

Dr. R S Grewal vs Chander Parkash Soni on 16 April, 2019

Equivalent citations: AIR 2019 SUPREME COURT 3000, 2019 (6) SCC 216, AIR ONLINE 2019 SC 457, (2019) 1 RENCER 577, (2019) 1 RENTLR 561, 2019 (200) AIC (SOC) 11 (SC), (2019) 2 ALL RENTCAS 41, (2019) 2 WLC(SC)CVL 222, (2019) 3 CAL HN 187, (2019) 3 CIVILCOURTC 383, (2019) 3 ICC 573, (2019) 4 ALL WC 3667, 2019 (4) KCCR SN 387 (SC), (2019) 6 SCALE 532, AIR 2019 SC (CIV) 2535

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Bench: Hemant Gupta, Dhananjaya Y Chandrachud

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REPORTAB

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No 11086 of 2018

Dr RS Grewal & Ors

..Appellants

VERSUS

Chander Parkash Soni & Anr

..Respondents

With

Civil Appeal No 11087 of 2018

And with

Civil Appeal No 11088 of 2018

JUDGMENT

Dr Dhananjaya Y Chandrachud, J 1 This appeal arises from a judgment of a learned Single Judge of the High Court of Punjab and Haryana at Chandigarh dated 21 January 2016 in a second appeal. The High Court reversed the judgment and the decree of the trial Court, which was confirmed in first appeal, by which a suit for possession of certain property in the occupation of the defendants as tenants had been decreed. 2 Dr Hira Singh was the owner of a residential house (shown in the site plan filed together with the suit) together with some shops constructed on property bearing Municipal No B-XX-69 (Old) 515 (New) at College Road, Civil Lines, Ludhiana. The family pedigree is depicted below:

Late Dr. Hira Singh (Died in 1945) Late Lt. Col Dr. Shiv Dev Singh Grewal Late Dayawant Kaur Late Dr. Shiv Dev Kaur (Died on 14.08.1968) (Died in 1922) (issueless widow) (Died on 15.02.1998) Late Dr. Jaswant Kaur (Died issueless) Dr. R.S. Grewal Late Dr. J.S. Grewal (Issueless, widower) (Died on 09.07.1993) Dr. Gagandeep Ramandeep Er. Amandeep On 16 September 1944, Dr Hira Singh executed a will by which he bequeathed his property to his son, Shiv Dev Singh Grewal, subject to a right of residence for his widowed daughter, Shiv Dev Kaur Grewal in the property situated at Civil Lines, Ludhiana. The will contains the following recital:

“I own a kothi on Iqbal Road opposite to Govt. College in Civil Lines. I have myself purchased its land and I also reside in this Kothi and some outer portion thereof has been given on rent.” The testator made a disposition in the following terms in favour of his son:

“After my death, my son Shivdev Singh will be the absolute owner of my property, mentioned above, situate in village Gujarwal i.e. land and houses owned by me as well as the mortgaged land. My son Shivdev Singh will also be the owner of the money which is due to me.” The will adverted to the fact that some portion of the property at Civil Lines was in the occupation of tenants. According to the will, the rent recovered was to be spent for the education and maintenance of a young child - Shiv Charan Kaur, who was brought up by the testator. A life interest in the property at Civil Lines was created in favour of Shiv Dev Kaur, the daughter of the testator in the following terms:

“My daughter Bibi Shivdev Kaur will get this Kothi situated on Iqbal Road till her life time subject to the abovesaid rights of Bibi Shiv Charan Kaur and that after my death Shivdev Kaur would be entitled to settle and reside in this Kothi as and when necessary and can spend the income from rent on herself. But these rights shall ensure to her till her life time. She will not be entitled to transfer or burden this Kothi along with the attached land nor could she mortgage, gift the same, nor could she sell or exchange it. This Kothi shall also be the sole ownership of my son Shivdev Singh subject to the above mentioned rights. Through this will I appoint my aforesaid son Shivdev Singh as my executor but he shall act according to the recitals in this will and shall arrange for the maintenance and marriage of Bibi Shiv Charan Kaur and after

recovering the rent of the concerned portion of the Kothi, he shall spend the same in accordance with the above mentioned directions.” The testator’s son, who was a legatee under the will, was also appointed as an executor. The testator died in 1945. His son died on 14 August 1968. The first appellant is the grandson of the testator, while the second and third appellants are the sons of the first appellant.

