

the amount of Rs. 3,20,000/- must have been divided.

In that view of the case, the decree passed by the High Court will be modified as follows :—

The properties of the joint family except the properties divided on September 23, 1946, October 12, 1946, October 19, 1946, including the amount of Rs. 3,20,000/-, October 20, 1946, October 21, 1946, including the stock-in-trade, silks and sarees and cupboards, and on November 10, 1946, February 7, 1947, February 22, 1947, February 24, 1947, February 25, 1947, and the furniture, utensils and other movables between May and June, 1947, and the property divided on July 13, 1947, and the outstandings divided between February 5, 1948, and February 9, 1948, shall be partitioned between the parties. The partition will be made on the footing that defendant No. 3 is entitled to a half share and defendant No. 1, the plaintiffs collectively and defendant No. 2 are each entitled to a 1/6 share. Defendant No. 1 will be entitled to his costs in Appeals Nos. 218 of 1959 and 219 of 1959. The other appeals filed by the plaintiffs and defendant No. 3 will be dismissed. One hearing fee.

C. As. Nos. 218 and 219 of 1959 allowed.

C. As. Nos. 220 to 223 of 1959 dismissed.

GANGA DUTT MURARKA

v.

KARTIK CHANDRA DAS AND OTHERS.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Tenant, Eviction of—Determination of lease by efflux of time—Tenant continuing in possession on payment of rent fixed by rent control Acts—Landlord accepting the same—New tenancy, if created—Transfer of Property Act, 1882 (4 of 1882), ss. 106, 116.

The appellant was a contractual tenant of certain premises in the town of Calcutta of which the respondents were the owners. The respondents called upon the appellant to vacate and deliver possession of the premises on the expiration of the period of tenancy but possession was not delivered and the respondents were unable to obtain possession in view of the protection afforded to the tenants by the successive rent control Acts passed by the State. In the meantime the

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appellant continued to pay every month amounts equal to the contractual rent, and later the rent declared to be the statutory rent and the respondent accepted the same. The question arising for decision was whether the acceptance of the amounts by the respondents conferred upon the appellant the right of a tenant holding over within the meaning of s. 116 of the Transfer of Property Act.

Held, that where a contractual tenancy to which the rent control legislation applied, had expired by efflux of time or by determination by notice to quit and the tenant continued in possession of the premises, 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 had assented to a new contractual tenancy.

Kai Khushroo v. Bai Jerbai [1949] F.C.R. 262, followed.

Acceptance by the landlord from the tenant of amounts equivalent to rent after the contractual tenancy had expired or amounts which were fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of s. 116 of the Transfer of Property Act.

Occupation of the appellant after the determination of tenancy was not in pursuance of any contract express or implied but was by virtue of protection granted by the successive statutes and such occupation was not required to be determined in the manner prescribed by s. 106 of the Transfer of Property Act.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 82 of 1957.

Appeal from the judgment and decree dated April 4, 1955, of the Calcutta High Court in Appeal from Appellate Decree No. 1224 of 1953.

G. S. Pathak and *D. N. Mukherjee*, for the appellant.

H. N. Sanyal, *Additional Solicitor-General of India* and *P. K. Chatterjee*, for the respondents.

1961. February 10. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—Of the premises relating to which this dispute arises—No. 5, Raja Rajkissen Street, Calcutta—the respondents are the owners and the appellant was a contractual tenant from June 15, 1917, till June 15, 1947, under three successive tenancies for 10 years each. Under the first tenancy, the appellant paid rent at the rate of Rs. 84-15-0 per month, under the second tenancy at the rate of Rs. 180 per month

and under the third tenancy at the rate of Rs. 225 per month. The tenancy was in respect of buildings used for manufacturing "tin canisters" and open land. On September 30, 1946, the Governor of Bengal issued the Calcutta Rent Ordinance, V of 1946, making certain provisions for control of rent of premises in the town of Calcutta. By s. 12 of the Ordinance, it was provided in so far as it is material that notwithstanding, anything contained in the Transfer of Property Act, the Presidency Small Cause Courts Act or the Indian Contract Act, no order or decree for the recovery of possession of any premises shall be made as long as the tenant pays rent to the full extent allowable by the Ordinance and performs the conditions of the tenancy. By the proviso, the landlord was, notwithstanding the protection granted entitled, if the conditions specified therein were fulfilled, to obtain possession of the premises. This Ordinance was replaced by Act I of 1947 which contained substantially the same provisions. By the West Bengal Act V of 1948, the provisions of Ordinance V of 1946 and Act I of 1948, were continued. Thereafter on December 1, 1948, the West Bengal Premises Rent Control (Temporary Provisions) Act XXXVIII of 1948 was brought into operation and by this Act, the West Bengal Act V of 1948 was repealed, but the protection granted to the tenants was continued. This Act was repealed by the West Bengal Premises Rent Control Act, 1950, and by s. 12 of the latter Act protection to tenants, including tenants whose tenancies had expired, against eviction was granted by prohibiting courts from passing decrees or orders for recovery of possession of any premises in favour of landlords. It was provided by that Act that the landlord shall be entitled to obtain a decree in ejectment, *inter alia*, where the premises are reasonably required by him either for the purpose of building or rebuilding or for his own occupation.

