Sah Sita Ram and Others Vs Syed Mohammad Mehdi Nawab and Others

Court: Patna High Court

Date of Decision: Oct. 17, 1958

Acts Referred: Patna High Court Rules, 1916 â€" Rule 1
Transfer of Property Act, 1882 â€" Section 108, 111

Citation: AIR 1959 Patna 139

Hon'ble Judges: Raj Kishore Prasad, J

Bench: Single Bench

Advocate: T.K. Prasad and Lala Deokinandan Prasad, for the Appellant; Akbar Hussain and Sarwar Ali, for the Respondent

Final Decision: Dismissed

Judgement

Raj Kishore Prasad, J.
The crucial, and main question for determination in this, plaintiffs appeal is, whether the defendants second party

are also liable for damages for three years before the suit for not putting the plaintiffs in possession of the lease-hold properties, notwithstanding

that the defendants second party terminated their tenancy u/s 111(h) of the Transfer of Property Act by a notice dated the 9th February, 1942,

with effect from the 1st March, 1942, in which they informed the plaintiffs that they (defendants second party) were not in possession of the house

in question, and, that Amiri Begum, defendant first party, was occupying a portion of it as admitted in the plaint. If the defendants second, party are

held so liable, then the question would arise, if the plaintiffs'' claim for damages against them is barred by limitation.

2. The plaintiffs have appealed from the judgment of Mr. S. Saghir Hussain, Third Additional Subordinate Judge, Patna, who has dismissed their

claim for damages against the defendants second party, ex-tenants of holding in question.

3. The facts necessary for the decision of the present appeal are that the plaintiffs are the landlords of the holding in dispute. The holding number is

83, and in the present suit we are concerned only with the inner apartment known as ''Kamras'', that is, the entire residential quarters, excluding

katras or shops. These kamras in suit have been admittedly in possession of the defendants second party and their predecessors-in-interest from a

long time. The rental payable by the defendants second party for the portion of holding No. 83 in dispute was Rs. 75/- a month.

The plaintiffs obtained several decrees for house rent against the defendants second party on the finding that they were their tenants. After the

disposal of the last rent suit in 1939, the defendants second party served a notice on the plaintiffs on the 9th February, 1942 terminating their

tenancy by the 28th February, 1942, and,, they also served a notice on Amiri Bibi, the defendant first party, who was in actual possession of the

house in question.

4. The last rent suit brought by the plaintiffs against the defendants second party came up for decision before this Court in Civil revision. Their

Lordships, Chatterji and Beevor, JJ., who heard and decided the case, as will appear from their judgment dated the 29th November, 1944 (Ext.

A-1), held that the lease having been deter- mined, the relationship of landlord and tenant no longer subsisted between the plaintiffs and the then

defendants, now defendants second party, and, consequently, the plaintiffs'' claim for rent must fail.

They further found that Amiri Bibi, who was not a party to that suit, but who is now a party to the present suit as defendant first party, was not

introduced by the present defendants second party, in that, they served a notice on her as well. In these circumstances, their Lordships held that it

would be most inequitable to give a decree to the plaintiffs against the then defendants, now defendants second party, for damages for use and

occupation. The plaintiffs'' suit was, accordingly, dismissed.

5. Thereafter, on the 8th November, 1949, after five years, the plaintiffs brought the present suit for ejectment and damages against Amiri Bibi,

defendant first party, as well as against the defendants second party. The plaintiffs'' suit for ejectment and damages was decreed against defendant

No. 1 only, but it was dismissed against the defendants second party. It was conceded at the Bar that the plaintiffs have already got possession of

the house in dispute. The plaintiffs have, therefore, come up in appeal against the judgment of the Court below disallowing their claim for damages

against the defendants second party.

6. The first, and the basic question, therefore, is: Are the defendants second party also liable for damages to the plaintiffs for not giving them vacant

possession of the demised land?

