." Mr. Mela Ram has contended that this should be read in the light of enclosures which were attached to the letter. The authority in my opinion is contained in the body of the letter. The enclosures are only a matter of information and do not in any manner cut down the authority or circumscribe it to any particular tenant or any portion of the land called "Old Police Lines." I am unable to accept Mr. Mela Ram's submission on this point and am of the opinion that the suits were properly instituted, and the appeals Nos. (6) to (10) of 1954, would, therefore, fail and are dismissed, but in view of the circumstances of the case I leave the parties to bear their own costs throughout.

The appeals which have been brought by the Punjab Government are R.S.A. Nos. 49 to 54 of 1954. The learned Additional District Judge has dismissed the suits of the Punjab Government on the ground that on the 18th of June 1951, the Punjab Government had leased out this land to one Atma Singh for the construction of a cinema. Whether the Punjab Government should have leased out for the construction of a cinema or not is outside the scope of the suits and this Court will be loath to interfere with any policy or decision of the Government. Whether there should be a

cinema or not is not a matter for adjudication before me. The only question which arises for determination is whether after the lease had been given the Punjab Government has the right to bring the suits for ejection of the respondents whose lands have now been leased out to Atma Singh. The learned Additional District Judge as also counsel for the respondents in this case have relied on a judgment of the Madras High Court which is based on an interpretation of section 109 of the Transfer of Property Act in *Manikkam Pillai v. Rathnasami Nadar* (1), where it was held that the rule of English law that the person entitled to the immediate reversion of the demised premises is the proper person to give a notice to quit is applicable to India. In that case the facts do not seem to be very clear, but whether the rule applies to cases in India or not is not the point before me. Under section 109 of the Transfer of Property Act if a lessor has transferred any interest in the property demised to some one else, that some one else possesses all the rights in the absence of a contract to the contrary. But does this section imply that if a person has let out his property on lease to A and then during the pendency of the lease creates a lease in favour of B, then the landlord has no interest at all in the possession of the property demised, because if that is so, it will lead to many anomalies. If the right to sue for possession passes exclusively to a tenant in whose favour a landlord transfers a right of reversion for a term of years, then the lessor will never be able to eject a trespasser and the lessor will have no right left in him. In my opinion, this is contrary to precedent and is not in accord with the principles dealing with the rights of lessors.

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—
Kapur, J.

The learned Advocate-General has relied on two cases *Damodar Prasad Tewari v. Lachhmi Prasad Singh* (1), and *Somai Ammal v. Vellayya Sethurangam* (2), and the rule laid down in these cases in my opinion is more in consonance with common-sense and the law relating to tenancies. In the former case it was held that a landlord though he has given a lease to a third person is entitled for the purpose of putting a lessee in possession to maintain a suit to eject a trespasser, and this was a suit which had been brought by the landlord to eject a person in whose favour he had executed a lease but that lease had terminated. In the Madras case in a suit for ejectment by the landlord it was held that the landlord though he has given a lease to a third person was entitled, for the purpose of putting his lessee in possession to maintain a suit to eject a trespasser. The defence in that case was that a lease had been granted to another person which was at the date of the suit subsisting. It was held that the lease was not subsisting and that such a suit could be brought to eject a previous tenant whose lease had expired even though a second lease had been executed in favour of a third party.

In the present case the leases were for a term of one year and that one year had expired and therefore, under section 111(a) of the Transfer of Property Act the lease was determined by efflux of time and, therefore, the defendants in the present case could not be called tenants for the purposes of this suit, and the rule laid down in the Patna case and the Madras case that I have referred to above would be fully applicable to the facts of the present cases. I would, therefore, allow the appeals of the Punjab State, set aside the decrees

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of the learned Additional District Judge and Mela Singh
restore those of the trial Court. Parties will bear and another
their own costs in this Court and in the Courts v.
below. The Punjab
State

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