By letter dated May 15, 1957, the respondents called upon the appellant to vacate and deliver possession on the expiry of the period of tenancy. Possession was however not delivered by the appellant

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and he continued to pay the stipulated amount and the same was accepted by the respondents. In an application under s. 9 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948; the Controller fixed the standard rent of the premises at Rs. 455 per month. After the enactment of the West Bengal Premises Rent Control Act, 1950, another application was submitted by the appellant and the standard rent was reduced to Rs. 247-8-0. On October 10, 1950, the respondents served a notice upon the appellant requiring him "to quit, vacate and deliver possession of the premises occupied", which the appellant was described as holding as "monthly tenant", on the expiry of the 31st of Chaitra, 1357 B. S., i.e., April 14, 1951. The ground for eviction, it was claimed, was that the premises were reasonably required by the landlords for putting up new buildings thereon. The appellant having failed to vacate the premises, the respondents sued in the Court of Small Causes, Calcutta, for a decree in ejectment. The Court of Small Causes decreed the suit filed by the respondents. In appeal to the Special Bench, Court of Small Causes, the decree passed by the court of first instance was reversed. The appellate court held that by acceptance of rent after determination of the tenancy in June, 1947, the appellant continued to be "a tenant holding over" and as the purpose of the tenancy was manufacturing, it could be determined only by a notice of six months, expiring with the year of tenancy and as no such notice was served, the tenancy was not determined and the suit was liable to fail. In appeal to the High Court of Judicature at Calcutta, the decree passed by the Special Bench was reversed and the decree passed by the court of first instance was restored. With certificate of fitness under Art. 133(1)(c) of the Constitution this appeal is preferred by the appellant against the order of the High Court.

The contractual tenancy in favour of the appellant was determined by efflux of time on June 15, 1947, and since that date there has been between the parties no fresh contractual tenancy. The respondents were,

it appears, anxious to obtain possession of the premises let out to the appellant, but they were unable to obtain assistance of the court in view of the protection afforded to the appellant by the successive rent control Acts. In the meanwhile, the appellant continued to pay every month amounts equal to the contractual rent, and later the rent declared to be the statutory rent. Does the acceptance of the amounts paid by the appellant confer upon him the right of a tenant holding over within the meaning of s. 116 of the Transfer of Property Act?

Section 116 of the Transfer of Property Act in so far as it is material provides that if a lessee of property remains in possession thereof after the determination of the lease granted to him and the lessor accepts rent from the lessee or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year or from month to month according to the purpose for which the property is leased as specified in s. 106. It is, however, well settled 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, 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. It was observed by B. K. Mukherjea, J. (as he then was), in *Kai Khushroo v. Bai Jerbai* (1):

“On the determination of a lease, it is the duty of the lessee to deliver up possession of the demised premises to the lessor. If the lessee or a sub-lessee under him continues in possession even after the determination of the lease, the landlord undoubtedly has the right to eject him forthwith; but if he does not, and there is neither assent or dissent on his part to the continuance of occupation of such person, the latter becomes in the language of English law a tenant on sufferance who has no lawful title to

(1) [1949] F.C.R. 262, 270, 272.

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the land but holds it merely through the laches of the landlord. If now the landlord accepts rent from such person or otherwise expresses assent to the continuance of his possession, a new tenancy comes into existence as is contemplated by s. 116, Transfer of Property Act, and unless there is an agreement to the contrary, such tenancy would be regarded as one from year to year or from month to month in accordance with the provisions of s. 106 of the Act."