7. There is no doubt that u/s 111(h), a lease of Immovable property determines on the expiration of a notice to determine the lease, duly give by

the lessor to the lessee. The tenancy of the defendants second party, therefore, came to an end on the 28th February, 1942 after the service of

notice by them on the plaintiffs on the 9th February, 1942.

The plaintiffs, however, were not put in vacant possession of the leasehold by the defendants second party, the lessees, on the ground that they

were not in possession of the some and, that it was in actual possess-on of the defendant first party, who, however, was not inducted as a sub-

tenant by them, and that she was in possession against their consent on a portion of the same.

8. Mr. Tara Kishore Prasad, who appeared for the plaintiffs-appellants, relied on Section 108(q) of the Transfer of Property Act and submitted

that on a determination of a lease the lessee was bound to put the lessor into possession of the property, and, consequently, here also, the

defendants second party were bound to put the plaintiffs in possession of the demised property, and on their failure to do so, they were also liable

for damages to the plaintiffs for the period the plaintiffs were out of possession of the property, even though the defendant first party was in actual

possession of the same against the consent of the plaintiffs, and, she was not inducted as a sub-tenant by them.

9. In support of his above contention, Mr. Prasad relied on Baliramgiri v. Vasudev ILR 22 Bom 348. which was relied upon by a learned Single

Judge of the Calcutta High Court in Gopaldas Khettri v. Phulchand Purushottamdas ILK (1946) 1 Call 411 : AIR 1946 Cal 357. He also placed

reliance on Handerson v. Squire (1869) 4 QB 170 which was fallowed by the Court of Appeal in Marsden v. Edward Heyes, Ltd. (1927) 2 KB

Z.

10. The law laid down by Lord Kenyon in Harding v. Crethorn (1793) 1 Esp. 57 that ""when a lease is expired the tenants'' responsibility is not at

an end; for if the premises are in possession of an under-tenant, the landlord may refuse to accept the possession, and hold the original lessee

liable; for the lessor is entitled to receive the absolute possession at the end of the term,"" has been considered law ever since, and, has been

recognised as law in India also.

In the case of a sub-tenant, therefore, who has been let into possession not by the landlord, but by the tenant, the landlord"" is entitled to recover

from the tenant all the loss he has sustained by not being put in possession of the entire premises at the end of the term; he is entitled to a sum

equivalent to the rent which he has lost, and to the expenses he has been put to in taking legal proceedings to oust the sub-tenant from a wrongful

possession. If, therefore, a sub-tenant is inducted on the land by the lessee, or, even when a person is in possession of the demised Sand with the

consent of the lessee, then the case would fall within the rule laid down in (1793) 1 Esp 57 (supraj.

11. But the question, which arises here, is: What is the legal position if the person in possession is not a sub-tenant inducted on the land by the

lessee, nor, he is in possession of the demised land or a portion of it with the consent of the lessee?

12. On the finding of the Court below, Amiri Bibi, defendant first party, was not inducted on the demised land by the defendants second party,

nor, was she there with the consent of the defendants second party. The question, therefore, arises, in such circumstances: Are the defendants

second party also liable for the decree of damages which has been passed against defendant No. 1, defendant first party, in favour of the plaintiffs?

13. In (1869) 4 QB 170 (supra), just mentioned, a tenant, under a parol agreement, without any stipulation that he shall deliver up possession of

the premises, at the end of his term, underlet a part of the premises, and at the determination of both tenancies, the under-tenant held over against

the will of the tenant. Their Lordships held that in such a case also, the tenant is nevertheless bound at law to deliver up complete possession,

notwithstanding there is no specific stipulation under the parol agreement that he shall deliver up possession of the premises at the end of the term,

and, therefore, the landlord can recover against the tenant as damages the value of the whole premises for the time he is kept out of possession,

and the costs of ejecting the undertenant.

14. In the above case, there was an under tenant, who was admittedly inducted on the land by the tenant, although at the determination of the

tenancy, the under-tenant held over against the will of the tenant, who had underlet a portion of the demised premises to him.

15. In such circumstances, the tenant was held liable, for damages, because, obviously it was he who underlet a part of demised land to the under-

tenant, and who brought him upon the land.

