

Nihal Singh  
and others  
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and others  
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show that this custom was ever disputed nor could they show that in any case the adoptee was prevented from succeeding collaterally. In view of the evidence produced in the present case, I am of the opinion that Ujjagar Singh has succeeded in proving that the general custom recorded in para 49 of the Rattigan's Digest does not prevail amongst Jats of Jullundur Tehsil, and that amongst them an appointed heir is entitled to succeed collaterally in the adoptor's family.

In this view of the matter the plaintiffs' suit must be dismissed. Accordingly I dismiss this appeal. However, as the plea of custom which has now succeeded was not taken originally in the written statement, I leave the parties to bear their own costs throughout.

*B.R.T.*

APPTLLATE CIVIL

*Before Dua, J.*

NAROTA RAM,—Appellant.

*versus*

BHAGWAT KRISHAN AND OTHERS,—Respondents.

**Execution Second Appeal No. 677 of 1959.**

1959  
Oct., 23rd

*Pepsu Urban Rent Restriction Ordinance (VIII of 2006 Bk.)—Section 13—Order for eviction passed under—Acceptance of rent thereafter—Whether makes the order for eviction incapable of execution—New tenancy—If created—Transfer of Property Act (IV of 1882)—Section 116—Whether applicable to such cases.*

*Held*, that unless the landlord and the tenant consciously agree to enter into a fresh lease and unless the landlord clearly gives up his rights under the eviction order, the mere acceptance of an amount, whether described as rent or damages for use and occupation, to which he would

clearly be entitled, so long as the tenant or ex-tenant, by whatever name the person in possession is called, remains in occupation, would not make the eviction order incapable of execution. The provisions of Section 116 of the Transfer of Property Act, 1882 have been excluded by the special provisions contained in the Pepsu Urban Rent Restriction Ordinance of 2006 Bk.

*Held*, that Section 116 of the Transfer of Property Act, 1882, does not apply to cases where decrees or orders for ejectment have been obtained. In such cases the question which arises for consideration always is to see as to whether or not the decree has been satisfied or discharged so as to disentitle the decree-holder to execute his decree. Acceptance of rent may be one of the circumstances to be taken into consideration, but it would not be conclusive for establishing satisfaction of the decree so as to make it incapable of execution.

*Execution Second appeal from the order of Shri Sant Ram Garg, District Judge, Sangrur, dated the 2nd May, 1959, reversing that of Shri F. S. Gill, Sub-Judge; Ist Class, Sangrur; dated the 29th July, 1958; dismissing the objection petition of Narota Ram.*

SHAMAIR CHAND with SHRI P. C. JAIN and PURAN CHAND,  
for Appellant.

H. L. SARIN, for Respondents

#### JUDGMENT

DUA, J.—This execution second appeal has been preferred from the judgment of the learned District Judge, Sangrur, allowing the appeal of the decree-holders and dismissing the objections raised by Narota Ram, the present appellant.

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Chowdhry Kesho Ram of Sangrur (since deceased) filed an application under section 13 of the Pepsu Urban Rent Restriction Ordinance, 2006 Bk., for eviction of the tenants from two

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shops situated at Sangrur. The Rent Controller allowed the application on the 29th of March, 1956, and directed the tenants to hand over the possession to the landlord on or before the 30th of April, 1956. Narota Ram preferred an appeal to the District Judge, as Appellate Authority, against the order of eviction, but the same was dismissed on the 10th of May, 1956, and the tenants were directed to hand over possession of the disputed shops to the landlord within two months of the order of the Appellate Authority. It appears that Chowdhry Kesho Ram did not live long and on his death Bhagwat Krishan and others sued out execution on the 10th of May, 1957, in the Court of Subordinate Judge, Second Class, and asked for possession of the disputed shops by evicting Narota Ram and his son Hari Ram. Narota Ram raised objections under section 47, Code of Civil Procedure, challenging the jurisdiction of the Subordinate Judge to execute the order of the Rent Collector, disputing the competence of the minor sons of Chowdhry Kesho Ram to execute the eviction order and pleading a new contract of lease after the date of the eviction order. The learned Subordinate Judge overruled the objections regarding jurisdiction and competency of Bhagwat Krishan and others to sue out execution. An appeal against this order was also dismissed by the learned District Judge on the 30th of September, 1957, and a second appeal to this Court met with no better fate on the 2nd of May, 1958. With respect to the plea of a new tenancy the learned Subordinate Judge upheld the contention in view of certain receipts showing payment of rent by the tenants, and on this ground dismissed the execution petition. On appeal the learned District Judge set aside the order of the first Court and relying on *Jai Lal v. Bhua Dev* (1),