It was further observed :

".....in cases of tenancies relating to dwelling houses to which the Rent Restriction Acts apply, the tenant may enjoy a statutory immunity from eviction even after the lease has expired. The landlord cannot eject him except on specified grounds mentioned in the Acts themselves. In such circumstances, acceptance of rent by the landlord from a statutory tenant whose lease has already expired could not be regarded as evidence of a new agreement of tenancy, and it would not be open to such a tenant to urge, by way of defence, in a suit for ejection brought against him, under the provisions of Rent Restriction Act that by acceptance of rent a fresh tenancy was created which had to be determined by a fresh notice to quit."

Under the Calcutta Rent Ordinance, 1946, and the subsequent legislation which culminated in the West Bengal Premises Rent Control Act, 1950, in the expression "tenant" was included any person who continued in possession after termination of his tenancy. Section 12 of the West Bengal Premises Rent Control Act, 1950, expressly protects a tenant whose lease has expired. By the Rent Restriction Statutes at the material time, statutory immunity was granted to the appellant against eviction, and acceptance of the amounts from him which were equivalent to rent after the contractual tenancy had expired or which were fixed as standard rent did not amount to acceptance of rent from a lessee within the meaning of s. 116, Transfer of Property Act. Failure to take action which was consequent upon a statutory prohibition

imposed upon the courts and not the result of any voluntary conduct on the part of the appellant did not also amount to "otherwise assenting to the lessee continuing in possession." Of course, there is no prohibition against a landlord entering into a fresh contract of tenancy with a tenant whose right of occupation is determined and who remains in occupation by virtue of the statutory immunity. Apart from an express contract, conduct of the parties may undoubtedly justify an inference that after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case. Occupation of premises by a tenant whose tenancy is determined is by virtue of the protection granted by the statute and not because of any right arising from the contract which is determined. The statute protects his possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist. Once the prohibition against the exercise of jurisdiction by the court is removed, the right to obtain possession by the lessor under the ordinary law springs into action and the exercise of the lessor's right to evict the tenant will not unless the statute provides otherwise, be conditioned.

The High Court was in our judgment right in holding that by merely accepting rent from the appellant and by failing to take action against him, the appellant did not acquire the rights of a tenant holding over. It is true that in the notice dated October 10, 1950, the appellant is described as a "monthly tenant", but that is not indicative of conduct justifying an inference that a fresh contractual tenancy had come into existence. Within the meaning of the West Bengal Premises Rent Control Act, 1950, the appellant was a "tenant" and by calling the appellant a tenant the respondents did not evince an intention to treat him as a contractual tenant. The use of the adjective "monthly" also was not indicative of a contractual relation. The tenancy of the appellant was determined by efflux of time and subsequent occupation by him

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was not in pursuance of any contract express or implied, but was by virtue of the protection given by the successive statutes. This occupation did not confer any rights upon the appellant and was not required to be determined by a notice prescribed by s. 106 of the Transfer of Property Act.

In that view of the case, this appeal fails and is dismissed with costs.

Appeal dismissed.

JUTE AND GUNNY BROKERS LTD.
AND ANOTHER

v.

THE UNION OF INDIA AND OTHERS.

(and connected appeals)

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and
K. C. DAS GUPTA, JJ.)

Requisition and Acquisition of Property—Orders by Government of India—Notice on managing agents—Validity—Holders of Pucca delivery order, if owners of goods—Estoppel—Defence of India Act, 1939 (35 of 1939)—Defence of India Rules, 1939, rr. 75A, 119—Code of Civil Procedure, 1908 (Act V of 1908), O. XXIX, r. 2—Indian Companies Act, 1913 (7 of 1913), ss. 2(11), 148—Indian Sale of Goods Act, 1930 (3 of 1930), s. 18.

The Government of India entered into an agreement with the President of Argentine Institute for Promotion of Trade to supply hessian in return for licences for shipment to India of food-stuff purchased there and with a view to implement that agreement issued orders under r. 75A(1) of the Defence of India Rules, 1939, on the managing agents of certain jute mills on September 30, 1946, requisitioning hessian and directing them and any other person in possession of the said goods to deliver them to the Director of Supplies, Calcutta. Although in the heading of the notices after the names of the managing agents it was not stated that they were being addressed as managing agents of such and such mills, the schedules attached to them made it clear that they were addressed as managing agents of such and such mills. On the same day notices of acquisition under r. 75A(2) were served on the said managing agents and they were further informed that under r. 75A(3) the goods would vest in the Government at the beginning of the same day free from any mortgage, pledge, lien and other similar encumbrance. The notices of acquisition were also accompanied by schedules similar to those accompanying the requisition orders. The

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