

Punjab-Haryana High Court

The Municipal Committee, Kaithal vs Pyare Lal Rikhi Ram And Ors. on 2 November, 1973

Equivalent citations: AIR 1974 P H 239

Bench: P Pandit

JUDGMENT

1. On 30th August, 1960, Piarey Lal took on lease two plots of land Nos. 198/11 and 199/11, situate in Kaithal, District Karnal, from the Municipal Committee, Kaithal, on a yearly rent of Rs. 114/- for the period commencing 1st April, 1960, to 31st March, 1961. It was mentioned in the rent note that Piarey Lal would not sub-lease these plots to anybody and vacate them after the expiry of the lease period. It appears that soon after the writing of the rent note, Piarey Lal gave these plots on rent to Raj Kumar and Hardwari Lal. On 17th January, 1962, another rent note for the period 1st April, 1961 to 31st March, 1962, was written in favour of the Committee by Yash Pal, acting as the Attorney of Piarey Lal, regarding these very plots on the same rent. In April 1963, the Committee filed a suit for possession of these plots and recovery of Rs. 114/- as rent against Yash Pal, Piarey Lal, Raj Kumar and Hardwari Lal, defendants Nos. 1 to 4. Two grounds were taken in support of the claim. The first was the Yash Pal and Piarey Lal had sublet these plots to Raj Kumar and Hardwari Lal without the consent of the Committee and the second was that the tenants had not paid any rent from 1st April, 1962 to 31st March, 1963.

2. The suit was contested by all the defendants. The case set up by defendants No. 1 and 2, namely, Yash Pal and Piarey Lal, was that the latter had constructed two shops on the plots by incurring an expense of Rs. 3,000/- and subsequently, mortgaged them with the former on 4th April, 1961. The position taken up by defendants Nos. 3 and 4 was that they were the sub-tenants of these plots under Piarey Lal and had been in possession thereof since a very long time.

3. The trial Court decreed the suit for possession of the plots against all the defendants. But rejected the claim for the recovery of Rs. 114/-, as, according to it, the amount had been realised by the plaintiffs.

4. When the matter went in appeal before the learned Senior Subordinate Judge, Karnal, he came to the conclusion that the finding given by the trial Court that Yash Pal had executed the rent-deed dated 17th January, 1962, as the Attorney of Piarey Lal, was not correct. According to the learned Judge, it had not been established on the record that Yash Pal was the Mukhtiar-i-am of Piarey Lal. He further found that Yash Pal had no authority to execute the said rent note in favour of the plaintiff. The learned Judge also held that the plaintiff should fail, because they had not issued a notice under Section 106 of the Transfer of Property Act to the defendants before filing the suit. The finding of the trial Court on this point, however, was that there was no necessity for issuing any notice, because the tenancy was for a fixed period and after the same was over, there was no point in sending such a notice to the defendants. The learned Senior Subordinate Judge, on the other hand, came to the conclusion that after the expiry of the period of tenancy mentioned in the rent note, Piarey Lal became a tenant holding over, inasmuch as the Committee was realising the rent of the plots in his name. Reference in this connection was made to the receipt, Exhibit P-3, which was for the rent pertaining to the year 1962-63. Reliance was also placed on a notice, Exhibit P-4, given by

the Committee on 3rd October/3rd December, 1962, in which rent was demanded from Piarey Lal for the year 1962-63. Both these circumstances, according to the learned Judge, showed that the Committee was treating Piarey Lal and not Yash Pal as their tenant. It was conceded before the learned Judge that if Piarey Lal was a tenant holding over, then a notice under Section 106 of the Transfer of Property Act was required to be given to him before filing the suit for possession of the property. That notice, admittedly, having not been issued, the plaintiff was liable to fail on that ground. As a result, the appeal was accepted, the judgment and decree of the trial Court reversed and the suit dismissed. Against that decision, the present second appeal has been filed by the Committee.