16. Blackburn, J. while agreeing with Cock-burn. C.f., in the above mentioned case, observed:

The question is, where there is a tenancy, "and nothing is expressed as to delivering up ptis- session a; its determination, whether there is an

implied contract that the tenant shall not only go out of possession, but restore the possession to the landlord. Here the tenant had sub-let the

premises to a man who, under some fancied claim of right, held over without the consent and against the will of the tenant, his landlord. I think that

there is such an implied contract; for as the landlord who is to put the tenant into possession could not fulfil hi contract unless he put him into

absolute possession, the obligation on the part of the tenant at the end of the term is correlative.

We would, therefore, find that the question, which arises for decision in the present appeal, did not arise in the aforesaid case. Here Amiri Bibi,

defendant 1, was never put in possession of any portion of the demised land by the defendants second party at all. She came upon the land against

their consent and, without their connivance. In such circumstances, the ratio of the above case will not apply here. The facts of that case are

entirely different from those of the instant case,

17. In the above case, while considering whether, where premises are let to co-tenants, and one holds over without the assent of the other, both

are liable in an action for use and occupation, Blackburn, J., said:

It is true that there is very little authority on the question under discussion; but, independently of authority, on principle, seeing that the landlord

gives the tenant absolute possession it is the duty of the tenant to restore absolute possession.

While considering the above mentioned case, their Lordships Chatterji and Beevor, JJ. in Ext. A-1, relied on the following observation of Hayes, J.

in the said case:

It is obvious that if the Landlord had not brought an action of ejectment, but had allowed the subtenant to remain in possession, and the rent to run

on against the defendant, his answer to an action for use and occupation would have been, why did not you bring ejectment?

Relying on the above observation, their Lordships in the previous rent suit (Ext. A-1) refused a decree to the present plaintiffs for damages for use

and occupation against the present defendants second party.

18. If, therefore, defendant I would not have been in actual and wrongful possession of even a portion of the demised land against the will and

consent, express or implied, of defendants second party, and, the latter would have failed to quit and deliver up possession to the plaintiffs, on

termination of the tenancy, there is no doubt that there would have been a breach of contract, in that, the lessors, the plaintiffs, were entitled to

receive the absolute possession at the end of the term, and, therefore, the defendants second party, the lessees, were bound to deliver up vacant

possession to the plaintiffs, and, consequently the damages sought to e recovered would have been those which necessarily Flow from the breach.

19. But, in a case like the present, where the defendants second party, for no fault of theirs, and due to no default on their part, are physically

helpless in putting the plaintiffs in vacant possession of the demised land, notwithstanding that they have determined then tenancy, because of the

illegal and wrongful possession of the defendant first party. I do not understand on what principle or law, the defendants second party can also be

made legally liable for damages. In such a case, as observed by Mellor, J., in (1869) 4 QB 170 (supra), ""the proper and legitimate course to

recover possession of premises is to bring an action of ejectment.

20. If the plaintiffs would have brought an action in ejectment forthwith, instead of delaying their action, they would not have suffered much loss. By

the late institution of their present suit for ejectment, after about eight years since the service of the notice by the defendants second party on them,

if the plaintiffs have been kept out of possession for a longer time, and, they have suffered consequently greater loss, only they are themselves to be

blamed, and, not the defendants second party, because the latter informed the plaintiffs as far back as 9-2-1942, in their notice to them, that they

wore not in possession of the house and that the defendant first party was in occupation of a portion of it.

But in spite of getting this knowledge, the plaintiffs persisted in bringing a suit for damages for use and occupation against the defendants second

party. Even then, although the judgment of this Court, on the previous action, (Ext. A-1) was delivered on 29-11-1944, the plaintiffs waited for

about five years more before bringing the present action in ejectment on 8-11-1949. For the reasons given above, in my judgment, the case of

(1869) 4 QB 170 (supra) is of no assistance to the appellants, and, it is not at all helpful in deciding the controversy here, which was not at issue in

that case, and, in which the facts were different.