3 A suit for possession was instituted by the appellants and by proforma respondent no 2 against the first respondent in the Court of the Civil Judge, Senior Division, Ludhiana. The first respondent is a tenant inducted by Shiv Dev Kaur Grewal. The foundation of the suit was that Shiv Dev Kaur Grewal was only entitled to a life interest in the property in terms of the will executed by her father and upon her death the appellants were entitled to possession of the shop from the defendant. The plea that was set up in paragraphs 14 and 15 of the plaint was in the following terms:

“14 That Dr Shivdev Kaur Grewal has died on 15.2.1998 and on her death her right to live in the main kothi alongwith right to utilize the usufruct of the main house and the shops came to an end. The plaintiffs became entitled to the possession of the main house and the shops came to an end. The plaintiffs became entitled to the possession of the main house as well as the shops on the main road being the owners of property No.B-XX 69 (od) 515(new), college road, civil lines, Ludhiana.

15 That defendant claims that he has taken the shop in his possession on rent as a tenant from Dr Shivdev Kaur Grewal and as such refuses to vacate the shop and deliver its vacant possession to the plaintiffs who are the real owners. The claim of the defendant is false. Defendant has no right in shop and cannot claim himself to be a tenant. Dr Shivdev Kaur Grewal had no right to let out the property. She could only enjoy the usufruct of the main house. In any case any tenancy is created by Dr Shivdev Kaur Grewal, that shall not bind the plaintiffs who are the absolute owners of the property. Without prejudice to the plea of the plaintiffs that Dr Shivdev Kaur Grewal could not let the property, it is submitted that even if any tenancy existed as being claimed by the defendant which had allegedly been created by Dr Shivdev Kaur Grewal, that comes to an end with the death of Dr Shivdev Kaur Grewal and the possession of the defendant is become unlawful only from date of death of Dr Shivdev Kaur and as such the defendant is not entitled to continue in occupation of shop as a tenant. The alleged tenancy stood terminated and extinguished with the death of Dr Shivdev Kaur Grewal. The plaintiffs being the lawful owners are entitled to possession of the shop. The plaintiffs are being denied possession of the shop by the defendant.” In the written statement, a plea was raised that Shiv Dev Kaur was not a limited owner of the property. Moreover, it was pleaded that the defendant was in occupation as a tenant and a suit for possession was not maintainable. Assuming that the appellants had become owners as alleged, it was contended that the tenancy shall stand attorned to them after the death of Shiv Dev Kaur. On these grounds, it was urged that the suit for possession was not maintainable.

4 The suit for possession was decreed and the first appeal was dismissed. The basis of the decree for possession was that Shiv Dev Kaur had only a limited right in the property which had not converted into an absolute ownership and hence on her death the property would revert back to Dr Shiv Dev Singh. The judgment of the trial Court as confirmed in appeal was the subject matter of a second appeal before the High Court. The second appeal was admitted on the following substantial questions of law:

1 Whether the defendants continue to be tenants even after the change of the ownership; and 2 Whether the possession of the tenant becomes unlawful the moment there was a change of ownership.

The High Court while setting aside the judgment of the first appellate Court held that Shiv Dev Kaur had created a tenancy in favour of the defendant and the relationship of landlord and tenant did not cease to exist on her death. The remedy of the appellants as owners was to seek eviction under prevailing rent control legislation and not by means of a suit for possession, treating the first respondent as trespasser. On this ground, the decree for possession was set aside, though with the observation that this would not preclude the appellants from seeking ejectment of the first respondent on any of the grounds available under the applicable rent control legislation.

