

REVISIONAL CIVIL

*Before Harbans Singh, J.*MADAN LAL,—*Petitioner**versus*SOHAN LAL AND OTHERS,—*Respondents.*

Civil Revision No. 548 of 1964.

Code of Civil Procedure (Act V of 1908)—S. 9—Suit by non-occupancy tenants for possession of an equivalent area of land out of the land allotted to their landlord as a result of consolidation operations—Whether cognisable by a civil Court. 1965
February, 11th.

Held, that a suit by non-occupancy tenants to get possession of an equivalent area of land out of the land which has been allotted to their landlord as a result of consolidation operations is cognisable by the civil Courts. Such a suit raises the question of title as to whether the plaintiffs are entitled to get possession of any area of land and, if so, how much. This is a matter which can be tried only by a civil Court, there being no provision either in the Land Revenue Act, Punjab Tenancy Act or section 44 of the Consolidation Act prohibiting the jurisdiction of the civil Court in this matter.

Petition under Section 44 of the Punjab Courts Act (VI of 1918) for revision of the order of Shri C. L. Kalra, Sub-Judge 1st Class, Palwal, dated the 13th August, 1964, holding that the suit is maintainable in the civil Court.

PARKASH CHAND JAIN, ADVOCATE, for the Petitioner.

H. L. SARIN AND MISS ASHA KOHLI, ADVOCATES, for the Respondent.

JUDGMENT

HARBANS SINGH, J.—The facts giving rise to this revision may briefly be stated as under. Plaintiffs claim to be non-occupancy tenants under Madan Lal defendant-petitioner in respect of some 9 *kanals* and 11 *marlas* of agricultural land. Consolidation proceedings took place in this village. The defendant-landlord got certain area of land on repartition. Out of this land, possession of the land comprised in *khewat* No. 60, *khata* No. 118, measuring Harbans Singh, J.

Madan Lal,
 v.
 Sohan Lal and
 others,
 Harbans Singh,
 J

9 *kanals* and 11 *marlas*, was given to the petitioner-landlord as the owner and to the plaintiffs as non-occupancy tenants thereof. Ganga Charan, etc., who were also proprietors in this village, took up the matter before the State Government under section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, and the Additional Director as the delegate of the State Government decided that the land which had been allotted to the petitioner should go over to aforesaid Ganga Charan, etc., and the land allotted to Ganga Charan, etc., should go to the petitioner. The result of this was that the land of the landlord, which was in the possession of the plaintiffs as tenants, was taken possession of by Ganga Charan, etc., and thus they lost possession of the land which they were cultivating under the petitioner. According to the allegations in the plaint, the plaintiffs were entitled to get possession of an equivalent area of land, i.e., 9 *kanals* and 11 *marlas*, out of the land which the petitioner got, which was originally allotted to Ganga Charan, etc. The petitioner, however, refused to give them possession of any such area and hence they filed the suit for possession of the land to the extent indicated above. A number of objections were taken in the written statement filed by the petitioner. *Inter alia* he urged that the Civil Court had no jurisdiction. He admitted that possession of *khewat* No. 60, *khata* No. 18, as mentioned in paragraph 1 of the plaint, was with the plaintiffs as tenants. He, however, denied that they had lost possession of the same and, in the alternative, pleaded that even if they had lost possession thereof they had no right to claim possession of any other land from him (the petitioner). He further averred that in fact they had applied to the Consolidation authorities to get possession, but their application was dismissed and consequently there was no further remedy available to the plaintiffs. A preliminary issue was settled as follows:—

“Whether Civil Court has jurisdiction to try the suit?”

The trial Court came to the conclusion that the suit essentially was to establish the right of the plaintiffs to possess land as tenants and that the suit did

not fall in any of the categories in section 77 of the Punjab Tenancy Act, 1887, nor was it covered by section 50 or section 50-A of the aforesaid Act. It further relied on a judgment of this Court in *Parmanand v. Rakha* (1), where it was held that to a dispossessed tenant two remedies were open: (1) within one year he could file a suit in a revenue Court under section 50 of the Punjab Tenancy Act; and (2) after that period he could file an ordinary suit for possession in a Civil Court within the period prescribed by the **Limitation Act**. The Court also relied on *Kundan and others v. Sardara and others* (2), for the proposition that section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, did not bar the jurisdiction of the Civil Courts so far as questions of title were concerned. Consequently, it held that the Civil Court had jurisdiction and thereafter framed three issues on merits, including the issue as to whether the plaintiffs were entitled to possession of the suit-land and the issue as to what is the effect of any applicatoin made by the plaintiffs for possession of the suit-land before the consolidation authorities and the rejection of the same. The defendant-landlord being dissatisfied with this has come up to this Court in revision.