21. Similarly (1927) 2 KB 1 in which (1869) 4 QB 170 (supra), was relied upon, has also no application here, because what was held in that case

was that a tenant from year to year is under an implied obligation to use the demised premises in a tenant like manner and to yield them up so used

at the end of the tenancy; and the obligation continues as long as he continues tenant. If, therefore, he alters the character of the premises, he

commits a breach of the obligation and is liable in damages for the injury to the reversion. Here, we are concerned with a trespasser, defendant first

party, who is in possession against the will of the ex-tenants, the defendants second party.

22. In ILR 22 Bom 348 the defendants of that suit, who held seven fields as tenants of the plaintiffs, who was the inamdar of the village of Kaneri,

gave him notice of relinquishment of six of them. The notice stated that the six fields were no longer in their possession, and, that they would not be

responsible for the assessment. The plaintiff notwithstanding brought a suit to recover the assessment against them. To this suit, the Persons said to

be in possession of the lands were not parties.

23. The question, therefore, which arose before their Lordships, in the above Bombay case, was: whether the aforesaid notice given by the

defendants was a sufficient notice of relinquishment? The retention of one field by the defendants which their Lordships Farran, C.J., and Hosking,

J.) said gave rise to different considerations was not taken into account in deciding the above question.

Their Lordships said that the notice was in terms an absolute relinquishment by the defendants of all interest in the six fields, and that it was not the

less so because it stated that the defendants had not been in possession of the fields, and, that it left the fields at the unqualified disposal of the

inamdar, the plaintiff, in so far as the defendants were concerned.

24. Their Lordships then proceeded to consider the further question : Whether the notice was invalid, because it did not purport to give, and did

not in fact give vacant possession to the plaintiff, the inamdar? Their Lordships observed :

It does nut seem to us to affect the legal aspect of the case whether the fact that the possession is not vacant appears on the face of the notice or

is shown otherwise. The legal result must, we think, be the same in either case. Ihere can, we think, be no doubt that a tenant giving up demised

lands to his landlord is bound to give him vacant possession.

25. Then: Lordships followed the case of (1869) 4 QB 170 (supra), and, observed that the law in England, as laid down in that case, was the

same in India. Therefore, they made the following observation, on which strong reliance was placed by Mr. Tara Kishore Prasad, and, which was

also quoted with approval by their Lordships, Chatterji and Beevor, JJ., in the previous case, the judgment of which is Ext. A-1. At p. 353,

Farran, C. J., who delivered the joint judgment of the Court, observed:

The question, however, still remains. What is the result of not giving vacant possession? Does it continue the tenancy indefinitely or does it give

rise to a claim for damages on the part of the Landlord? The latter appears to us to be its legal result. In the case of (1869) 4 QB 170 above

referred to the tenant had underlet a part of the premises, and the under-tenant refused to vacate at the termination of the principal tenancy. The

landlord recovered possession by ejectment. The tenant was there held liable in damages to the extent of the loss of rent which the landlord

sustained during the actual period for which he was kept out of possession and the expenses he was put to in ejecting the sub-tenant. The same

rule should, we think, be applied in a case like the present. It would be unreasonable to hold cultivators, like the defendants, liable for rent

perpetually because the inamdar docs choose to demand or recover possession from Keshav and Pandurang (that is, the persons who were in

possession), if he does not decide to treat them as his tenants. If they refuse to vacate at the request of the defendants, it is difficult to see how the

defendants after the notice could force them to do so.

26. Their Lordships thereafter held that the suit before them was not a suit for damages for not giving up vacant possession, but to recover

assessment from the defendants as if they had given no notice of relinquishment, and, therefore, they confirmed the decree of the Court below

refusing the plaintiff a decree for assessment of rent against the defendants.

27. Mr. Prasad contended that from the above observation of their Lordships it is clear that although the ex-tenant is not liable for the rent in

respect of the demised land, but his failure to deliver up vacant possession to the lessor does give rise to a claim for damages on the part of a

landlord against him, and, accordingly, be submitted, that, in the instant case also, the plaintiffs were entitled to damages from the ex-tenants,

defendants second party, also.