5 Learned counsel appearing on behalf of the appellants submits that the life interest which was created in favour of the daughter of the testator was personal in nature. In a judgment inter partes rendered by this Court in Shivdev Kaur (Dead) by LRs v RS Grewal¹, it has been held that the limited interest acquired by Shiv Dev Kaur during her life time under the will of the testator had not fructified into full ownership under Section 14(1) of the Hindu Succession Act 1956. This was because in terms of the exception contained in sub-section (2) of Section 14, Shiv Dev Kaur had acquired only a limited interest in the property of her father by virtue of the will. Learned counsel submitted that that in consequence, Shiv Dev Kaur enjoyed an interest that continued through her life time. It was urged that she was not entitled under the testamentary disposition of her father to create a tenancy in the property. In any event, any tenancy so created would have no existence after her life time, having due regard to the fact that the restricted interest which she acquired was personal to her. Finally, it was also urged that the shops were constructed by Shiv Dev Kaur after the execution 1 (2013) 4 SCC 636 of the will, as noticed by the High Court and that in consequence the creation of the tenancy had no legal effect.

6 On the other hand, learned counsel appearing on behalf of the first respondent submitted that though Shiv Dev Kaur had a life interest in the property, the will empowered her to create a tenancy. The first respondent is a tenant protected under the East Punjab Urban Rent Restriction Act 1949, having due regard to the definition of the expression 'landlord' in Section 2(c). It has been urged that the tenancy created by Shiv Dev Kaur does not come to an end and with her death, the tenant does not become a trespasser. Learned counsel submitted that the adjudication rendered by this Court in 2013 to the effect that Shiv Dev Kaur continued to have a restricted interest in the property does not render the answering respondent a trespasser. In other words, it has been urged that the answering respondent being a tenant, a suit for possession was not maintainable and an order for eviction can only be obtained by resorting to the provisions of the East Punjab Urban Rent

Restriction Act 1949. 7 While dealing with the rival submissions it is necessary at the outset to clear the ground in regard to the nature of the interest which Shiv Dev Kaur obtained under the will executed by her father, Dr Hira Singh, on 16 September 1944. This issue has been the subject of an adjudication by this Court in Shivdev Kaur (supra). A brief background of the circumstances leading up to the adjudication by this Court would be necessary. Shiv Dev Kaur, claiming rights under the will, instituted a suit against her nephew for a mandatory injunction seeking his eviction from the suit premises. She asserted a right of absolute ownership by virtue of the provisions of Section 14 of the Hindu Succession Act 1956. The suit was contested. During the pendency of the suit the defendant instituted a suit against Shiv Dev Kaur for a permanent injunction restraining her from alienating the property. The trial Court held that Shiv Dev Kaur did not have absolute ownership over the property and that she was not entitled to interfere in respect of the agricultural lands and other property. The trial Court held that she could not be dispossessed from the suit premises, subject to the final decision of another suit. The appellate court confirmed the view that Shiv Dev Kaur did not have an absolute right of ownership. The High Court held against Shiv Dev Kaur in a second appeal. In appeal, this Court had to construe the provisions of Section 14 of the Hindu Succession Act 1956. Section 14 reads thus:

“10. Section 14 of the 1956 Act reads as under:

14. Property of a female Hindu to be her absolute property.— (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

*** (2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.” (emphasis added) The aforesaid statutory provisions provide for conversion of life interest into absolute title on commencement of the 1956 Act, however, sub-section (2) carves out an exception to the same as it provides that such right would not be conferred where a property is acquired by a Hindu female by way of gift or under a will or any other instrument prescribing a restricted estate in that property.” A two Judge Bench of this Court held that since Shiv Dev Kaur had acquired only a life interest under the will of her father, the provisions contained in sub-section (2) of Section 14 would apply and her restricted interest had not been crystallised into absolute ownership. Dr Justice BS Chauhan, J, speaking for the two Judge Bench held thus:

“14. Thus, in view of the above, the law on the issue can be summarised to the effect that if a Hindu female has been given only a “life interest”, through will or gift or any other document referred to in Section 14 of the 1956 Act, the said rights would not stand crystallised into absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the 1956 Act, the provisions of Sections 14(2) and 30 of the 1956 Act would become otiose. Section 14(2) carves out an exception to the rule provided in sub-section (1) thereof, which clearly provides that if a property has been

acquired by a Hindu female by a will or gift, giving her only a “life interest”, it would remain the same even after commencement of the 1956 Act, and such a Hindu female cannot acquire absolute title.” Hence, the concurrent finding that Shiv Dev Kaur did not acquire an absolute title was affirmed.

