

PETITIONER:
SANT LAL JAIN

Vs.

RESPONDENT:
AVTAR SINGH

DATE OF JUDGMENT 12/03/1985

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
FAZALALI, SYED MURTAZA

CITATION:
1985 AIR 857 1985 SCR (3) 184
1985 SCC (2) 332 1985 SCALE (1)423

ACT:

East Punjab Rent Restriction Act 1949: Section 13, Grant of licence for one year-on expiry of period licence revoked-Suit for mandatory injunction filed-Delay in filian of-Whether excusable-Such Suit in effect one for possession-Suit should be decreed-On termination of licence-Licencee's possession that of a tres-passer.

Indian Evidence Act, Section 16.

Licensee purchased property during pendency of suit-It could set up title to property-eviction from property-Whether permissible.

HEADNOTE:

The appellant had taken a plot of land on lease under a lease-deed for a term of 10 years for M/s Jain Motors. At that time he was only a partner of M/s Jain Motors but later he became its sole owner. The respondent took from the appellant on licence for one year under a deed the suit shed for carrying on work shop business Since he did not vacate the she dafter the expiry of the period the appellant terminated the licence and filed the suit for a mandatory injunction directing the respondent to vacate the premises. The respondent opposed the suit contending that the appellant sub-let to him a plot of land and he had raised a new construction thereon and is carrying on workshop business, and that the relationship between the parties was that of landlord and tenant and the suit for mandatory injunction was not maintainable.

The trial court dismissed the suit, for mandatory injunction as not maintainable.

On appeal, the Additional District Judge held that the relationship between the parties was only one of licensee and that suit for mandatory injunction was maintainable, allowed the appeal decreed the suit and directed the respondent to deliver vacant possession of the shed.

In the second appeal, the respondent filed an application for receiving as additional evidence a sale-deed dated 27.8.1979 whereby he claimed to have purchased the entire property from its original owner. On a finding called for

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by the High Court, the trial court found that the respondent

had purchased the property from its original owner by that sale-deed. The High Court held that after the commencement of the tenancy or the license a tenant or licensee who has purchased the property from its original owner cannot be evicted from that property on the basis of the lease or laciness. The Second appeal was allowed, the judgment and decree of the additional District Judge was set aside and the trial court's decree dismissing the suit was restored.

Allowing the Appeal,

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HELD: 1. There is no merger of the whole property by its original owner in favor of the appellant by reason of the sale of the entire property by the original owner in favor of the respondent or of the license given by the appellant to the respondent which had been revoked prior to the date of the suit. The lease in favor of the appellant continues and under the East Punjab Rent Restrictions Act 1949 even the tenant of a vacant land cannot be evicted therefrom except in accordance with the provisions of that Act. [188F G]

K.K Verma & Anr. v. Union of India & Anr., AIR 1954 Bombay 358, Milka Singh v. Diana & Ors., AIR 1964 Jammu & Kashmir 99, relied upon.

2. In the instant case, it has not been shown that the appellant had filed the suit for mandatory injunction after considerable delay which will disentitle him to the discretionary relief. Even if there was some delay, in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another suit with all the attendant delay trouble and expense. [189E-F]

3. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds in possession of the property to which he may be found to be entitled. Therefore, the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.

[189G]

4. The respondent was a licensee and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the licence or in the suit for recovery of possession of the property instituted after revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to the property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from some one else lawfully claiming under him, in which case there would be clear merger. The respondent had not surrendered the possession of the property to the appellant even after the termination of the licence and the institution of the suit. The appellant is, therefore, entitled to recover possession of the property. The respondent is directed to deliver possession of the property to the appellant forthwith failing which it will be open to the appellant to execute the decree and obtain possession. [189H; 190A-C]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 216 of 1984

From the Judgment and Order dated 11.9.80 of the High Court of Punjab & Haryana at Chandigarh in R.S.A. No. 126/76.

Harbans Lal A.K Goel for the Appellant
A.K Gauguli and A.D. Sikri for the Respondent.

The Judgment of the Court was delivered by

VRADARAJAN, J. This appeal by special leave is by the plaintiff against the reversing judgment of the Punjab and Haryana High Court in R.S.A. No. 126 of 1979. The trial court had dismissed the suit but the learned Additional District Judge, Patiala allowed the plaintiff's appeal and decreed the suit.

The plaintiff/appellant's case was that he had taken on lease under a lease-deed dated 26.8.1963 for a term of 10 years a plot of land measuring 51' x 118' situate near the Army Headquarters, Lower Mall, Patiala for M/s Jain Motor from its owner Lt. Col. Sadan Singh. He was only a partner of M/s Jain Motors in 1963, but later became its sole owner in 1967. The defendant/respondent took from the appellant on licence for one year under a deed dated 10.12.1969 the suit shed for carrying on the work of repair of motors, tractors, etc. But since he did not vacate the shed after the expiry of the period he terminated the licence and filed the suit on 15.2.1973 for a mandatory injunction directing him to vacate the premises. The respondent opposed the suit contending that the appellant sub-let to him a plot of land in 1966-67 and he has raised a new construction thereon and is carrying on workshop business therein since then. He further contended that the relationship between the parties was that of landlord and tenant and that the suit for mandatory injunction was not maintainable.