28. In the above Bombay case ILR 22 Bom 348 while considering the question as to how Keshav and Panclurang were in possession of a portion

of the demised land, Farran, C.J., at page 354, said :

There is no finding by the District Judge how these men got into possession, whether with the consent or against the wish of the defendants, or

whether they are or are not willing to vacate the fields. The Subordinate Judge appears to think that they may be holding on behalf of the

defendants, but he has not found to that effect, and that aspect of the case does'' not appear to have been preserited to the District Judge, it would

have been more desirable if the latter had dealt with this question of non-vacant possession, but as his judgment does not allude to it, we must

presume that it cannot have been pressed upon him.

29. We, therefore, find that in the Bombay case, there was no finding as to whether the two persons, who were alleged to be in possession, were

in possession with the consent or against the wish of the ex-tenants. Their Lordships did not think it necessary to remand the appeal for further

enquiry upon the above point as the suit before them was not for damages for not giving up vacant possession, but to recover assessment from the

defendants, as if they had given no notice of relinquishment.

30. In these circumstances, no doubt there is an observation in the above case that the rule laid down in (1869) 4 QB 170 (supra), which applies

to the case of a sub-tenant, to whom a part of the demised premises had been let and who hold over and who refused to vacate at the termination

of the principal tenancy, should apply to a case like the one which their Lordships were considering in which the defendants in their notice of

relinquishment stated that they had not been in possession of the six fields, which were in possession of other persons, but to me it appears that the

observation is only an obiter, and not a decision, because the suit before them was not for damages for not giving up vacant possession, but only to

recover assessment from the defendants as if they had given no notice of relinquishment.

31. The above observation of Farran, C.J., is certainly entitled to great weight; but it appear to me that the latter portion of the observation of the

learned Chief Justice to the effect that,

It would be unreasonable to hold cultivator like the defendants, liable for rent perpetually because the inamdar does not choose to demand or

recover possession from Keshav and Pandurang, if he does not desire to treat them as his tenants, if they refuse to vacate at the request of the

defendants, it is difficult to see how the defendants after the notice could force them to do so,

is very much against the appellants. Relying on the above observation, relied upon by the appellants, here also it can be said it would be

unreasonably to hold the defendants second party liable for rent perpetually because the plaintiffs do not choose to demand, or recover possession

from the defendant first party if they do not desire to treat her as their tenant; and, if she refuses to vacate at the request of the defendants second

party, it is difficult to see how the defendants second party after there notice of relinquishment could force her to do so.

The position, therefore in this : On the authority of the Bombay case, the defendants second party could not have been legally liable for the rent of

the demised land after their notice of relinquishment informing the plaintiffs that they were not in possession of it. Further, the plaintiffs on the

authority of (1869) 4 QB 170 (supra), would have been entitled to recover from the defendants second party all the loss they had sustained by not

being put in possession by them on the termination of their tenancy, and entitled as such to a sum equivalent to the rent which they would have lost,

only if the defendant first party would have been a sub-tenant of, or let into possession of the demised home or a portion of it by, the defendants

second party, or even if she would have been in possession with their consent, express or implied,

I cannot, therefore, understand how the plaintiffs can recover the rent from the defendants second party in the shape of damages, when they could

not have been made liable for the rent even. The plaintiffs in the previous suit (Ext. A-1) were hold not entitled to damages for use and occupation

against the defendants second party. For these reasons, in my judgment, the Bombay case is no authority for the present case, because the

question at issue, here did not arise there at all, and, although incidentally it arose, but it was left undermined, as it did not arise in the suit before

their Lordships.