8 The adjudication in the present case must hence proceed on the foundation that Shiv Dev Kaur had a life interest in the property. 9 The essence of the submission of the appellants is that Shiv Dev Kaur having held a right which was personal in nature, she was not entitled to create a tenancy and, in any event, the tenant would cease to have a surviving interest in that character upon her death. In this context, reliance was placed on the following observations contained in a decision of a Bench of two judges of this Court in *Ranvir Dewan v Rashmi Khanna*² where, Justice AM Sapre explained the concept of a life interest in the following terms:

2 (2018) 12 SCC 1 “42.6 ... it is a settled principle of law that the “life interest” means an interest which determines on the termination of life.

It is incapable of being transferred by such person to others being personal in nature. Such person, therefore, could enjoy the “life interest” only during his/her lifetime which is extinguished on his/her death.” 10 Now reading the will executed by Dr Hira Singh on 16 September 1944, it is evident that while his son Shiv Dev Singh Grewal was to be the absolute owner of his properties upon the death of the testator, a life interest was created in favour of Shiv Dev Kaur. She was “entitled to settle and reside in this kothi as and when necessary” and “could spend the income from rent on herself” during her lifetime. However, she was not entitled to transfer, mortgage, sell or gift the property. In consequence, the testator directed that his son would ensure that the rent that was recovered would be spent in accordance with the directions contained in the will. The testator’s priority was to ensure that following his death his widowed daughter had adequate financial means. Expenses for the repairing of the property and for the payment of land revenue were to be paid by Shiv Dev Kaur during her lifetime. The disposition specifically contemplated her entitlement to spend the income received by way of rent on herself. Creation of a tenancy was an incident of the life interest which she had. It was means of her generating rental income to sustain herself. This was authorised by the will. 11 But the submission which has been urged on behalf of the appellants is that the life interest being personal to Shiv Dev Kaur, the tenancy which she created would stand terminated with her death. In other words, according to the appellants, with the death of Shiv Dev Kaur, the first respondent became a trespasser on the property and was liable to be removed in consequence of the decree for possession.

12 This submission cannot be accepted both as a matter of first principle and having regard to the precedent on the subject. The expression ‘landlord’ is defined in Section 2(c) of the East Punjab Urban Rent Restriction Act 1949 thus:

“Sec.2 In this Act, unless there is anything repugnant in the subject or context, -

(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;” A landlord within the meaning of Section 2(c) is not necessarily the owner of the property. The definition of the expression ‘landlord’ is relatable to an entitlement to receive rent in respect of any building or rented land. The inclusive definition of ‘landlord’ under Section 2(c) would take in its sweep Shiv Dev Kaur who held a life interest in the property. This position in law has been explained in a decision of a two Judge Bench of this Court in *KD Dewan v Harbhajan S Parihar*³, where it was held thus:

“8. A perusal of the provision, quoted above, shows that the following categories of persons fall within the meaning of landlord: (1) any person for the time being entitled to receive rent in respect of any building or rented land; (2) a trustee, guardian, receiver, executor or administrator for any other person; (3) a tenant who sub-lets any building or rented land 3 (2002) 1 SCC 119 in the manner authorised under the Act; and (4) every person from time to time deriving title under a landlord. Among these four categories of persons, brought within the meaning of “landlord”, Mr Sharma sought to derive support from the last category. Even so, that category refers to a person who derives his title under a landlord and not under an owner of a premises. For purposes of the said category the transferor of the title referred to therein must fall under any of the categories (1) to (3). To be a landlord within the meaning of clause (c) of Section 2 a person need not necessarily be the owner; in a vast majority of cases an owner will be a landlord but in many cases a person other than an owner may as well be a landlord. It may be that in a given case the landlord is also an owner but a landlord under the Act need not be the owner. It may be noted that for purposes of the act the legislature has made a distinction between an owner of a premises and a landlord. The Act deals with the rights and obligations of a landlord only as defined therein. Ownership of a premises is immaterial for purposes of the Act.” (emphasis supplied)