The trial court found that M/s Jain Motors were the lessees and that the respondent became a sub-tenant of a piece of land and constructed the suit shed thereon and that the suit for mandatory injunction is not maintainable and dismissed the suit. In the appeal the learned Additional District Judge set aside the trial court's findings recorded in favour of the respondent and found that no rent is mentioned either in the document executed by the respon-

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dent in favour of the appellant or in the written statement and no rent receipt was produced by the respondent, and that the relationship between the parties was only one of licensor and licensee. On the question of delay in filing the suit the learned Additional District Judge found that the parties remained busy in fighting out criminal cases till the end and that the present suit had been filed thereafter and there had been no undue delay and also that there was no challenge to the trial court's finding that the respondent had not put any construction of his own and held that the suit for mandatory injunction against the licensee is maintainable. On these findings he allowed the appeal and decreed the suit, directing the respondent to deliver vacant possession of the shed in dispute to the appellant.

In the second appeal the respondent filed an application for receiving as additional evidence a sale-deed dated 27.8.1979 whereby he claimed to have purchased the entire property from its original owner. The High Court called for finding in that regard from the trial court which thereupon found that the respondent has purchased the property from its original owner by that sale deed. It was contended in the High Court that in view of that sales, it is not open to the appellant to contend that the respondent in whom the title to the property has come to be vested after the date of the suit, is liable to be ejected on the

revocation of the license granted to him by the appellant. On the other hand, it was contended for the appellant that the fact that the respondent had purchased the property from its owner subsequent to the grant of the licence in favour of the respondent does not make any difference to the appellant's claim for recovering possession of the suit shed and that it is obligatory on the respondent to first surrender possession of the property after the licence had been revoked and then seek his remedy, according to law, on the basis of the title claimed by him. It was further contended that in view of the provisions of s. 13 of the East Punjab Rent Restrictions Act, 1949, the appellant who was the tenant of the property under its original owner cannot be dispossessed except in accordance with the provisions of that Act.

The learned Single Judge of the High Court rejected the appellant's contention that his rights under the lease by the original owner cannot be interfered with the provisions of the said Act, observing that from the decisions referred to by him H

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and the provisions of s. 116 of the Indian Evidence Act, it is clear that after the commencement of the tenancy or the licence a tenant or licensee who has purchased the property from its original owner cannot be evicted from that property on the lease or licence. He rejected the contention that the present suit for a mandatory injunction directing the respondent to vacate and hand over possession of the suit shed is in effect a suit for possession and he allowed the second appeal and set aside the judgment and decree of the learned Additional District Judge and restored the trial court's decree dismissing the suit.

Now the parties are bound by the following factual findings recorded by the learned Additional District Judge in the first appeal namely: (1) that the appellant who had become the sole proprietor of M/s Jain Motors in 1967 through at the time of the lease of the property by the original owner Lt. Col. Sadan Singh to M/s Jain Motors in 1963 he was only one of its partners, was the lessee of the property; (2) that the respondent had become a licensee of the suit shed under the appellant when the appellant was in possession of the whole of the demised premises including the suit shed as tenant under the original owner; (3) that the licence in favour of the respondent had been revoked before the institution of the present suit and (4) that subsequent to the decision in the first appeal on 7.12.1978, the respondent had purchased the entire property from the original owner by a sale-deed dated 27.8.1979. In these circumstances, there, is no merger of the lease of the whole property by its original owner in favour of the appellant by reason of the sale of the entire property by the original owner in favour of the respondent or of the licence given by the appellant to the respondent which had been revoked prior to the date of the suit. The lease in favour of the appellant continues, and it is not disputed that under the Act of 1949 referred to above, even the tenant of a vacant land in Patiala town cannot be evicted therefrom except in accordance with the provisions of that Act. In K.K. Verma & Anr. v. Union of India & Anr., (13 Chagla, C.J. presiding over a Division Bench has observed that in India a landlord can only eject his erstwhile tenant by recourse to law and by obtaining a decree for ejection. In Milkha Singh v. Dvna & Ors., (2) it has

(1) AIR 1954 Bombay 358

(2) AIR 1964 Jammu & Kashmir 99.

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been observed that the principle once a licensee always a licensee would apply to all kinds of licences and that it cannot be said that the moment the licence is terminated, the licensee's possession becomes that of a trespasser. In that case, one of us (Murtaza Fazal Ali, J.) as he then was speaking for the Division Bench has observed:

"After the termination of licence, the licensee is under clear obligation to surrender his possession to the owner and if he fails to do so, we do not see any reason why the licensee cannot be compelled to discharge this obligation by way of a mandatory injunction under s. 55 of the Specific Relief Act. We might further mention that even under English law a suit for injunction to evict a licensee has always been held to be maintainable.

Where a licensor approaches the court for an injunction within a reasonable time after the licence is terminated, he is entitled to the injunction. On the other hand, if the licensor causes huge delay the court may refuse the discretion to grant an injunction on the ground that the licensor had not been diligent and in that case the licensor will have to bring a suit for possession which will be governed by s.7 (v) of the Court Fees Act."

In the present case it has not been shown to us that the appellant had come to the court with the suit for mandatory injunction after any considerable delay which will disentitle him to the discretionary relief. Even if there was some delay, we think that in a case of this kind attempt should be made to avoid multiplicity of suits and the licensor should not be driven to file another round of suit with all the attendant delay, trouble and expense. The suit is in effect one for possession though couched in the form of a suit for mandatory injunction as what would be given to the plaintiff in case he succeeds is possession of the property to which he may be found to be entitled. Therefore, we are of the opinion that the appellant should not be denied relief merely because he had couched the plaint in the form of a suit for mandatory injunction.

The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him? during the subsistence of

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the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to set up title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from some one else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of property to the appellant even after the termination of the licence and the institution of the suit. The appellant is, therefore, entitled to recover possession of the property. We accordingly allow the appeal with

costs throughout and direct the respondent to deliver possession of the property to the appellant forthwith failing which it will be open to the appellant to execute the decree and obtain possession.

A.P.J.

Appeal allowed.

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