32. Likewise ILR (1946) 1 Cal 411 : AIR 1946 Cal 357 the last case relied upon by the learned Counsel for the appellants, in which tht, just

mentioned Bombay case ILR 22 Bom 348 has been relied upon, has also no application here. That was a case of a sub-tenant in possession, and

not of a trespasser in possession against the will of the tenant, as is the case here. In the Calcutta case ILR (1946) 1 Cal 411: AIR 1946 Cal 357

the tenant lessee failed to make over vacant possession of the premises upon the expiry of the lease, but offered to get the sub-tenants to attorn in

favour of the landlords. In these circumstances, the tenant was held liable to pay mesne profits for the period from the expiry of the lease until the

receiver in that case took possession.

33. The learned Counsel for the appellants particularly referred to a passage at p. 423 of ILR Cal: (at p. 364 of AIR). The passage, in the

judgment of Khundkar, J., relied upon is to the following effect :

In the present case, the plaintiff incurred loss by reason of the first defendant"s failure to restore him to possession. Between September 1 and

November 10. 1938, the loss was occasioned by the first defendant, who was in wrongful possession, taking the profits of the property. After

November 10, it was occasioned by the costs, charges and expenses of a receiver, who had to be put in possession. But in neither case would less

have arisen at all had the first defendant restored the lessors to possession. Its cause being the same, the essential character of loss was not

changed, though its technical legal definition suffered alteration after the appointment of the receiver. A loss which started as mesne profits

continued as damages, but both flowed from the wrongful act of the first defendant in not surrendering possession.

34. The basic fact of the above case, which is ignored, is that that was a case of a sub-tenant, and not a trespasser like here. If a tenant inducts a

sub-tenant upon the demised land, he alone is responsible to his landlord for surrendering possession upon the expiry of the lease, and if he does

not do so, because the sub-tenant refuses to vacate, the tenant would be liable in damages to his landlord, because the loss of the landlord flowed

from the wrongful act of the tenant in not surrendering possession. In my opinion, therefore, this Calcutta case also is not at all helpful.

35. Mr. Syed Akbar Hussain, who represented defendants second party Respondents did not call to his aid any authority, but he distinguished the

cases relied upon by the appellants and submitted that neither in principle, nor in law on the facts of the present case, defendants second party can

also be made legally liable for damages to the plaintiffs for the loss they had suffered by not being put in possession of the demised house.

36. From a review of the authorities discussed above, the principles, which can be deduced therefrom, may be stated thus :

37. u/s 111(a), Transfer of Property Act, a lease of Immovable property determines by efflux of the time limited thereby, and, u/s 111(h) on the

expiration of a notice to determine the lease,, or to quit, or of intention to quit, the property leased, duly given by one party to the other. u/s

108(q), on the determination of the lease, the lessee is bound to put the lessor into possession of the lease property. Therefore, at the expiration of

the term, whether it terminates by notice u/s 111(h), or by efflux of time u/s 111(a) the lessee is bound to put the lessor in vacant possession of the

property.

38. The well settled rule is that the tenant must, on the expiration or sooner determination of his tenancy, deliver up to his landlord possession of

the demised property and put him in vacant possession thereof. If the tenant does not give vacant possession to his landlord, its effect is not to

continue the tenancy indefinitely, but to give rise to a claim for damages on the part of the landlord. The tenant is liable in damages to the extent of

the loss of rent which the landlord Sustains during the actual period for which he was kept out of possession and the expenses he was put to in

recovering possession of the land.

39. The landlord''s right to get back and the tenant''s liability to restore possession of the property on determination of the tenancy is inherent in the

very relationship between them and will be implied by law. Where, therefore, there is a tenancy and nothing is expressed as to delivering up

possession at its determination, there is an implied contract that the tenant shall not only go out of possession, but restore the possession to the

landlord.

40. It is also well established that when a lease is expired the tenant''s responsibility is not at an end; for if the premises are in possession of an

under-tenant, the landlord may refuse to accept the possession, and hold the original lessee liable; for the lessor is entitled to receive the absolute

possession at the end of the term. In the case of Subtenant, therefore, who has been let into possession not by the landlord, but by the tenant, the

landlord is entitled to recover from the tenant all the loss he has sustained by not being put in possession of the entire premises at the end of the

term. In such a case also, the landlord is entitled to a sum equivalent to the rent which he has lost, and to expenses be has been put to in talcing

legal proceedings to oust the sub-tenant from a wrongful possession.