Madan Lal,
v.
Sohan Lal and
others,

Harbans Singh,
J.

In the first place it was urged on behalf of the petitioner that the ruling reported as *Permanand v. Rakha* (1), on which reliance had been placed by the Court below, has since been overruled by a Full Bench decision of this Court reported in *Bhag Singh and others v. Jawahar Singh and others* (3). The learned counsel for the respondents, however, contended that the case of the plaintiffs did not fall under section 50 as they had made no allegation of dispossession and consequently neither the Full Bench decision nor the decision in *Permanand v. Rakha* (1), had any application. Having gone through the plaint, the substance of which has been reproduced above, I am clearly of the view that there are no allegations of possession or dispossession and obviously, therefore, the provisions of section 50 are not applicable. Admittedly, only clause (g) in section 77(3), First Group, of the Punjab Tenancy Act can possibly be applicable, but that refers to

(1) A.I.R. 1952 Punj. 94

(2) 1959 P.L.R. 208.

(3) I.L.R. (1965) 1 Punj. 382=1965 P.L.R. 226.

Madan Lal, a suit under section 50 by a tenant, who has been dis-
 v. possessed, to get back possession. Obviously, therefore,
 Sohan Lal and section 77 or section 50 of the Punjab Tenancy Act are
 others, not applicable.

Harbans Singh.
 J.

The next contention of the learned counsel for the petitioner was that under sub-section (2) of section 23 of the Consolidation Act if all the owners and tenants do not agree to enter into possession as provided in sub-section (1); they would be entitled to possession of the holdings and tenancies allotted to them from the commencement of the agricultural year next following the date of the publication of the scheme; and "the Consolidation Officer shall; if necessary, put them in physical possession of the holding to which they are so entitled

* * * * *

He urged that in view of this, work of putting the tenants in physical possession of the holdings to which they are entitled is left only to the consolidation authorities. That would certainly be a case where there is no dispute as to the right of a tenant to get possession. Here, as already indicated, the petitioner denies the right of the tenants to get possession of any portion of the land which has been given to him under the orders of the Additional Director. He has further stated that the application of the plaintiffs, given to the consolidation department, has been rejected. As evidence has not been led on merits, it is not possible to say on what grounds that application has been dismissed. If and when evidence is produced before the trial Court, it will be open to it to go into the same and adjudicate on the question as to whether the tenants are or are not entitled to get possession of the land claimed by them. Section 25 of the Consolidation Act clearly provides that the rights of the tenants and the landowners are in no way altered as a result of consolidation and they remain the same as they were before consolidation. The suit consequently raises the question of title as to whether the plaintiffs are entitled to get possession of any area of land and, if so, how much. This is a matter which can be tried only by a Civil Court, there being no provision either in the Land Revenue Act, Punjab Tenancy Act or section 44 of the Consolidation Act prohibiting the juris-

diction of the Civil Court in this matter. The decision of the Court below, though slightly on a different ground, must be upheld.

Madan Lal,
v.
Sohan Lal and
others,

In the result this petition is dismissed. There will, however, be no order as to costs. The parties have been directed to appear in the trial Court on 15th of March, 1955 to get further date. The records will be despatched to the Court below immediately.

Harbans Singh,
J.

B.R.T.

LETTERS PATENT APPEAL

Before D. K. Mahajan and S. K. Kapur, JJ.

G. P. GOVIL,—*Appellant.*

versus

UNION OF INDIA,—*Respondent.*

Letters Patent Appeal No. 83-D of 1964.

Constitution of India (1950)—Art. 226—High Court—When can review findings of Inquiry Officer—Inquiry officer—Whether can base his report on guess work—Exhibited document—Whether can be cancelled. 1965
February, 17th.

Held, that in a petition under Article 226 of the Constitution of India to quash the order of dismissal on the ground that the enquiry suffered from serious infirmities, it is open to the High Court to consider and hold unlawful and set aside any agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, limitations, or short of statutory right; (4) without observance of procedure required by law; (5) violative of principles of natural justice; and (6) unsupported by any evidence.

Held, that it is not legitimate for an inquiry Officer or any quasi-judicial body to go into all types of guess work as to what could and must have happened, particularly when the material could have been available which could have served as positive evidence in coming to the conclusion one way or the other. The enquiry is in a way of a quasi-criminal nature and it is for the prosecution to produce evidence which establishes the guilty of the person charged.

Held, that the Inquiry Officer cannot cancel an exhibited document. A document which has been brought on record cannot be ruled