

## PUNJAB-HARYANA HIGH COURT

Ram Pershad Singh

Vs

Mukand Lal

(Kapur, J.)

20.11.1950

### ORDER

**Kapur, J.**

1. This is a rule directed against the appellate order of Mr. Tek Chand Vijn, Senior Subordinate Judge of Delhi, holding that nephews were included within the meaning of the word "family" as used in Section 9 (1) (e) of the Delhi and Ajmer-Merwara Rent Restriction Act hereinafter called the Act. The findings of the learned Judge are that the plaintiff and his nephews neither form a joint Hindu family nor have a joint business, but that Chandu Lal is living with the plaintiff and the question to be determined is whether both Chandu Lal and Nandu Lal, who are the nephews (brother's sons) of one plaintiff, are to be included in the word "family" as used in the Act.

2. The evidence of Chandu Lal as P. W. 6 is that Nandu Lal and Chandu Lal brothers were carrying on business as confectioners in Lahore. The plaintiff had given them the money to start this business. He brought about their marriages and whenever they used to come to Delhi they used to stay with the plaintiff and Chandu Lal is now living with the plaintiff Mokand Lal. He has also stated that the plaintiff is about 80 years old and has got no wife or any child. Nandu Lal and Chandu Lal are the heirs of the plaintiff, and from this evidence it is quite clear that they are the only persons who are the heirs of the plaintiff and they are the persons whom the plaintiff would like to benefit.

3. The question for determination is whether under these circumstances the plaintiff should get the advantage of getting the house in possession of the defendant vacated. The word "family" has been the subject-matter of decision in some of the English cases. In an English judgment '*BROCK v. WOLLAMS*', Bucknill, L. J., quoted with approval the observations of Wright, J., in '*PRICE v. GOULD*'<sup>2</sup>, where it was observed:

"It has been said in a number of equity cases, relating principally to wills or to settlements under powers of appointment, that the word "family" is a

popular, loose, and flexible expression, and not a technical term. It has been laid down that the primary meaning of the word "family" is children, but that primary meaning is clearly susceptible of wider-interpretation, because the cases decide that the exact scope of the word must depend on the context and the other provisions of the will or deed in view of the surrounding circumstances. Thus, in '*SNOW v. TEED*', (1871) 23 L T 303, it was held that the word "family" could be extended beyond not merely children but even beyond the statutory next-of-kin."

Wright J. went on to say:

"I hold that in the section now under consideration the word "family" includes brothers and sisters of the deceased living with her at the time of her death. I think that that meaning is required by the ordinary acceptation of the word in this connection, and that the legislature has used the word "family" to introduce a flexible and wide terms."

4. In a later English case *JONES v. WHITEHILL*<sup>3</sup>, where the question for determination was whether a niece of the tenant's wife who was living in the dwelling house to which the Rent Act applied, and nursed him and his wife until their deaths was included in the words 'member of the tenant's family'. Sir Raymond Evershed, M. R., quoted the observations of Wright, J., as given in the judgment of Bucknill, L. J., In the cases that I have quoted above and said: "I am not suggesting necessarily that all nephews and nieces by marriage should be regarded as members of the tenant's family, but be it observed here that the defendant, a niece of Mrs. Bailey..... (His Lordship considered the facts of that case).

"On those facts I think that, if it were asked in an ordinary conversation. "Was the defendant a member of Mr. Bailey's family? an affirmative answer would be given."

With this judgment Cohen and Asquith, L. JJ., agreed.

5. In '*PUSPALATA DEBI v. DINESH CHANDRA*'<sup>4</sup>, it was held "In determining what is family or a dependent or a person essential and necessary for occupation, it is not only permissible but is proper and desirable for the Court to bear in mind the context of social order, the habits and ideas of living and the religious and socio-religious custom of the community to which the individual concerned belongs and then come to a conclusion on the facts of each case." In this particular case the two nephews for whom the landlord wishes to get this house are his only heirs. He set them up in business in Lahore and also got them married, and one of them is actually living with the plaintiff and the accommodation, it is submitted, on the evidence of Chandu Lal is insufficient for the purposes of the landlord and his nephews, which evidence I am prepared to accept as indeed the learned Senior Subordinate Judge accepted. In these circumstances my opinion is that the nephews are members of the family of the landlord and he is entitled to evict the tenant for the purposes of these nephews.

6. Taking the words of the learned Master of the Rolls and considering the circumstances of the

case I am of the opinion that the learned Senior Subordinate Judge rightly held that the nephews in this case should be included in the word "family" as used in the Act. I, therefore, dismiss this petition for revision and discharge the rule. The opposite party will have his costs in this Court and in the Courts below.

Cases Referred.

1(1949) 1 All E R 715

2(1930) 143 L T 333

3(1950) 1 All E R 71

485 Cal L J 74