

SHRI NEKI S/O BAKHATAWAR

v.

SHRI SATNARAIN AND ORS.

DECEMBER 19, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

*Punjab Security of Land Tenures Act, 1953: Section 9.*

*Punjab Tenancy Act, 1887: Section 70.*

*Tenancy Law—Tenant—Non—Payment of rent—Eviction order—Validity of—Appellant tenant of demised land—Under contract liable to pay rent of 1/3rd of produce to landlord—Tenant not obtaining any receipt from general power of attorney of landlord on account of faith—Due to failure of the crop in the year 1978, he could not pay the share of the crop but subsequently he had paid the same—Application for eviction filed by general power of attorney of landlord—Eviction order passed by primary authority on the ground that tenant made an admission that he had not paid the rent for 1978—Order affirmed by Revisional Authority—Writ dismissed by High Court—Appeal, before supreme Court—Held, since the appellant has been tenant for the past 50 years and never committed default in the payment of share of the crop, it is unlikely that he would commit default in the payment of rent for 1978—The normal probable human conduct would show that he must have paid the amount to the agent of the principal landlord—Subsequent to the filing of the application for three years he had already paid the rent to the respondent—G.P.A—On a conspectus of the relevant provisions and the probable human conduct, the finding recorded by the commissioner is not sustainable—Generally, tenant is not expected to demand from the landlord issue of a rent receipt for payment of the amount unless there is a special contract in that behalf—In this case, there appears to be a common practice of payment by way of the share in the crop, after the harvest, to the agent of the landlord—In these circumstances the finding that the appellant has committed default in payment of rent and had paid the same in the later year is not correct—He is not liable to ejection.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2309 of 1986.

A From the Judgment and Order dated 7.8.84 of the Punjab & Haryana High court in C.W.P. No. 3447 of 1984.

K.K Mohan and Ms. Smita Mohan for the Appellant.

B Sarvesh Bisharia, Nidhi Bisaria and S.K. Bisaria for the Respondents.

The following order of the Court was delivered :

C This appeal by special leave arises from the order of the Division Bench of the Punjab & Haryana High Court, made on August 7, 1984 in CWP No. 3447/84 dismissing the writ petition *in limine*.

D The appellant-tenant admittedly was in possession for the past 50 years, of the demised land. As per the contract, he is liable to pay 1/3rd of the produce to the landlord. The respondent, claiming to be General Power of Attorney (GPA) of the landlord, filled an application under section 9 of the Punjab Security of Land Tenures Act, 1953 (for short, the 'Act'). The appellant pleaded that he has paid the rent for all the years except for the rabi crop in the year 1978 due to failure of crops in that year; he was not obtaining any receipt on account of faith in the GPA of the landlord. The primary authority held that on the admission made by E the appellant that he had not paid rent, for the year 1978, he is liable to be ejected. The appeal was dismissed summarily. The revision, though all the contentions of the appellant were heard, has been decided against him. As stated earlier, the writ petition was dismissed *in limine*. Thus, this appeal by special leave.

F Shri K.K. Mohan, learned counsel for the appellant, contents that the view taken by the authorities is not correct in law. Since he has been paying the rent regularly and there was no practice of obtaining receipt in proof of payment of it, the appellant was under the *bona fide* belief and did not obtain the receipt from the landlord. Tenant frankly admitted that due to failure of the crop in the year 1978, he could not pay the share of the crop G but subsequently he had paid the same. It is his further contention that under Section 9 (a) of the Act read with Section 70 of the Punjab Tenancy Act, 1887, on an application filed by the tenant for determination of the compensation for improvement for the lands effected by him unless it is decided and value of improvements determined and paid, he is not liable H to ejection and, therefore, even the order of ejection is illegal.

The question, therefore, is whether the appellant's default in the payment of rent for the year 1978 warranted his ejection from the demised property? It is brought to our notice that the GPA of the landlord died and the legal representatives are not substituted; so the appeal is abated. It is seen that since the proceedings were instituted by the GPA on the basis of the power given by the principal, the matter is always to be adjudicated only by or on behalf of principal. Mere death of the agent does not cause any impediment in the way for disposal without his Legal Representatives being brought on record and given notice. As per the statement of the counsel, the landlord did not respond to his correspondence. On the facts in this case, we think that it is not necessary to adjourn the matter any further on the ground that the GPA of the first respondent died.

Since the appellant has been tenant for the past 50 years and never committed default in the payment of share of the crop, it is unlikely that he would commit default in the payment of rent for 1978. The normal probable human conduct would show that he must have paid the amount to the agent of the principal landlord. It is also an admitted position that subsequent to the filing of the application for three years he had already paid the rent to the respondent G.P.A. Under these circumstances, the question emerges; whether the appellant has subsequently paid the rent for the years 1978 also? On a conspectus of the relevant provisions and the probable human conduct, the finding recorded by the Commissioner is not sustainable, Generally, tenant is not expected to demand from the landlord issue of a rent receipt for payment of the amount. After all, it is a relationship of confidence between the landlord and the tenant, unless there is a special contract in that behalf. In this case, there appears to be a common practice of payment by way of the share in the crop, after the harvest, to the agent of the landlord. Under these circumstances, we are of the view that the finding that the appellant has committed default in payment of rent for the year 1978 due to failure of crop and had paid the same in the later year is not correct. He is not liable to ejection. The finding contra is not sound in law. The High Court has committed manifest error of law in not interfering with the finding thus recorded by the primary authority and the revisional authority. In this view of the matter, it is unnecessary to go into the second question.

- A It is contended by the learned counsel for the respondent that even during the pendency of the appeal in this Court, the appellant has committed default in payment of the rent and that he did not deposit the rent as directed by this Court. It is seen that the appellant has deposited the rent for the year 1996 also. Under these circumstances, it would be clear that the appellant-tenant is not derelict in payment of rent, 1/3rd share in the form of the crop, as contended for. It is also to be seen that on three previous occasions, the GPA of the landlord made unsuccessful attempts to have the appellant ejected on the self-same ground of the default. So, it would be unlikely that he would commit default. Thus, it would be seen that the appellant was acting *bona fide* to sustain his right to tenancy by
- C paying the rents regularly to the agent of the landlord.

The appeal is accordingly allowed. No costs.

T.N.A.

Appeal allowed.