41. If, therefore, the property is in possession of a sub-tenant, it is the duty of the tenant to get him out, otherwise he cannot give the landlord

complete possession. If the tenant does not turn him out, the landlord may maintain a suit for ejectment against the sub-tenant and recover damages

from the tenant including the cost of ejecting the subtenant.

42. Even, when that tenant sublets the premises to a man, who under some fancied claim of right, or, for some other reason, holds over, without

the consent, and, against the will of the tenant, his landlord, there is an implied contract that the tenant shall not only go out of possession, but

restore the possession to the landlord for as the landlord who is to nut the tenant into possession could not fulfil his contract unless he put him into

absolute possession the obligation on the part of the tenant at the end of the term is correlative. On the principle seeing that the landlord gives the

tenant absolute possession, it is the duty of the tenant to restore absolute possession.

43. In each of the above cases, the liability of the tenant, who on the determination of his tenancy was bound to put his landlord into possession of

the leased property, but who fails to deliver Up possession and put his landlord in vacant possession of the entire premises, to pay damages to his

landlord, is not at all unreasonable; but, on the contrary, very salutary to hold the tenant liable to compensate his landlord to the extent of the

natural and necessary consequences of his wrongful act.

The failure of the tenant to deliver up vacant possession to his landlord on the determination pf the lease amounts to a breach of contract, and the

damages sought to be recovered by the landlord against his ex-tenant are those which necessarily flow from the breach. Upon the failure by a

tenant to put the landlord in possession of the property on the expiry of the lease, therefore, the landlord is entitled to recover all the loss he has

sustained by reason of such failure.

44. But where a tenant serves a notice of relinquishment on his landlord, and, informs him that he is not in possession of the demised land, and, that

the entire demised land, or a portion of it, is in possession of a trespasser, who has encroached upon it, against his wish, and against his consent,

express or implied, and who was never inducted upon the premises by him, and, who in spite of the tenant''s notice on the trespasser also, the

latter refuses to vacate, the tenant will not be liable in damages to his landlord for his failure to put the landlord in vacant possession of ''the

demised premises,

If the tenant, even in such a case, where the trespasser is in possession, without any fault or default on the part of the tenant, was to be held liable

in damages to the landlord, what would be the use of the notice of surrender and intimation of relinquishment conveyed to the landlord, and, of the

notice of encroachment given by the tenant to the landlord? It is obvious that if the landlord even then does not bring an action of ejectment against

the trespasser, but, allows him to remain in possession, and, the rent to run on against the tenant, his answer to an action for use and occupation by

the landlord would be: Why did not you bring ejectment? In these circumstances, it would be unreasonable to hold the tenant liable in damages to

the landlord.

45. Damages, which may fairly and reasonably be considered as naturally arising from a breach of contract, according to the usual course of things,

are always recoverable. But where the landlord suffers loss due to the wrongful act of a third party, such as could not naturally be contemplated as

likely to spring from the tenant''s conduct, such damage will be too remote. Damage complained of must arise in the usual course of things, and, if it

would not arise in the usual course of things from a breach of contract, ordinarily, it is not recoverable.

46. Here, if the plaintiffs have suffered greater loss, it was due to their own imprudence, in beginning an action for damages for use and occupation,

in the first instance, against the defendants second party, in spite of determination of the tenancy and, having knowledge of the fact that the

defendants second party were not in possession of the demised land and that the defendant first party was in possession of the same, instead of an

action in ejectment forthwith against the defendant first party after the notice in 1942. A man cannot claim damages for harm resulting from his own

conduct. In this view also, the plaintiffs are not entitled to any damages against the defendants second party.

47. For the reasons given above, I hold that the defendants second party are not liable to pay damages to the plaintiffs, and, accordingly, they are

not liable for the decree for damages passed in favour of the plaintiffs against the defendant first party.

