Before M. M. Punchhi, J.

GIAN CHAND,—*Petitioner.*

versus

SURINDER PARKASH MALHOTRA,—*Respondent.*

Civil Revision No. 3084 *of* 1983.

August 6, 1984.

Transfer of Property Act (IV of 1882)—Sections 7 and 105—East Punjab Urban Rent Restriction Act (III of 1949)—Section 2(c)—Property owned by one leased out by another—Rent paid by the tenant to the owner—Person leasing out the property claiming rent from the tenant—Suit for recovery of rent by such person who within the ambit of law is also a landlord—Every landlord—Whether entitled to recover rent from the tenant when the same has been paid to one of them.

Held, that every person competent to contract and entitled to transferable property can transfer his own property. And it goes without saying that creation of a lease is transfer of a right in property, that is, a right to enjoy such property. Besides the owner himself, another person who, of course, must be competent to contract and entitled to transfer another's property if authorised, can transfer property of that other. All what is required to dispose of transferable property not one's own is to have an authority; not necessarily always an authority in writing but an authority which is tacit by word or conduct, subject, of course, to not violating the provisions of any other law for the time being in force. Lease being a transfer of a right to enjoy property is not the transfer of property as such but merely a transfer of a right therein. Authority to transfer such a right would always, not, require any formal authorisation and such can be spelled out from a variety of ways having regard to the day to day affairs of life and ordinary human conduct. It is precisely for this reason that the 'transferor' in the Transfer of Property Act is called the 'lessor' though he may be transferring a right of enjoyment in the property of another. And precisely, same is the reason for the comprehensive definition of the word 'landlord' used in the East Punjab Urban Rent Restriction Act. But one thing is clear from the comparative study of the provisions that the tenant has to pay rent only one time and not to all the landlords for the time who can claim themselves to be bearing the title. It goes without saying that on authorisation of someone to create a lease, the person holding the authority does not substitute himself to the grant or of the authority, but is rather in the eye of law a second self of the same person. The created self cannot in any event turn round to say that by his creation the original self is lost or that his shadow eclipses

altogether his creator. As long as the authority exists, it is to go side by side in co-existence but in no way to the detriment of the person who owns the property and entitled to transfer it as such or any interest therein. Thus, it is held that the law does not permit each and every landlord which comes within the ambit of law to recover the arrears of rent from a tenant when rent has been paid to one of them for a particular period validly.

(Paras 6 and 8).

Petition under section 115 *C.P.C. for the revision of the order of the Court of Shri R. L. Anand, Additional District Judge, Patiala dated* 3*rd September,* 1983 *reversing that of Shri M. S. Ahluwalia, Senior Sub Judge, Patiala, dated* 30*th October,* 1982, *granting a money decree for the recovery of a sum of Rs.* 1,650 *on account of arrears of rent from* 1*st June,* 1978 to 28*th February,* 1981 @ *Rs.* 50 *per month regarding a portion of House No.* 160-*B*/3, *situated in Toba Baba Dhiana, Patiala, in favour of the plaintiff and against the defendant with no order as to costs.*

Surjit Singh, Advocate, *for the Petitioner.*

K. P. Bhandari, Sr. Advocate and Ravi Kapoor, Advocate, with him, *for the Respondents.*

JUDGMENT

M. M. Punchhi, J. (Oral):

(1) This revision petition arises out of a suit for recovery of rent. The facts giving rise to the suit are these:

House No. 160-B/3, Toba Baba Dhiana, Patiala was concededly owned by one Om Parkash Malhotra. On 27th January, 1968, the brother of Om Parkash Malhotra being Surinder Parkash Malhotra rented it out to Gian Chand at a monthly rent of Rs. 50. The lease was embodied in the form of a rent note written by Gian Chand. He wrote the following recital:—

> "That a portion of House No. 160-B/3, at Toba Baba Dhiana owned by Om Parkash son of Brij Lal, resident of Toba Baba Dhiana, has been obtained from Surinder Parkash Malhotra @ Rs. 50 per mensem ..... Whenever I want to vacate the house, then I will deliver the possession thereof to Shri Surinder Parkash Malhotra ....."

