

APPELLATE CIVIL

Before S. K. Kapur, J.

GURDIT SINGH.—Appellant

versus

DURGA DASS KHANNA AND OTHERS.—Respondents.

S. A. O. 120-D of 1962.

Delhi Rent Control Act (LIX of 1958)—S. 13—Application for ejection filed by the landlord allowed—During the pendency of the appeal by the tenant the landlord selling the premises—Effect of—Whether disentitles the landlord from claiming the decree for ejection.

1964

November, 2nd

Held, that the suit, in the present case, was brought on the ground of sub-letting and parting with possession by the tenant and the sale of the premises by the landlord would not create any new rights in the tenant. The moment a tenant sublets or parts with possession of a property, he loses the protection of the Rent Control Act and becomes liable to eviction. Sale by the owner would not, therefore, alter the position nor affect his right to ask for an order of ejection on the ground that the tenant has sublet or parted with possession of the premises.

Second Appeal under section 39 of Act 59 of 1958 of the order of Shri P. S. Pattar dated 12th February, 1962 affirming that of Shri B. L. Mago, Rent Control Tribunal, Delhi, dated 3rd June, 1961 dismissing the appeal and leaving the parties to bear their own costs.

N. R. SURI, ADVOCATE, for the Petitioner.

L. R. GUPTA AND MAN SINGH, for the Respondent.

ORDER

Kapur, J. . KAPUR, J.—The present appeal is directed against the order of the Rent Control Tribunal, dated 12th February, 1962. On 29th June, 1960, one Mohd Ilyas Khan sold the property in dispute to the respondents and on 24th August, 1962, the respondents presented an application to the Rent Controller, Delhi, for ejection of the appellant on the ground that he had sublet and parted with possession of a part of the premises to one Gopal Dass and a part to Unique Electric and others. By order, dated 3rd June, 1961, the Rent Controller allowed the application for ejection and held that there was no subletting or parting with possession so far as Gopal Dass was concerned but a part of the premises had been sublet to Anant Singh. The appellant filed an appeal before the Rent Control Tribunal who, by his order, dated 12th February, 1962, dismissed the same.

Mr. Naubat Ram Suri, appearing for the appellant, has urged only one point in support of his appeal. He says that the respondents sold the premises in question by a sale deed, dated 27th December, 1961, to one Mohinder Kaur and ceased to have any interest in the property. They were consequently not entitled to a decree for ejection. Mr. Suri's argument is that an Appellate Court can take

notice of the subsequent events and in view of the sale deed, he asks me to hold that the respondents, who lost all interest in the property, are no longer entitled to an order for ejection of the appellant. He further submits that the relationship between the landlord and the tenant is a personal relation and the moment landlord is changed, the right which may have accrued to the earlier landlord ceases to be of any avail to the assignee from the said landlord. He strongly relies on two decisions of this Court, namely, *Abid Hussain v. Roshan Dass* (1) and *Prithi Singh v. Jiva Ram* (2). In *Abid Hussain's* case certain rent was due to the landlord when he sold the property and the right to recover those arrears was also sold to the purchaser. The tenant deposited only the arrears of rent due to the purchaser-landlord. Shamsher Bahadur, J., held that the tenant under the Delhi and Aimer Rent Control Act, 1952, was only required to deposit the arrears of rent for the period in respect of which arrears are payable on the first hearing relates to the landlord who has brought a suit for ejection and it is only the rent due to him that is required to be deposited. The decision in *Abid Hussain's* case is, in my view, of no assistance to the appellant. It is well established that arrears of rent which have been assigned are not rent as after assignment they assume a different legal character. In *Prithi Singh's* case, a landlord obtained a decree for ejection of his two tenants who occupied the ground floor and the first floor of the building respectively. The occupier of the ground floor vacated the premises occupied by him and the same was occupied by the landlord. The tenant in the first floor went up in appeal and urged that the landlord did not *bona fide* require both the floors and the accommodation in his possession was quite sufficient for his use. The argument was accepted and the landlord's suit for ejection dismissed.

In the present case, however, the suit was brought on the ground of subletting and parting with possession, and, in my opinion, sale would not create any new rights in the tenant. The moment a tenant sublets or parts with possession of a property, he loses the protection of the Rent Control Act and becomes liable to eviction. Sale

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(1) I.L.R. (1961) 1 Punj, 226=1960 P.L.R. 836.

(2) 1961 P.L.R. 352.

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by the owner would not, therefore, alter the position. Mr. Gupta, appearing for the respondents, has pointed out that by virtue of section 36 read with Rule 23, the provisions of Civil Procedure Code are applicable and consequently under Order 22 the seller-landlord was entitled to continue the proceedings. According to Mr. Gupta the assignee-landlord was not obliged to participate in the proceedings. I am in agreement with the argument of the learned counsel for the respondent landlord that the sale-deed dated 27th December, 1961, did not affect the right of the landlord to ask for an order of ejectment on the ground that the tenant has sublet or parted with possession of the premises. Mr. Gupta also contends that there is no substantial question of law involved in the appeal and the same is, therefore, not competent under section 39 of the Act. In view of my decision on the merits, it is not necessary to go into this question. I would, therefore, dismiss the appeal, but having regard to the circumstances of the case make no order as to costs.

B.R.T.