5. It is beyond dispute that if the finding of the learned Senior Subordinate Judge that Piarey Lal was a tenant holding over, is correct, then the plaintiff's suit must be dismissed, because, admittedly, no notice under Section 106 of the Transfer of Property Act was issued to him before filing the suit and such a notice was necessary under the law. The point argued before me is whether this finding is in accordance with law. In other words, is it right to say in the circumstances of this case that Piarey Lal was a tenant holding over?

6. It is true that though the effect of holding over has been mentioned in Section 116 of the Transfer of Property Act, there is no definition given of a "tenant holding over" in the said Act. The Federal Court had the occasion to deal with this matter in *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden*, AIR 1949 FC 124, and there it was observed, per majority, as under:--

"The tenancy, which is created by the 'holding over' of a lessee or under lessee, is new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and it cannot be disputed that to bring new tenancy into existence, there must be a bilateral act. What Section 116 contemplates is that on one side there should be an offer of taking a renewed or fresh demise evidenced by the lessee's or sub-lessee's continuing in occupation of the property after his interest has ceased and on the other side there must be a definite assent to this continuance of possession by the landlord expressed by acceptance of rent or otherwise. The assent of the landlord which if sounded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it."

7. The question for decision is whether the requirement mentioned by the Federal Court for a finding that Piarey Lal is a tenant holding over have been complied with in this case or not. There is no manner of doubt that by virtue of the receipt, Exhibit P-3, the rent was accepted by the Municipal Committee on behalf of Piarey Lal for the year 1962-63 after the tenancy period mentioned in the original rent note dated 30th August, 1960, Exhibit P-9, executed by Piarey Lal himself was over. It is also beyond dispute that the plaintiff themselves had issued a notice, Exhibit P-4, demanding the rent for the year 1962-63 from Piarey Lal. I am purposely avoiding a reference to the subsequent rent note dated 17th January, 1962, which was executed by Yash Pal as Mukhtiar-i-am of Piarey Lal, because the finding given by the learned Senior Subordinate Judge was that it had not been established on the record that Yash Pal was in fact the attorney of Piarey Lal. But, as I have already said, the fact remains that the rent was paid to the Committee on behalf of Piarey Lal for the year 1962-63 after the same had been demanded from the latter by the former after the lease period

mentioned in Exhibit P.9, dated 30th August, 1960, was over. If these were the facts, could it be said that Piarey Lal was a tenant holding over? If the Municipal Committee had known that Yashpal was not the Mukhtiar-i-am of Piarey Lal, when he executed the rent note dated 17th January, 1962, Exhibit P. 1, after the period covered by the first rent note, Exhibit P. 9, was over, would they have accepted the rent from Piarey Lal? Then again, would they have even demanded the rent from Piarey Lal under those circumstances? Unfortunately, the oral evidence produced in this case by either of the parties does not make the position clear so far as these two matters are concerned. When the Federal Court was saying that a new tenancy would come into operation, they obviously implied that the tenant wanted to continue as a tenant on the old terms and the landlord was accepting rent from him on that basis. According to the Federal Court, the new tenancy would come into operation if there was a bilateral act. In other words, the tenant offered to renew the previous tenancy on the old terms after his interest under the previous rent note had ceased and on the other side, there was a positive assent by the landlord to the tenants continuing in possession of the premises on the old terms and that assent could be deduced by the acceptance of the rent from the tenant as such and in clear recognition of the tenancy rights asserted by the person who paid it. The difficulty regarding this point has arisen, because there was no specific issue on the point whether Piarey Lal was a tenant holding over or not. It is also significant to mention that in the pleadings of the parties, especially of the plaintiff Municipal Committee, the expression 'tenant holding over' has even not been referred to. Learned counsel for the appellant, however, submitted that this question would be covered by issue No. 3, which was-"Did the plaintiff serve upon defendants Nos. 1 and 2 a notice under Section 106, Transfer of Property Act, and if not, what effect? O. P." His argument was that if Piarey Lal was a tenant holding over, then notice under Section 106 of the Transfer of Property Act was necessary and if not, the said notice would not be essential. If that be so, then the plaintiff should have led some evidence to show that the Committee would not have either demanded the rent from Piarey Lal or accepted the same on his behalf, if they had information that Yash Pal was not his Mukhtiar-i-am and he had no authority to execute the rent note, Exhibit P-1, dated 17th January, 1962. This became all the more necessary, because in the joint written statement filed by Yash Pal and Piarey Lal, it had been specifically mentioned in para 1(on merits) thereof that it was denied that Yash Pal was the Mukhtar of Piarey Lal. Immediately when this averment in the written statement came to the knowledge of the plaintiff, they should have led some evidence with regard to the facts already mentioned by me, especially when they knew that issue No. 3 was framed in the case and the question of Piarey Lal being a tenant holding over, might arise under the same, as is being contended by the learned counsel for the appellant before me. Oral evidence produced by the parties on this point, as I have already mentioned above, does not throw any light on this matter. It is true that in the natural course of events, one can imagine that the Committee could not have either demanded the rent from Piarey Lal or accepted the same on his behalf if Exhibit P-1 had not come into existence. In order to avoid drawing this inference, however, it would, in my opinion, be in the interest of justice that before a final decision was given in the case, both the parties be given a chance to lead evidence on the point whether or not Piarey Lal could be considered to be a tenant holding over, especially when, as I have already stated, there was no pleading on this point and, consequently, no specific issue struck regarding the same. The trial judge is directed to give his report on this point after giving a reasonable opportunity to both the parties to lead evidence thereon. The report should come through the lower Appellate Court, which shall also record its own finding thereon after hearing the counsel. The said report should reach this Court