13 In *B Bal Reddy v Teegala Narayana Reddy*⁴, a three Judge Bench of this Court held that the interest of a protected tenant subsists so long as a protected tenancy has not been validly terminated. Moreover, even if the protected tenant has lost possession without a valid termination of that status, they would be entitled to the existence of protection under tenancy legislation. Justice UU Lalit, speaking for the Bench observed:

“11. It is well settled that the interest of a protected tenant continues to be operative and subsisting so long as “protected tenancy” is not validly terminated. Even if such protected tenant has lost possession of the land in question, that by itself does not terminate the “protected tenancy”. The observations of the Full Bench of the Andhra Pradesh High Court in *Sada* case [*Sada v. Tehsildar*, AIR 1988 AP 77 :

(1987) 2 An LT 749 : 1987 SCC OnLine AP 187] were quoted with approval by this Court in Boddam Narsimha v. Hasan Ali Khan [Boddam Narsimha v. Hasan Ali Khan, (2007) 11 SCC 410] are quite eloquent: (Sada case[Sada v. Tehsildar, AIR 1988 AP 77 : (1987) 2 An LT 749 : 1987 SCC OnLine AP 187] , SCC OnLine AP para 44) 4 (2016) 15 SCC 102 “44. In our view, this contention is not correct. If a protected tenant is already in physical possession on the date of notification there is no problem at all. If proceedings under Sections 19, 32 or 44 are pending, the date of vesting gets itself postponed. If the “protected tenancy” stood validly terminated by the date of notification under Sections 19, 32 or 44, in that case, no certificate at all can be issued. But, as long as a person continued to be a “protected tenant” either under Sections 34, 37 or 37-A, as per the Act and has not lost that status, whether he is in actual possession or not on the date of notification, and is also to be “deemed” to be in possession under the first part of the Explanation subject to Section 32(7) and the proviso to Section 38-E(1), the ownership stands transferred straightaway to such protected tenant by the very force of Section 38-E(1). Further, Section 38-E(2) read with the Andhra Pradesh (Telangana Area) Protected Tenants (Transfer of Ownership of Lands) Rules, 1973 contemplates a full-fledged inquiry after notice to the landholders or after hearing objections of any other interested person (vide Rules 4 and 5). Once a certificate is issued, the same is, under Section 38-E(2), “conclusive evidence” of the ownership of the protected tenant, and cannot be defeated by the result of any inquiry under second part of the Explanation to Section 38-E. Another reason for this view is that the inquiry under Section 38-E(2) read with the 1973 Rules referred to above, is to be done by the Tribunal (the Revenue Divisional Officer) and obviously his decision to grant the ownership certificate will not and cannot be jeopardised by the result of any inquiry by a subordinate official like the Tahsildar, who deals with the granting of possession to a “protected tenant”. (emphasis supplied) ... In the absence of such valid termination of “protected tenancy”, the interest of such protected tenant continued to be operative and subsisting in law and could devolve on his legal heirs and representatives who could then claim restoration of possession.” The same view has been reiterated by a two Judge Bench in Nandkishor Savalaram Malu (Dead) through Legal Representatives v Hanumanmal G Biyani (Dead) through Legal Representatives⁵:

5 (2017) 2 SCC 622 “27. Once the tenancy is created either orally or in writing with respect to a land or building then it is always subject to the relevant provisions of the Transfer of Property Act, 1882 (hereinafter referred to as “the TP Act”) and the State Rent Acts. Sections 105 to 111 of the TP Act provide certain safeguards, create some statutory rights, obligations, duties whereas the State Rent Acts, inter alia, specify the grounds to enable the lessor to evict the lessee/tenant from the demised premises.” In V. Dhanapal Chettiar v Yesodai Ammal⁶, a seven judge bench of this Court while considering state rent legislations, held thus:

“6. ... the tenant continues to be a tenant even though the contractual tenancy has been determined by giving of a valid notice under Section 106 of the Transfer of

Property Act... in our opinion it will suffice to say that the various State Rent Control Acts make a serious encroachment in the field of freedom of contract. It does not permit the landlord to snap his relationship with the tenant merely by his act of serving a notice to quit on him. In spite of the notice, the law says that he continues to be a tenant and he does so enjoying all the rights of a lessee and is at the same time deemed to be under all the liabilities such as payment of rent, etc. in accordance with the law.” In *Gian Devi v Jeevan Kumar*⁷, a Constitution Bench of this Court dealt with the question of whether the rule of heritability extends to a statutory tenancy of commercial premises as much as it did to residential premises under the Delhi Rent Control Act 1958. The Court while holding this in the affirmative discussed the concept of statutory tenant and held thus:

“2. ... “Statutory tenant” is not an expression to be found in any provision of the Delhi Rent Control Act, 1958 or the rent control legislation of any other State. It is an expression coined by the Judges in England and, like many other concepts in English law, it has been imported into the jurisprudence of this country and has become an expression of common use to denote a tenant whose contractual tenancy 6 (1979) 4 SCC 214 7 (1985) 2 SCC 683 has been determined but who is continuing in possession of the premises by virtue of the protection against eviction afforded to him by the rent control legislation. Though the expression “statutory tenant” has not been used in any rent control legislation the concept of statutory tenant finds recognition in almost every rent control legislation.

15. ... It is also important to note that notwithstanding the termination of the contractual tenancy by the landlord, the tenant is afforded protection against eviction and is permitted to continue to remain in possession even after the termination of the contractual tenancy by the Act in question and invariably by all the Rent Acts in force in various States so long as an order or decree for eviction against the tenant on any of the grounds specified in such Acts on the basis of which an order or decree for eviction against the tenant can be passed, is not passed.

...

31. ... The termination of the contractual tenancy in view of the definition of tenant in the Act does not bring about any change in the status and legal position of the tenant, unless there are contrary provisions in the Act; and, the tenant notwithstanding the termination of tenancy does enjoy an estate or interest in the tenanted premises. This interest or estate which the tenant under the Act despite termination of the contractual tenancy continues to enjoy creates a heritable interest in the absence of any provision to the contrary...” We have relied on the above decision only for its explanation of the meaning of the concept of a statutory tenant.

Speaking for the Division Bench of the Calcutta High Court in *Krishna Prosad v Sarajubala*⁸, Bachawat, J observed thus:

“... The Rent Control and the Tenancy Acts create a special world of their own. They speak of life after death. The statutory tenancy arises phoenix-like out of the ashes of the contractual tenancy. The contractual tenant may die but the statutory tenant may live long thereafter. The statutory tenant is an ex-tenant and yet he is a tenant...” 8AIR 1961 Cal 505. The above observation was also reiterated in *Damadilal and Ors v Parashram and Ors* (1976) 4 SCC 855 14 The provisions of the East Punjab Urban Rent Restriction Act 1949 are available to the tenant. The tenant has a protected status. That status cannot be disrupted or brought to an end except on grounds specified in the enactment. The first respondent in whose favour the tenancy was created would be covered under the definition of the expression ‘tenant’ in Section 2(i)9 of the East Punjab Urban Rent Restriction Act 1949. The status of a statutory tenant enures as a consequence of rent control legislation. The East Punjab Urban Rent Restriction Act 1949 aims at regulating conditions of tenancy, controlling rents and preventing unreasonable eviction of tenants. For the advancement of these objects, tenants are invested with rights and landlords are subjected to obligations. The first respondent in whose favour a tenancy was created acquired a status of a statutory tenant and that status does not stand obviated by the death of Shiv Dev Kaur. The remedy available to the appellants to remove the first respondent from the property is by pursuing eviction proceedings on one or more of the grounds available in the enactment. Section 13 lays down the procedure for eviction of tenants. Only upon the satisfaction of the Controller that sufficient grounds exist for eviction of the tenant can an order be passed directing the tenant to vacate the premises. The protection offered to a statutory tenant can only be overcome by following the procedure laid out in the enactment.