48. In view of my above finding that there is no liability on the part of the defendants second party to pay damages for their failure to deliver vacant

possession to the plaintiffs, it is not necessary to consider the second question about limitation. The question of limitation, in these circumstances,

does not arise at all, and, therefore, it is unnecessary to decide it,

49. There is one more question about my jurisdiction sitting single to hear the present appeal which was argued by Mr. Tarakishore Prasad

yesterday. What happened was this; The Stamp Reporter of this Court reported that the plaintiffs'' suit in the court below had been undervalued,,

and, according to him, the market-value of the land in suit should be Rs. 18,000/- and not Rs. 5,000/- as mentioned in the plaint.

The report of the Stamp Reporter was accepted by me, and, thereafter, the plaintiffs-appellants were asked to pay the deficit court-fee payable on

the plaint. The plaintiffs have, accordingly, paid the deficit court-fee on the 13th instant. After the payment of the court-fee, the plaintiffs were

allowed to amend the plaint and the memorandum of appeal in accordance with the report of the Stamp Reporter, The result of the amendment,

therefore, is that the present value of the suit is Rs. 20,500/-, whereas the value of the appeal is as before Rs. 2,500/-. The objection of Mr. T.K.

Prasad is based on the newly inserted provision in the Rules of the High Court at Patna.

50. Chapter II, Rule 1 specifies the different matters which may be heard and disposed of by a Single Judge. All such matters are given in detail in

Rule 1 of Chapter II at page 5 of the Patna High Court Rules. A new Clause (i) (a) has now been added to Rule 1 on the 14th November, 1957.

This new Clause (i) (a) of Rule 1 of Chapter II is in the following terms:

An appeal from an original decree below Rs. 10,000/- in value and any cross objection therein, irrespective of the date of institution of such

appeal or cross-objection.

The contention of Mr. Tara Kishore Prasad on the basis of the above Clause (i) (a) is that unless the decree be below Rs. 16,000/- in value, the

appeal cannot be heard by a Single Judge. According to his contention, the value of the suit and the value of the appeal may be more than Rs.

10,000/-, but if the value of the decree is below Rs. 10,000/-, then only an appeal from such an original decree will be heard by a Single Judge.

He, therefore, contended that as in the present case the value of the decree and the value of the suit after the amendment is more than Rs. 20,000/-

, the appeal from such a decree notwithstanding that its value is below Rs. 10,000 must be heard by a Division Bench.

I am unable to accept this interpretation of Mr. Prasad as correct. I confess that this clause is not very happily worded, because by putting the

words ""below Rs. 10,000/- in value"" immediately after the words ""original decree"" it may create some confusion and convey a meaning not really

intended. If the words ""below Rs. 10,000/-. in value"" had been put immediately after the words ""An appeal"" and before the words ""from an

original decree,"" I think the meaning would have been much clearer and without any controversy.

I have, however, no doubt in my mind, even on the present phraseology of Rule 1(i)(a) that the true meaning and construction of the clause is that if

an appeal to this Court from an original decree is below Rs. 10,000/- in value, such an appeal may be heard and disposed of by a Single Judge,

irrespective of the value of the suit or the decree passed in the suit.

I, therefore, hold that it is the value of the appeal which will determine the Jurisdiction of the Court to hear it. In other words, if an appeal is below

Rs. 10,000/- in value, it may be heard and disposed of by a Single Judge notwithstanding that the value of the suit and the value of the decree

passed in the suit is more than Rs. 10,000/-. In the present case, although the value of the suit and the value of the decree passed in it is above Rs.

10,000/-, but as admittedly the value of the appeal is below Rs. 10,000/-, it can be heard and disposed of by a Single Judge. This objection on the

ground of jurisdiction of this Court to hear the appeal taken by Mr. Tarakishore Prasad, is therefore, overruled.

51. In the result, the appeal fails, and is dismissed but in the circumstances of the case there will be no order for costs in favour of the defendants

second party-respondents against the plaintiffs-appellants.