came to the conclusion that there was no new lease intended to be created by the heirs of Chowdhry Kesho Ram. It seems that on the death of Chowdhry Kesho Ram his heirs were not in a position immediately to start reconstruction of the building and therefore they merely postponed eviction proceedings for about a year.

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Mr. Shamair Chand has strongly urged that the acceptance of rent by the tenants after the order of eviction establishes a new lease with the result that the order of eviction is no longer executable. He submits that there are no less than six receipts which, according to him, establish the intention on the part of the landlords to create a new lease. He has also in this connection placed reliance on section 116 of the Transfer of Property Act which lays down the effect of holding over. The decision of the Federal Court in *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and another* (1), as also the decision of the Supreme Court in *Karnani Industrial Bank Ltd. v. The Province of Bengal and others* (2) in both of which the scope and effect of section 116 of the Transfer of Property Act have been considered, have also been relied upon. The Counsel contends that as soon as rent is accepted by the landlord, a fresh tenancy would automatically come into being, superseding the previous order of eviction. I regret I do not find it possible to agree with this contention. It is true that according to the majority view of the Federal Court in *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden and another* (1), the tenancy which is created by the holding over of a lessee or under-lessee is a new tenancy in law, but, as it has been held in this

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(1) A.I.R. 1949 F.C. 124

(2) A.I.R. 1951 S.C. 285

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very case, to bring a new tenancy into existence, there must be a bilateral act. What is contemplated by section 116 of the Transfer of Property Act is that on one side there should be an offer of taking a renewed or fresh demise, evidenced by the lessee's continuing in occupation of the property after his interest has ceased, and on the other side there must be a definite assent, to this continuance of possession by the landlord expressed by acceptance of rent or otherwise. The assent of the landlord which is to be founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it. Patanjali Sastri, J., of course went a little further and observed that there must be consensus between the parties and not an option exercisable by the lessor alone. In the later Supreme Court judgment in *Karnani Industrial Bank Ltd., v. The Province of Bengal and others* (1), to which also Fazal Ali and Mukherjea, JJ. were parties (they were also parties to the Federal Court case), two things were held to be necessary for the application of section 116, Transfer of Property Act: (1) the lessee should be in possession after the termination of the lease, and (2) the lessor or his representative should accept rent or otherwise assent to his continuing in possession. Mr. Shamair Chand contends that in the instant case rent having been accepted after the expiry of the lease shows that the landlord consented to the tenant continuing in possession. The Counsel has also in support of his argument relied on *Hari Singh v. Narain Das*, (2), *Madhavji Virji v. Lakshmidas Mulji and Company* (3), *Gooderham*

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(1) A.I.R. 1951 S.C. 285  
(2) A.I.R. 1945 Lah. 175  
(3) A.I.R. 1924 Bom. 99

*and Worts Ltd., v. Canadian Broadcasting Corporation* (1), *Bawa Har Nath v. Mohar Singh* (2), and *Jai Lal v. Bhu Dev* (3).

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Mr. Sarin has on the other hand, contended that the Patiala Ordinance No. 8 of 2006 Bk. is a self-contained Code and it excludes the applicability of all other laws, including section 116 of the Transfer of Property Act. He also places reliance on *N. V. Kupaswami Ayyar v. P. Mahadeva Chettiar* (4), in which section 116, Transfer of Property Act, was held inapplicable to matters arising under the Madras Buildings (Lease and Rent Control) Act. In the course of judgment Horwill J., who prepared the judgment on behalf of the Bench, observed that it was not possible to divorce section 116, Transfer of Property Act, from the other provisions of that Act and when section 116 speaks of the determination of the lease, it must have reference to a determination of the lease such as is contemplated in section 111, Transfer of Property Act, which sets out the various methods of such determination. It is obvious that in the instant case the lease has not been determined in any of the ways set out in section 111 of the Transfer of Property Act, and therefore, as held in the above decision, section 116 may not apply.

