

PUNJAB AND HARYANA HIGH COURT

Jagan Nath Pershad Jhalani

Vs

Jatinder Nath Prem Nath

(D Falshaw, C.J.)

22.03.1961

JUDGMENT

D. Falshaw, J.

1. These two revision petitions (Nos. 301-D and 426-D/ 1960) have been filed under Section 35 of Delhi and Ajmer Rent Control Act, 1952, in the following circumstances. The petitioner Jagan Nath Pershad Jhalani was occupying about a one-half of the house No. 24, Barakhamba Road, New Delhi, as a tenant of Prem Nath. The latter died and some time after his death a suit was instituted by his three sons, Jai-tender Nath, Rajeshwar Nath and Vishwa Nath, and his widow Shrimati Indra Devi for the ejection of the petitioner on the ground of their personal requirement of the premises in suit for their own occupation. The suit was contested by the tenant but after 8 witnesses had been examined in support of the plaintiffs' case on the 21st of April, 1956, the parties made a joint statement which reads--

"The parties have compromised. A decree for ejection in favour of the plaintiffs against the defendant may be passed not to be executable before the 30th of September, 1958. The parties will bear their own costs."

On the basis of this statement the court passed a decree for ejection, which was declared not to be executable before the date fixed.

2. When, however, the decree-holders sought to execute the decree after the decree had become executable they were resisted by the tenant both by raising objection in the execution proceedings, and also by filing a separate suit for a declaration that the decree being based on a compromise was nullity and unenforceable and for an injunction restraining the decree-holders from executing it.

3. In the suit the preliminary issue was framed, "whether the suit is maintainable?" and this was decided against the present petitioner, whose suit was dismissed. In the execution proceedings the

decree-holders raised the objection that in the light of the decision in that suit the objection petition was barred by the rule of constructive res judicata and also that the objection petition was not maintainable on other grounds, and these issues were also decided against the present petitioner in the executing Court.

4. His appeals against these adverse decisions were heard together by the learned District Judge, who dismissed both of them, holding that the decree of the 21st of April, 1956, was valid and enforceable.

5. In connection with the petition regarding the suit filed as a revision petition under Section 35 of the Act of 1952 it may be mentioned at the outset that this should have been filed as a regular second appeal, since the Rent Act itself makes no provision for a declaratory suit challenging a decree passed under its provisions, and obviously a suit of this nature was an ordinary civil suit governed by the provisions of the Civil Procedure Code. It may, however, be treated as an appeal.

6. The root question, which will decide both cases, is whether a decree for ejectment passed under Section 13 of the Act is a nullity and unenforceable if it is based on a compromise between the parties. There are undoubtedly decisions of other Courts which appear to support this proposition. One of these is *Jagjivan Singh v. Sitaram*. AIR 1954 Raj 43, in which Wanchoo, C. J. dealing with similar provisions in the Rajas-than Act has held that the Court cannot pass a decree for ejectment unless it is satisfied that one or the other of the conditions mentioned in Section 13 is satisfied and that it is not open to a Court to pass a decree for ejectment merely because the parties agree that a decree be so passed. In *Korah Punnen v. Parameswara Kurup Vasudeva Kurup*¹, a Full Bench has held that a tenant cannot contract himself out of the rights conferred on him under clause 9(1) of the Travancore-Cochin Buildings (Lease and Rent Control) Order and that a decree passed on a compromise cannot be enforced. Reliance was also placed on certain observations of Jenkins, L. J., in *Middleton v. Bal-dock*², at page 715 as follows:--

"I think the principles deducible from those cases are that under the Acts the Court only has jurisdiction to order possession on one or other of the specified statutory grounds. The Court, however, is not always obliged to hear a case out, because, if the tenant appears and admits that the plaintiff is entitled to possession on one of the statutory grounds, the Court may act on that admission and make the appropriate order. Again -- and this, I think, is an extension of what I have just said -- if there is a representation made by the plaintiff landlord to the defendant tenant to the effect, for instance, that the landlord wants the premises for his own occupation -- which is one of the ingredients of a ground on which possession may be ordered -- and the tenant accepts that representation and on that

footing submits to an order, the order can validly be subject to the possibility that in the event of the representation turning out to have been false the efficacy of the order may be destroyed. In my judgment, the Court cannot order without inquiry or investigation simply because the tenant appears in Court and says: 'I consent to an order.' or goes into the witness box and says he does not contest the plaintiffs right".

