

If the meaning of just debt is the existence of a previous debt which is due, is not immoral, illegal or opposed to public policy, etc., then it cannot be said that the amounts due on the mortgages in the present case were not just debts particularly when one of the mortgages was an interest carrying debt. This definition which was given as long ago as 1900 by Chatterjee, J., has more recently been re-stated by Mehr Chand Mahajan, J., in *Karnail Singh v. Naunihal Singh* (1). I am in respectful agreement with these judgments as indeed I am bound by them particularly when they have the imprint of very high authority. In this Court Harnam Singh, J., in *Mohindar Singh v. Joginder Singh* (2), upheld the sale which was made to pay off two mortgages, the rest of the consideration not being proved.

Puran Singh
v.
Udham Singh
and another
—
Kapur, J.

I would hold that the debts in the present case were just antecedent debts and, therefore, form a binding consideration for the sale which was effected by Bishan Singh. I would, therefore, dismiss this appeal, but the parties will bear their own costs in this Court.

APPELLATE CIVIL

Before Harnam Singh, J.

TEK CHAND, ETC.,—*Defendants-Appellants*

versus

JATI RAM, ETC.,—*Plaintiffs-Respondents*

Civil Regular Second Appeal No. 638 of 1949

1953

Sept. 16th.

Abandonment—Loss of right by—Whether a question of fact—If open to challenge in second appeal—Co-sharers—Adverse possession—Requisites of.

Held, that the question whether proprietary rights in suit land had been lost by abandonment is a question of fact and is not open to examination in second appeal unless it is shown that the finding does not proceed upon the consideration of the entire evidence on the record.

(1) I.L.R. 1945 Lah. 434 (F.B.)
(2) A.I.R. 1950 E.P. 79

Held further. that a co-sharer in order to prove title by prescription must prove some overt act amounting to ouster for a period of more than 12 years prior to the institution of the suit.

Regular second appeal from the decree of Shri Dalip Singh, District Judge, Karnal, dated the 14th day of May 1949, reversing that of Shri E. F. Barlow, Sub-Judge, 1st Class, Kaithal, dated the 12th April 1948, and granting the plaintiffs a decree for joint possession of the land in suit, but leaving the parties to bear their own costs throughout.

A. R. KAPUR and KRISHAN LAL, for Appellants.

RAJENDER NATH and D. N. AGGARWAL, for Respondents.

JUDGMENT

Harnam Singh,
J.

HARNAM SINGH, J. In civil suit No. 126 of 1947 the points that arose for decision were these :—

- (1) Whether the plaintiffs lost their proprietary rights in the land in suit by abandonment; and
- (2) Whether the defendants have become owners of the land in suit by prescription?

In dismissing the suit the Court found that the plaintiffs had lost their proprietary rights in the land in suit by abandonment and that defendants had become owners of the land in suit by prescription.

From the decree passed by the Court of first instance plaintiffs appealed.

In deciding the appeal the Court has found that the plaintiffs had not lost their proprietary rights in the land in suit by abandonment and that the defendants had not become owners of that land by adverse possession. In the result, the Court has set aside the judgment and the decree passed by the Court of first instance and passed a decree for joint possession of the land in suit. Parties have been left to bear their own costs.

From the decree passed on appeal the defendants have come up in further appeal to this Court. Tek Chand etc.
v.
Jati Ram etc.

Mr. Amolak Ram Kapur urges that the decision given on appeal that the plaintiffs had not lost their rights in the land in suit by abandonment is erroneous. In *Sain Ditta v. Ghulaman* (1), Stogdon, J., defined 'abandonment' in these terms :— Harnam Singh,
J.

"The meaning of the word as applied in this Province to absentee cases is an intentional quitting of possession by the proprietor, coupled with an intention not to resume it."

In *Sain Ditta v. Ghulaman* (1) Stogdon, J., thought that no quitting of possession is possible unless there is an intent on the part of the person in possession to divest himself entirely of the thing possessed. In plain English if a divestive intention does not exist, there is no absolute quitting or relinquishment of possession. Clearly, the question whether the plaintiffs had lost their proprietary rights in the land in suit by abandonment is a question of fact. If so, this Court is precluded from examining that finding unless it is shown that the finding does not proceed upon the consideration of the entire evidence on the record. In this connection *Noor Ilahi Maqbul Ilahi v. R. J. Wood and Company* (2) may be seen.

Mr. Amolak Ram Kapur appearing for the appellants has not been able to show a syllable of evidence on the record which has not been considered by the Court of appeal in reaching the conclusion that the extinction of proprietary rights by abandonment was not proved.

Mr. Amolak Ram Kapur then urges that the facts proved or admitted on the record prove that the defendants have become owners of the land

(1) 85 P.R. 1892

(2) A.I.R. 1928 Lah. 924

Tek Chand etc. in suit by prescription. In this connection it has
 v. to be borne in mind that the plaintiffs and the
 Jati Ram etc. defendants were co-sharers of the land in suit.
 ——— That being so, to prove title by prescription de-
 Harnam Singh, fendants must prove some overt act amounting to
 J. the ouster of the plaintiffs for a period of more
 than twelve years prior to the institution of the
 suit. In the opinion of the District Judge ouster
 of the plaintiffs for a period of more than twelve
 years is not proved.

Finding as I do that Regular Second Appeal
 No. 638 of 1949 is concluded by findings of fact I
 dismiss the appeal.

Having regard to the circumstances of the
 case, I leave the parties to bear their own costs
 throughout.

APPELLATE CIVIL

Before Bhandari, C.J., and Khosla, J.

PANDIT RAJA RAM,—Plaintiff-Appellant

versus

SHAM LAL AND ANOTHER,—Respondents

Regular Second Appeal No. 388 of 1952

*The East Punjab Urban Rent Restriction Act (II of
 1949)—Section 4—Standard rent fixed by Rent Controller—
 No date specified from which it is to take effect—Date from
 which standard rent payable—Date of application or date of
 order—Nature of the order passed, explained—Separate
 suit to enforce the order, whether competent.*

Tenants applied for fixation of rent on the 27th
 May, 1947, Controller fixed the rent at Rs. 5 per mensem
 on the 17th August, 1948. On appeal by the landlord, rent
 fixed at Rs. 25 per mensem on the 14th May 1949. No date
 mentioned from which this order was to take effect. Land-
 lord's suit for recovery of arrears of rent at Rs. 25 per men-
 sem filed on the 27th March 1950, with effect from the
 27th May 1947. Suit resisted on the ground that rent at the
 rate of Rs. 25 was chargeable with effect from the 14th May
 1949, the date of the appellate order. Rent Controller held
 that rent at Rs. 25 was payable from the date of the appellate
 order. This order was upheld in appeal. The landlord
 came up in second appeal to the High Court.

1953

Sept. 17th.