“Sec.2 In this Act, unless there is anything repugnant in the subject or context, - ***

(i) "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of the tenancy in his favour, but does not include a person placed in occupation of a building or rented land by its tenant, unless with the consent in writing of the landlord, or a person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has been farmed out or leased by a municipal, town or notified area committee;“ 15 In *Dahya Lala v Rasul Mahomed Abdul Rahim*¹⁰, a Constitution Bench of this Court dealt with a case where a mortgagee who was granted possession of land under a deed of mortgage had inducted a tenant on the land. The appellants as owners of the equity redemption applied under the Bombay Agricultural Debtors’ Relief Act 1947 for redemption of the mortgaged land. An award was made on a compromise that the mortgagor was entitled to take possession from the tenant who had been inducted by the mortgagee. The tenant who was evicted applied for the restoration of possession under Section 29 of the Bombay Tenancy and Agricultural Lands Act 1948. The High Court upheld the plea on the ground that the tenant was entitled to continue in occupation on the same terms on which he was inducted by the mortgagee. Assailing the judgment of the High Court it was contended by the appellants that a person could be said to lawfully cultivate land within the meaning of Section 4 only if he had derived his right to cultivate directly from the owner of the land and not from some other person such as a mortgagee

who had a limited interest in the land. Justice JC Shah, speaking for the Constitution Bench held that under the Transfer of Property Act 1882, the right of a tenant who is inducted by a mortgagee in possession ordinarily comes to an end with the redemption of the mortgage. However, that rule would have no application to the interpretation of a statute such as the Bombay Tenancy and Agricultural Lands Act 1948 which had been enacted with the object of protecting persons lawfully possessing agricultural lands. This Court held:

“7. ...But a tenant of the mortgagee in possession is inducted on the land in the ordinary course of management under 10 (1963) 3 SCR 1 authority derived from the mortgagor and so long as the mortgage subsists, even under the ordinary law he is not liable to be evicted by the mortgagor. It appears that the legislature by restricting the exclusion to mortgagees in possession from the class of deemed tenants intended that the tenant lawfully inducted by the mortgagee shall on redemption of the mortgage be deemed to be tenant of the mortgagor. In our view, therefore, the High Court was right in holding that the respondent was entitled to claim the protection of the Bombay Tenancy and Agricultural Lands Act, 1948 as a deemed tenant.” A similar view was held by a Full Bench of the Punjab and Haryana High Court in *Jagan Nath v Mittar Sain*¹¹ where the High Court was dealing with the question of whether by virtue of a tenant executing a fresh rent note in favour of the mortgagee, the tenancy under the mortgagor comes to an end and a new tenancy comes into being under the mortgagee. The High Court held thus:

“(3) That a tenant inducted by the mortgagee remains a tenant during the continuance of the mortgage and on the redemption of the mortgage, the tenancy comes to an end;

(4) That in the case of agricultural tenancies, proposition No. (3) does not absolute hold good. There is an exception to it, namely, that the tenant of a mortgagee of agricultural land will continue to be its tenant even after redemption provided he has been inducted bona fide and in the like manner as a prudent owner would have done for the proper management of the land. Even in such a case, the operation of the lease cannot extend beyond the period for which it was granted. No lease can be granted if there is an express prohibition in the mortgage deed.” In *G Ponniah Thevar v Nalleyam Perumal Pillai*¹², ‘A’ died leaving behind two widows. One of the widows instituted a suit for partition which ended in a compromise under which the other widow was given certain land for enjoyment 11 1970 AIR (Punjab) 104 12 (1977) 1 SCC 500 during her life time. During her life time she had inducted a tenant. The respondents filed a suit to evict the tenant on the ground that his tenancy rights did not enure beyond the life time of the widow. The High Court granted the decree for eviction. In appeal, this Court reversed the decree for eviction and construed the provisions of the Madras Cultivating Tenants Protection Act 1955. It held thus:

