# Gian Chand Vs Surinder Parkash Malhotra

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 6, 1984

**Acts Referred:** Transfer of Property Act, 1882 â€" Section 7

**Citation:** (1985) 1 ILR (P&H) 282 : (1984) 2 RCR(Rent) 182

**Hon'ble Judges:** M.M. Punchhi, J

**Bench:** Single Bench

**Advocate:** Surjit Singh, for the Appellant; K.P. Bhandari and Mr. Ravi Kapoor, for the Respondent

**Final Decision:** Allowed

## Judgement

M.M. Punchhi, J.
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 menthly 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 Cband tenant. It is in this background that on 28th May, 1981, Surinder Parkash

Malhotra, Plaintiff Respondent, fifed 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 defease 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 go, to what

amount by way of arrears of rest 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 pre-

TRANSFER OF PROPERTY ACT EAST PUNJAB URBAN RENT

RESTRICTION ACT

Sec. 105. Lease defined.Ã¯Â¿Â½ See. 2(C). "Landlord" means any

person for the time being entitled to

A lease of immovable property is a receive rent in respect of any

transfer of right to enjoy building or rented

such property, made for a certain land whether on his own account or

time, express or implied, or in on behalf, or for the benefit, of any

perpetuity, in consideration of a other person or as a trustee,

price paid or promised, or of guardian, receiver, executor or

money, a share of crops, service or administrator for any other person

any other thing of value, to be and includes tenant who sublets any

rendered periodically or on specifiedbuilding or rented lard in the manner

occasions to the trars-feror by the hereinafter authorised, and, every

transferee, who accepts the transfer person from time to time deriving title

on such terms. under a landlord.

Lessor, lessee, premium and rent

definedÃ¯Â¿Â½The 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:

Section 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 properly. 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 autorization 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 docs not substitute himself to the grantor of the authority, but is rather in the eye of law a second self of the sane 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 Vs. Pt. Sant Ram Jaishi Ram, . while taking stock of the salutary principle embodied in Section 11 of the Indian

Evidence Act, observed that the doctrine had no application where the landlord''s title bad expired or been extingitished 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 (sic) 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 Maihotra) holding a title paramount, his obligation to pay rent to Surinder Parkash Maihotra, 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 debased from denying the title of the

landlord during the continuance of the tenancy. As noticed earlier if be gets evicted by title paramount, as observed by A. N Bhandari, C. J., then

he can deny the title. Now (sic) 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 bold the title paramount. On the

happening of such an event, if he attorned to her, be 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 lave denied the title

of his erstwhile landlord for, by then, the tenency 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, bad 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 u/s 115, CPC 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 (sic) 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.