(2) Undisputably Surinder Parkash Malhotra, the plaintiff-respondent herein, kept receiving rent from Gian Chand, defendant-petitioner, till the end of December, 1977 at the rate stipulated. As the case of the defendant-petitioner goes, money orders Exhibits DX and DY were sent by the petitioner to Surinder Parkash Malhotra, respondent, but they refused. Thereafter on 12th March, 1981, Om Parkash Malhotra, the owner of the house, recovered the arrears of rent from the tenant and executed a receipt Exhibit D. 3 on that day. Simultaneously,—*vide* registered deed Exhibit D. 1., he sold the house to Shrimati Nirmal wife of Gian Chand tenant. It is in this background that on 28th May, 1981, Surinder Parkash Malhotra, plaintiff-respondent, filed a suit for recovery of rent due from 1st June, 1978 to 28th February, 1981. It was specifically stated therein that claim of the plaintiff for arrears of rent from 1st January, 1978 to 31st May, 1978 had become time-barred and as such, was not being laid. The sum assessed was, thus, Rs. 1,650. The plaintiff had based his case solely on the ground that he was the landlord, and during the continuance of the tenancy his title could not be denied. The defence of the defendant, on the other hand, was that when he had paid the arrears of rent to Om Parkash Malhotra over and above the period in question, the suit did not lie.

(3) On the pleadings of the parties, the following crucial issue was framed:—

> "Whether the defendant occupied the disputed premises as a tenant under the plaintiff from 1st June, 1978 to 28th February, 1981, if so, to what amount by way of arrears of rent is the plaintiff entitled ?"

(4) On the evidence led by the parties, the aforementioned crucial issue was decided against the plaintiff. The other issue whether the defendant was entitled to special costs was decided against the defendant. The plaintiff preferred an appeal before the Additional District Judge, Patiala, which was allowed and hence the revision.

(5) The sole question which crops up for the consideration in this petition is: Does the law permit each and every landlord which comes within the ambit of law to recover the arrears of rent from a tenant? Learned counsel for the plaintiff-respondent wishes a diversion in the question by contending that since it was a civil suit and not a rent application to recover arrears of rent under the East

Punjab Urban Rent Restriction Act, the wider meaning of the word 'landlord' as given in section 2(C) of the said Act, was not applicable. According to him, the definition of the word 'landlord' as known restrictedly in the Transfer of Property Act should be employed to the term in the question posed. It would be appropriate to juxtapose the provisions:

TRANSFER OF PROPERTY ACT	EAST PUNJAB URBAN RENT RESTRICTION ACT
Sec. 105. *Lease defined.*— A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.	*Sec.* 2(C). 'Landlord' means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord.
Lessor, lessee, premium and rent defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.	

(6) The juxtaposition would not be complete without taking note of section 7 of the Transfer of Property Act. That provides as follows:—

"*Sec.* 7. *Persons competent to transfer.*—

Every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or

conditionally, in the circumstances to the extent and in the manner allowed and prescribed by any law for the time being in force."

Reading these three provisions together, it surfaces to fore that every person competent to contract and entitled to transferable property can transfer his own property. And it goes without saying that creation of a lease is transfer of a right in property, that is, a right to enjoy such property. Besides the owner himself, another person who, of course, must be competent to contract and entitled to transfer another's property if authorised, can transfer property of that other. All what is required to dispose of transferable property not one's own is to have an authority; not necessarily always an authority in writing but an authority which is tacit by word of conduct, subject, of course, to not violating the provisions of any other law for the time being in force. Now, as said before, lease being a transfer of a right to enjoy property is not the transfer of property as such but merely a transfer of a right therein. Authority to transfer such a right would always, not, to my mind, require any formal authorization and such can be spelled out from a variety of ways having regard to the day to day affairs of life and ordinary human conduct. It is precisely for this reason that the 'transferror' in the Transfer of Property Act is called the 'lessor' though he may be transferring a right of enjoyment in the property of another. And precisely, same is the reason for the comprehensive definition of the word 'landlord' used in the East Punjab Urban Rent Restriction Act. But one thing is clear from the comparative study of the aforesaid provisions that the tenant has to pay rent only one time and not to all the landlords for the time who can claim themselves to be bearing the title. It goes without saying that on authorisation of someone to create a lease, the person holding the authority does not substitute himself to the grantor of the authority, but is rather in the eye of law a second self of the same person. The created self cannot in any event turn round to say that by his creation the original self is lost. or that his shadow eclipses altogether his creator. As long as the authority exists, it is to go side by side in co-existence but in no way to the detriment of the person who owns the property and entitled to transfer it as such or any interest therein.

