

**(1965) 05 P&H CK 0014**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Revision No. 261 of 1965**

Brahma Nand

APPELLANT

Vs

Parkash Chand and Others

RESPONDENT

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**Date of Decision :** 26-05-1965

**Acts Referred:**

Punjab Urban Rent Restriction Act, 1941 — Section 13

**Citation :** (1965) 05 P&H CK 0014

**Hon'ble Judges :** Dua, J

**Bench :** Single Bench

**Advocate :** B.R. Aggarwal, for the Appellant; Mohan Lal Gupta, for the Respondent

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## Judgement

Dua, J.—Shri Brahma Nand applied u/s 13 of the Punjab Urban Rent Restriction Act for the eviction of a number of respondents from the

premises in question. The said premises are stated to have been taken on rent on 7th May, 1951 for a period of one year per Exhibit P. 2 on a

monthly rent of Rs. 5/-. The rent was to be paid every month, the tenant being Gondi Ram, the predecessor-in-interest of the persons against

whom the present eviction proceedings were started. Gondi Ram died, as the order of the learned Rent Controller shows, five years prior to the

eviction proceedings: the exact date not being known to the counsel at the bar in this Court. The persons sought to be evicted had apparently paid

no rent from March, 1958 to April, 1963. From this, it is inferred that Gondi Ram must have died sometime before March, 1958. The premises

were also stated to be in a dangerous condition and unfit for human habitation justifying eviction.

2. This application was contested and the fact of Gondi Ram having taken the

premises on rent was also denied. Indeed, the persons in possession claimed ownership in themselves.

3. The learned Rent Controller ordered eviction of the persons in possession after trying the following two issues:

1. Whether the relationship of landlord and tenant exists between the parties? and
2. Whether the alleged grounds exist?

The Rent Controller observed in his order that Brahma Nand applicant had stated the premises in dispute had been taken on rent by Gondi Ram

from his father and subsequently from him vide rent-deed Exhibit P. 1 which was sent by him after admitting it to be correct.

4. Against the order of eviction, the matter was taken on appeal to the Appellate Authority, Patiala, by Parkash Chand and others. It may here be

mentioned that Parkash Chand, Siri Ram, Pawan Kumar minor, Sukhdev Ram minor and Mohinder Lal alias Surinder Lal minor under the

guardianship of Parkash Chand, their real brother, were the sons of Gondi Ram and Smt. Shanti Devi, was widow of Gondi Ram, who, amongst

others, were the appellants. Before the Appellate Authority, it was argued that the Rent Controller was wrong in holding that the relationship of

landlord and tenant subsisted between the parties, Gondi Ram, according to the argument, had died after the expiry of the period of tenancy

created under the alleged rent deed and the legal representatives of Gondi Ram did not become the tenants of Brahma Nand because statutory

tenancy is not heritable. This argument appears to have prevailed with the learned Appellate Authority for the reason that tenancy being for a fixed

period, of one year, after the expiry of that period, Gondi Ram became the statutory tenant under Brahma Nand. Gondi Ram, who, according to

the common case of the parties before the Appellate Authority, died somewhere near about 1953, was a statutory tenant and, therefore, his rights

and liabilities as a statutory tenant could not be inherited by his heirs, as indeed they could not be transferred by him, with the result that possession

of the appellants before the Appellate Authority over the premises in dispute was that of trespassers and not of tenants. In support of this

conclusion, the Appellate Authority relied on a decision of Mehar Singh, J. in Nihal Chand v. Shiv Narain (1958) 60 P.L.R. 297. Reference was

also made to Ganga Narain v. Balkishan Dass AIR 1934 P&H. 356 and Niadre v. Nanneh (1960) 62 P.L.R. 451, in support of this view. The

impugned order also contains observations that the learned counsel for the landlord had conceded that Gondi Ram had become a statutory tenant

after the expiry of the period of one year for which there was a contractual tenancy, though it was contended on his behalf that the appellants

remained tenants by holding over or tenants by sufferance and the relationship of landlord and tenant subsisted between the parties. This

submission did not find favour with the Appellate Authority, with the result that the appeal was allowed and the order of eviction set aside.

4. On revision in this Court, the learned counsel for the petitioner-landlord has very strongly urged that the plea of Gondi Ram having become a

statutory tenant on the expiry of one year from the date of rent deed having not been taken in the pleadings and also having not been argued before

the Rent Controller, could not in law be allowed by the learned Appellate Authority to be raised for the first time on appeal. According to him, the

present case is not covered by the rule which permits an appellate Court to allow a pure question of law going to the root of the controversy to be

raised before it for the first time and, therefore, the Court below has acted illegally and unjustly in allowing it to be raised, without amendment of

the pleadings and a fresh trial thereon. The counsel has submitted that if this plea had been raised, it was open to his client to have shown by

evidence that Gondi Ram had after the expiry of one year actually continued to remain a contractual tenant because it is not necessary that there

must be a written lease for the purpose of creating the contractual relationship of landlord and tenant. According to the learned counsel, he could

also have shown that Gondi Ram had entered into the tenancy as Karta of the joint Hindu family, with the result that all the members of Ills family

must in that event be deemed to have become the tenants and that, therefore, there was no question of Gondi Ram's sons and wife inheriting this

tenancy.

