

(1951) 04 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 576 of 1950

Kidar Nath

APPELLANT

Vs

Dr. Prema Nand
 Dr. Prema Nand Vs Kidar Nath

RESPONDENT

Date of Decision : 26-04-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Punjab Tenancy Act, 1887 — Section 4(5), 77(3)

Citation : AIR 1952 P&H 185

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : A.M. Suri and B.R. Tuli, for the Appellant;

Final Decision : Dismissed

Judgement

Kapur, J.—This is a rule directed against an order of Mr. K. S. Chadha, Subordinate Judge, Jagadhri, holding that the suit was triable by a civil Court.

2. On the 8th April, 1949 Prema Nand gave on lease a garden to Kidar Nath for three years from the 1st April 1949 to the 31st March 1952 at a yearly rent of Rs. 2,240/- which was later on reduced to Rs. 2,000/-. On the 25th March 1950 Kidar Nath served a notice on Prema Nand that by an agreement of the 1st August 1949 the lease had terminated and that he could not remain in possession any longer. On the 28th May 1950 Kidar Nath again gave notice and quitted on the 2nd June 1950. On the 11th June 1950 the lease for one year was auctioned by Prema Nand for a sum of Rs. 600/-.

3. Prema Nand then brought a suit for recovery of Rs. 1,400/- for damages on account of breach of contract by Kidar Nath. An objection was taken in the trial Court that the suit was not cognisable by a civil Court, which the learned Judge overruled, and a petition for revision has been brought against this order.

4. The point for determination is whether it is a suit covered by Section 77 (3) (1) of the Punjab Tenancy Act which provides:

"The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Courts shall take cognisance of any dispute or matter with respect to which any suit might be instituted:--

* * * * * (i) any other suit between landlord and tenant arising out of the lease or conditions on which a tenancy is held."

5. "Tenant" has been defined in the Punjab Tenancy Act in Section 4 (5) to mean "a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person."

6. The submission of the petitioner's counsel is that the word "holds" in Section 4 (5) of the Punjab Tenancy Act includes a person who held the land in dispute or has a right to hold the land, and he relies on "Rup Lal And Sons v. Secretary Of State AIR 1935 Lah 903 where it was held that a person who has been in possession of land as a tenant continues to hold the land and to be a tenant in spite of having been wrongly put out of possession, and therefore a suit by a tenant who has been ejected by his landlord for compensation for breach of contract is cognisable only by the revenue Court and inspite of dispossession he continues to be a tenant. Mr. Tuli for the plaintiff-respondent on the other hand submits that the real meaning of the word "holds" is "actually holds" and not that he held the land or had a right to hold the land, and he relies on "Baru v. Niadar ILR (1943) Lah 191 a decision of the Full Bench. At p. 205 Dalip Singh, J., with whom the other Judge agreed, approved of the observations of the learned Judges in "Kesar Singh v. Nihal Singh 45 PRe 1891, where Sir Meredyth Plowden, S. J., had observed:

"I am inclined to think that it is only for the purposes of this suit (suit u/s 50 of the Punjab Tenancy Act) that the dispossessed tenant is regarded by the Act as continuing to hold the land of his tenancy after dispossession."

The learned Senior Judge went on to observe-

"If we look at the converse case, namely, when a tenant wrongfully relinquishes his land, without notice, we find that he is not described in the Act as a tenant after such relinquishment. He is liable u/s 36 (3) for rent, under prescribed conditions: and he is liable to be sued for arrears of rent in a Revenue Court u/s 77 (h), but the worn tenant is excluded in that clause:

Ordinarily, then, a tenant is a person who has a right to hold and does hold, and the person described in Section 50 is a tenant only by an exceptional use of the term tenant & only, as it seems to me, during the period prescribed for bringing this special suit granted to him by Section 50, and for the purpose of exercising this right to sue."

At p. 213 Dalip Singh J., observed:--

"....since it is a general principle of law that the Act restricting the powers of Courts of ordinary jurisdiction must be strictly construed, it would follow that the

narrower interpretation must be preferred to the wider interpretation."

the narrower being "actually holds" and the wider "the right to hold". The learned Judge went on to say-

"....that a person who does not actually hold the land is not a tenant within the meaning of Section 4 (5)."

With this interpretation given by Dalip Singh, J., Tek Chand, J., at p. 240 agreed.

7. Following this Full Bench I am of the opinion that the word "holds" in Section 4 (5) of the Punjab Tenancy Act must mean a person who actually holds and not a person who held or has or had a right to hold. The jurisdiction of civil Courts is not to be excluded unless the statute expressly or by necessary intend merit takes away that jurisdiction. In my opinion the words of the statute do not take away the jurisdiction of the civil Court. I therefore dismiss this revision petition and discharge the rule, but there will be no order as to costs in this Court.