In that case, however, the peculiar circumstances under which these observations were made must be stated. The tenant of the premises in dispute was a husband who had deserted his wife, leaving her in occupation of the disputed premises, and the question before the Court of Appeal was to what extent the wife was bound by the fact that her husband had appeared in a suit brought by the landlord for possession and had offered to hand over possession immediately, and it was held that the trial Court had wrongly refused wife's application to be joined as a party to the suit and it was Ordered that she should be so joined.

7. The question whether a compromise decree could be passed in a suit under the East Punjab Urban Rent Restriction Act of 1949 came for consideration before Dua J. and myself in *Babu Ram Sharma v. Bal Singh*, 61 Pun LR 33. The case was one in which ejectment was sought on the grounds of non-payment of arrears of rent and a decree was passed on the basis of a compromise whereby the tenant was allowed to pay the amount due by instalments, with a default clause. The question which arose was whether such a decree could be passed and whether on a default occurring the decree for possession could be executed. We decided both the questions in favour of the landlord. We held that if the compromise decree is based on grounds on which the landlord could claim a decree for eviction under Section 13 of the Act it was within the jurisdiction and competence of the Rent Controller to pass such a decree,

8. Admittedly, the facts in that case were not quite similar to those of the present case but a similar case came for consideration before Grover J., in *Vas Dev Sharma v. Milkhi Ram Bhatia*³, The grounds on which the landlord sought to eject the tenant in that case were conversion of user, non-payment of rent and requirement for personal occupation and on the 9th of November, 1955, after the plaintiff's evidence had been led a compromise took place by virtue of which a decree was passed according to which the tenant was liable to ejectment after the 30th of April, 1957. Case law was discussed, including the cases to which I have referred to above, and the learned Judge expressed his view in the following passage:--

"From the above discussion of the English cases the principle which has also been accepted by the Bench of this Court (in *Babu Ram Sharma's* case, 61 Pun LR 33) it is quite clear that if the tenant admits after a suit for ejectment has been filed that the landlord is entitled to possession on one of the statutory grounds the Court can make an appropriate order Or if the landlord has made some representation within the terms of the

statute to the tenant and which is one of the ingredients of a ground on which possession can be ordered and the tenant accepts that representation and submits to an order, then also the Court will be fully justified in making a valid order of eviction. Each case therefore will have to be decided on its own facts and it will have to be seen whether there is any material to justify an inference that an admission, be it express or implied, has been made by the tenant on the existence of one of the statutory grounds".

9. On behalf of the petitioner it was strenuously contended that there was no admission on the part of the tenant in this case that the landlords required the premises for their own occupation, but there does not appear to" have been any such direct admission in the case decided by Grover J. It seems to me that where the plaintiffs evidence has been led and the defendant then consents to the passing of a decree in return for concession of continued occupation of the premises for a time, which in the present case was for more than two years, the Court is fully justified in coming to the conclusion that the defendant admits the strength Of the plaintiffs case and consents to a decree for ejection on the ground of personal requirement being passed in return for the concession, I am accordingly of the opinion that the view taken by the lower Court is correct and I dismiss the revision petitions with costs. Counsel's fee Rs. 50/- in each case.

Cases Referred.

1(S) AIR 1956 Trav-Co. 1

21950-1 All ER 708

362 Pun LR 888: (AIR 1960 Punj 514)