In my view section 116 may also be inapplicable to this case on the ground that it does not deal with cases where decrees or orders for ejectment have been obtained. In such cases the question which arises for consideration always is to see as to whether or not the decree has been satisfied or discharged so as to disentitle the decree-holder to execute his decree. Acceptance of

(1) A.I.R. 1949 P.C. 90

(2) 1931 P.L.R. 469

(3) 1956 P.L.R. 267

(4) A.I.R. 1950 Mad. 746

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rent may be one of the circumstances to be taken into consideration, but it would not be conclusive for establishing satisfaction of the decree so as to make it incapable of execution. In the present case Mr. Shamair Chand has not addressed any arguments on this aspect of the matter. In *Baldeodas Mahavirparsad v. G. P. Sonavalla* (1), while dealing with the provisions of Bombay Rents, Hotel Rates and Lodging House Rates (Control Act), it was observed that the mere acceptance of rent is not by itself sufficient to bring into existence new tenancy as contemplated by section 116, Transfer of Property Act, as it used to be prior to the passing of the Rent Restriction Act. Acceptance of rent, according to this authority, must be attributable to an assent by the landlord to bring about a new tenancy. *Ghulam Ghouse Saheb v. Chowdri D. Raja Rao*, (2), cited by Mr. Sarin appears to be not very relevant to the point before me and therefore need not detain us. In *Mahadeo Prasad v. Sm. Sulekha Sarkar* (3), *consensus ad idem* was considered to be necessary for renewing the lease or for treating the lease as subsisting. In *Panchanan Ghose v. Haridas Banerjee* (4), also an agreement between the parties to treat the lease as continuing was considered to be necessary for establishing waiver of a notice to quit. *Manindra Nath De v. Man Singh* (5), is also not to the point and need not be discussed. In *Dasrathi Rai Chaudhury v. Kali Charan Chosh* (6), which has also been relied upon by the learned Counsel for the respondents, it has been observed that the conception of a tenant as conceived by the Houses and Rents—Bihar Buildings (Lease, Rent and Eviction) Control Act

(1) A.I.R. 1948 Bom. 385  
(2) A.I.R. 1947 Mad. 436  
(3) A.I.R. 1954 Cal, 404  
(4) A.I.R. 1954 Cal, 460  
(5) A.I.R. 1951 Cal, 342  
(6) A.I.R. 1951 Pat. 372

is entirely novel and not in keeping with the ordinary ideas as to what a tenant is. The Counsel submits that this observation would be equally applicable to the case of the Patiala Ordinance in question.

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After considering the arguments addressed at the Bar, in my view unless the landlord and the tenant consciously agree to enter into a fresh lease and unless the landlord clearly gives up his rights under the eviction order, the mere acceptance of an amount, whether described as rent or damages for use and occupation, to which he would clearly be entitled, so long as the tenant or ex-tenant, by whatever name the person in possession is called, remains in occupation, would not make the eviction order incapable of execution. Nothing has been said at the Bar whether the provisions of section 116 of the Transfer of Property Act are actually in force in the territory in question, but assuming that they are, in my view, these provisions would be excluded by the special provisions contained in the Patiala Ordinance.

For the reasons given above, this appeal fails and is dismissed with costs.

*B.R.T.*

REVISIONAL CRIMINAL

*Before Dua, J.*

JIT SINGH,—*Petitioner.*

*versus*

MUNICIPAL COMMITTEE, KHANNA, AND ANOTHER,—

*Respondents.*

Criminal Revision No. 801 of 1959.

*Indian Evidence Act (I of 1872)—Section 57—“all laws in force in the territory of India”—Meaning of—Punjab*

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