within three months. Let the papers of this case be sent to the trial Judge for this purpose. Parties have been directed to appear before him on 10-12-1973.

8. It may be mentioned that the learned counsel for the respondents also raised the point that the plaintiff had come to Court with a specific allegation that defendant No. 1 as Mukhtar of defendant No. 2 had taken the plots on an annual rent of Rs. 114/- from 1-4-1961 to 31-3-1962 and written a rent note dated 17th January 1962, and it was agreed that the plots would be returned to the plaintiff in the same condition in which they had been taken on rent. Defendants Nos. 1 and 2 had, without the permission of the plaintiff, given the said plots on rent to defendants Nos. 3 and 4, and this they had no right to do. The defendants had been given notice to vacate the plots, but they neither did so nor paid the rent for the period 1-4-1962 to 31-3-1963. On this ground, it was stated that the plaintiff wanted to evict the defendants and did not want to keep them as their tenants. They, therefore, brought this suit in April 1963 for ejectment and also for the recovery of Rupees 114/- as rent for the period commencing 1-4-1962 to 31-3-1963. According to the learned counsel, since the finding given by the lower Appellate Court was that defendant No. 1 was not the Mukhtar of defendant No. 2, therefore, the rent deed, on the basis of which the suit was brought, had to be ruled out of consideration, and that being so, the suit should have been dismissed on that ground alone, because no other question for decision arose on the pleadings of the plaintiff themselves.

9. It is not possible to accept this contention of the learned counsel, because it is not the case of the defendants that they were not the tenants of this land and were either owners thereof or trespassers. As a matter of fact, they accepted themselves to be the tenants and pleaded that the suit was not competent as no notice to quit had been served upon them, as required by Section 116 of the Transfer of Property Act. They had also admitted that they had built shops on the plots and had inducted defendants No. 3 and 4, though there was no relationship of landlord and tenant between the latter and the plaintiff. This apart, such an argument was never raised in any of the Courts below and it is clear from their judgments that it was understood by the parties that defendant No. 2 Piarey Lal was the tenant of these plots under the plaintiff and the whole evidence was led by the parties keeping that fact in view. Under these circumstances, it could not be held that simply because Yash Pal had not been found to be the Mukhtar of Piarey Lal and the rent deed, Exhibit P-1, executed by him, therefore, not binding on the latter, the suit for the ejectment of the defendants should be rejected on that ground alone.

10. Order accordingly.