(7) In *Shri Sain Dass Farngu* v. *Pt. Sant Ram Jaishi Ram* (1) A. N. Bhandari, C.J. while taking stock of the salutary principle

(1) A.I.R. 1959 Pb. 564.

embodied in Section 116 of the Indian Evidence Act, observed that the doctrine had no application where the landlord's title had expired or been extinguished or where there had been a fraud on the part of the landlord in the execution of a lease, or where the tenant did not obtain or retain possession under the lease or by virtue of it, or where he had been evicted by title paramount. I am of the considered view that in the instant case, though Surinder Parkash Malhotra, plaintiff-respondent, was the landlord of the premises in question and entitled to receive rent from the tenant-petitioner, but when the tenant-petitioner had paid rent to a person (Om Parkash Malhotra) holding a title paramount, his obligation to pay rent to Surinder Parkash Malhotra, plaintiff-respondent, stood automatically discharged. For it cannot be said that Surinder Parkash Malhotra, plaintiff-respondent, while creating the lease could have acted in any other capacity, even though not specifically authorised in writing, as suggested by his learned counsel, except to have acted in the recognition of the paramount title of his brother Om Parkash Malhotra. Had it not been so, there was no occasion for the name of Om Parkash Malhotra to have figured in the rent note, Exhibit P. 1, and that too in the hand of the tenant-petitioner.

(8) Looking the case from the point of view of section 116 of the Indian Evidence Act, the tenant is of course debarred from denying the title of the landlord during the continuance of the tenancy. As noticed earlier, if he gets evicted by title paramount, as observed by A. N. Bhandari, C.J., then he can deny the title. Now here the conceded position is that the house after 12th March, 1981 started belonging to Smt. Nirmal, who incidentally happens to be the wife of the tenant-petitioner. She derived title from the true owner and herself came to hold the title paramount. On the happening of such an event, if he attorned to her, he became her tenant and, if not, his tenancy with the earlier landlord otherwise came to an end, in any event. The suit was filed much after the said event. At the stage, I see no reason why the defendant-petitioner could not have denied the title of his erstwhile landlord for, by then, the tenancy as created by the latter was not continuing. And as far as he was concerned, with him the tenancy had come to an end. Thus, I am of the considered view that in no case could the plaintiff-respondent recover rent from the tenant-petitioner when his brother (Om Parkash Malhotra), who held the title paramount, had recovered it from him on 12th March, 1981. Thus I hold that the law does not permit each and

every landlord which comes within the ambit of law to recover the arrears of rent from a tenant when rent has been paid to one of them for a particular period, validly.

(9) Lastly, it was contended by the learned counsel for the plaintiff-respondent that this being a revision, and its scope being limited, no interference be caused in the judgment and decree of the lower appellate Court. It goes without saying that when there is an error apparent on the face of the record, and a material irregularity in the exercise of jurisdiction, this Court can interfere under section 115, Civil Procedure Code. It hardly needs to emphasise that the errors pointed out heretofore were apparent on the face of the record and the jurisdiction exercised was materially irregular in permitting the suit of the plaintiff-respondent to be instituted and continued in the presence of the rent already having been paid by the defendant-petitioner to the landlord holding title to the property.

(10) For the foregoing reasons this petition is allowed, the judgment and decree of the lower appellate Court is set aside and the plaintiff's suit is dismissed with special costs, for which the second issue was framed, and which are assessed at Rs. 500. In addition to that, the defendant-petitioner will get costs in this revision petition.

N.K.S.

Before J. V. Gupta, J.

CHAMAN LAL AND OTHERS,—*Petitioner.*

versus

INDIRA WATI,—*Respondent.*

Civil Revision No. 1959 *of* 1983.

August 13, 1984.

East Punjab Urban Rent Restriction Act (III of 1949)—Section 13—Landlady filing application for eviction of tenant on the ground of personal necessity—Court finding that landlady only a benamidar while the real owner being the husband of the said landlady—Eviction application—Whether competent—Ostensible owner of the property—Whether entitled to seek eviction.