5. On behalf of the respondents, this argument is sought to be met by the submission that since the tenancy was denied by the persons in actual

possession of the property, it was not necessary for them to plead statutory tenancy by positive averment and that it was for the landlord to prove

all the essential ingredients for the purpose of seeking an eviction order, The learned counsel for the respondents has also in support of his

submission drawn my attention to a decision of the Supreme Court in *Cunga Dutt v. Kartik Chandra Das* AIR 1961 I.S.C. 1067, in which it is laid

down that where a contractual tenancy, to which the rent control legislation applies, has expired by efflux of time or by determination by notice to

quit and the tenant continues in possession of the premises by virtue of statutory protection, acceptance of rent from the tenant by the landlord after

the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord has assented to a new contractual

tenancy. In that case, a fresh notice as prescribed by section 108, Transfer of Property Act, was held not to be necessary. The counsel has also

made a reference to *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, where by majority, the Court held that a person

remaining in possession after the determination of tenancy becomes a statutory tenant and he can remain in possession, but cannot enforce terms of

original tenancy, with the result that a sub-lessee from a statutory tenant acquires no right of tenant under the Bombay Rents and Lodging House

Rates (Control) Act. Other cases to which my attention has been drawn are *Daulat Ram v. Smt. Bhagwanti* (1963) 65 P.L.R. 606, in which a

learned Single Judge observed that a tenant as defined under the East Punjab Urban Rent Restriction Act does not envisage an heir of a tenant

who dies intestate because the right of a statutory tenant is personal and cannot be transmitted to his heirs, *N.H. Thadani Vs. Chief Settlement*

*Commissioner, and Raman Lal Vs. Bhagwan Das*, .

6. After considering the arguments addressed at the bar and going through the record, in my view, the revision must succeed. The question whether

a tenancy, which is contractual at its inception, has terminated and the tenant has since become a statutory tenant, is not a pure question of law but

one which falls for determination on the facts and circumstances of each case. A tenant holding over, who pays rent and from whom the landlord

accepts rent as such, does not necessarily, for that reason alone, become a statutory tenant : it may well be that there is a fresh tenancy created by

the acceptance of rent by the landlord which would be the case if the acceptance of rent is attributable to the landlord assenting to a new tenancy

after the termination of the previous one. In the case in hand, if the persons in possession, who are heirs of Gondi Ram, wanted to rely on the fact that their predecessor-in-interest had, after the expiry of one year of the tenancy, become a statutory tenant, and such statutory tenancy not being heritable, these persons were trespassers, claiming adversely to the owner, then, in my view, it was in all fairness incumbent on them to raise this plea before the Rent Controller in reasonably clear terms. It may be remembered that the provision of the CPC in regard to pleadings have not in terms been made applicable to the proceedings under the Rent Control view of justice and fair-play. Had this precise objection been taken before the Controller, then the petitioner could have shown that either there was a fresh tenancy or the original tenancy was such that no question of its being heritable or otherwise arose. Again, if Gondi Ram had truly become a statutory tenant and on his death his heirs and successors had started claiming adversely to the rightful owners, then had such a plea been taken, the present petitioner could have immediately instituted a regular suit for possession in the civil Court. Failure to take this plea before the Controller in this case in hand is quite clearly calculated to prejudice the owners and to allow this plea for the first time on appeal, can scarcely be considered to promote the cause of substantial justice. As a general rule, an Appellate Authority has to consider the correctness of the order under appeal on the existing material and in the light of the points actually raised and agitated before and determined by the lower Tribunal. In the interest of justice, fresh questions of law going to the root of controversy on admitted or properly established facts are open in the discretion of the appeal Tribunal to be raised on appeal, but this is done to promote and not to defeat the cause of justice. To allow a new question to be raised for the first time on appeal, which requires plea and evidence in order to prevail, can by no means tend to promote the cause of justice, and indeed our jurisprudence does not look at such a course or practice with favour.

7. The contention that mere denial of tenancy by the heirs and successors of Gondhi Ram before the Rent Controller is enough has not appealed to me and no provision of law applicable to these proceedings has been brought to my notice which would compel me to sustain it. If justice and fair-

play have to be considered to be the criterion, then the successors of Gondi Ram should have raised this plea in reasonably clear terms before the

Rent Controller, and having not done so, they cannot be permitted to raise it on appeal for the first time.

8. On the view that I have taken, it is unnecessary, as indeed it is not permissible, to go into the further question whether in the case in hand, the lease had actually terminated on the expiry of one year and thereafter Gondi Ram became a statutory tenant, clothing his successors with the weapon of adverse possession; a question which does not appear to me to be quite so simple as may be supposed on first impression.

9. Once this plea is excluded from consideration, no other question would seem to arise, as the persons in possession do not claim to have paid the rent, and indeed they have boldly claimed adverse possession and have denied both lease-deed by Gondi Ram and title of the petitioner.

10. The respondents have not attempted to support the impugned order on any other ground. The observation of the Appellate Authority regarding concession by the landlord's counsel has not been relied upon and, in my opinion, rightly because if the point could not be agitated, the concession would be practically out of question and at least unavailing. A concession of this type by a counsel in the circumstances may also not be easily held binding on the client.

11. The result, therefore, is that this revision succeeds and reversing the order of the Appellate Authority, I restore that of the Rent Controller. In case the successors of Gondi Ram want to claim any adverse title, it is open to them to establish it in accordance with law and in the ordinary Courts.

12. In fairness, I would also direct that the respondents should not be dispossessed before 25th June, 1965, though there would be no bar to the execution proceedings being initiated immediately. On the facts of the case, I make no order as to costs.