“3. ...The Madras High Court had, apparently, followed certain decisions of that court which had applied the principle that a life-estate holder cannot create a tenancy

which could last beyond the life of a life-estate holder. The view taken by the Madras High Court and applied to statutory tenancies runs counter not only to the principles underlying creation of statutory tenancy rights in agricultural land, throughout the length and breadth of the country, but, it seems to us to be obviously in conflict with the particular statutory protection conferred upon cultivating tenants in the State of Madras. These enactments are really meant for the purposes proclaimed by them. The obvious effect of such statutory provisions cannot be taken away or whittled down by forensic sophistry. Courts should not allow themselves to become tools for defeating clearly expressed statutory intentions.” A statutory protection granted for the benefit of the tenants under specific tenancy laws is to be viewed from a standpoint of protecting the interests of a particular class. Restrictions on recovery of possession of the premises let out to the tenants have been imposed for the benefit of the tenants as a matter of legislative policy.

16 There is a fallacy in the submission which was urged on behalf of the appellant. The appellant postulates that a life interest is personal to the person who possesses it and the creation of a tenancy which will enure beyond her life amounts to a transfer of the life interest. What the submission overlooks is that the creation of the tenancy was an act of the person enjoying a life interest in the present case and was an incident of the authority of that individual to generate income from the property for her own sustenance. The creation of a tenancy is an incident of the exercise of such an authority. The protection which is conferred upon the tenant against eviction, except on specified grounds, arises as a consequence of statutory prescription under rent control legislation. The reason why the tenant is entitled to occupy the premises beyond the life time of the landlord who created the tenancy is simply as a result of a statutory enactment, in this case, the East Punjab Rent Restriction Act 1949. It is the intervention of a legislative mandate which enures to the benefit of the tenant. Once this has taken place, it was not open to the civil court to entertain a suit for possession founded on the hypothesis that the tenant is a trespasser.

17 In view of the above discussion, we have come to the conclusion that:

- (i) Shiv Dev Kaur was in terms of the will executed by her father, Dr Hira Singh on 16 September 1944 entitled to a life interest in the property;
- (ii) Under the terms of the will, Shiv Dev Kaur was entitled to settle and reside in the property and benefit from the income arising out of the rent;
- (iii) The life estate granted to Shiv Dev Kaur enabled her to create a tenancy and receive the rent from the tenants on the property. She fulfilled the description of a ‘landlord’ under Section 2(c) of the East Punjab Urban Rent Restriction Act 1949;
- (iv) The first respondent who was covered by the expression ‘tenant’ under Section 2(i) of the East Punjab Urban Rent Restriction Act 1949 acquired the character of a statutory tenant and was protected under it;

(v) The statutory protection afforded to the tenant did not cease to exist upon the death of Shiv Dev Kaur;

(vi) A suit for possession on the basis that the tenant was a trespasser after the death of Shiv Dev Kaur was not maintainable; and

(vii) The remedy of the appellants was to pursue eviction proceedings on the grounds contemplated by the East Punjab Urban Rent Restriction Act 1949. 18 For the above reasons, we are of the view that the judgment of the learned single Judge dated 21 January 2016 does not suffer from any error. The appeal shall accordingly stand dismissed. There shall be no order as to costs. Civil Appeal Nos 11087 and 11088 of 2018 19 The appeals shall also stand dismissed in the same terms and with the same directions in Civil Appeal No 11086 of 2018.

.....J [Dr Dhananjaya Y Chandrachud]
.....J [Hemant Gupta] New Delhi;

April 16, 2019