

APPELLATE CIVIL

Before Harnam Singh, J.

THAKAR DALIP SINGH,—Plaintiff-Appellant.

versus

COURT OF WARDS, DADA SIBA ESTATE AND KANWAR

RAJINDAR SINGH, MINOR, THROUGH DEPUTY
COMMISSIONER, KANGRA DISTRICT,—

Defendants-Respondents.

First Appeal From Order No. 89 of 1950

Punjab Tenancy Act (XVI of 1887), Section 77 (3), Second Group (i), Tenancy expiring by efflux of time—Suit by the ex-tenant against the landlord thereafter, whether cognizable by a Revenue Court or a Civil Court.

Held, that clause (i) of section 77 (3), Second Group of the Punjab Tenancy Act, contemplates that at the date of the suit the relationship of landlord and tenant subsists between the parties. The tenancy had expired by efflux of time when the suit was filed. The tenant had neither the right to enter upon and possess the land leased to him nor was he in possession of the land; and, therefore, the suit was not between a landlord and a tenant within the meaning of the clause and was, therefore, cognizable by a Civil Court.

First Appeal from the order of Shri Sham Lal, Senior Sub-Judge, Kangra at Dharamsala, dated the 14th July 1950, holding that both these cases are triable by the Revenue Court and not by the Civil Court and the plaints of both the suits are returned to the plaintiff for presentation to a Revenue Court having jurisdiction to hear the cases.

D. K. MAHAJAN, for Appellant.

A. R. KAPUR, for Respondents.

JUDGMENT

HARNAM SINGH, J. This order disposes of F.A.O. Nos 89 and 90 of 1950.

Briefly summarised, the facts giving rise to these appeals are these: On the 6th of February 1950, Thakar Dalip Singh instituted Civil Suit No. 39 of 1950 for the recovery of rupees 13,195 from the Court of Wards, Dadasiba Estate, Kangra District. In the plaint it was said that in November 1946, a notice was

Harnam
Singh J.

Thakar Dalip Singh published on behalf of the defendant in the 'Tribune' of Lahore for the submission of tenders to the defendant by the 6th of December 1946, with respect to the lease of five squares of land situate at Chak No. 2|1-AL, Tahsil Okara, District Montgomery, for the year 1947-48. In pursuance of that notice the plaintiff submitted tender offering rupees 11,125 on account of the lease money of the land for the year 1947-48. That offer having been accepted the plaintiff paid to the defendant rupees 2,900 on the 6th of December 1946, rupees 4,112-8-0 on the 11th of December 1946, and rupees 4,112-8-0 in the month of February 1948. In para 4 of the plaint it is stated that on account of disturbances in the West Punjab it became impossible for the Hindus and Sikhs to do their business in Pakistan and in the month of August 1947, the plaintiff migrated to India from Chak No. 2|1-AL to save his life. In para No. 5 (a) it is pleaded that the plaintiff was not given possession of the land for *Kharif* 1947 and *Rabi* 1948. On these facts the plaintiff claims rupees 11,125, together with interest at the rate of annas 8 per cent per mensem from the date of payment till the realization.

On the 6th of February 1950, *Thakar Dalip Singh* instituted Civil Suit No. 40 of 1950, for the recovery of rupees 13,220 from the Court of Wards, Kutlhar Estate, Kangra District. In that suit it was said that the plaintiff submitted his tender offering to the defendant rupees 11,125 on account of lease money for five squares of land situate at Chak No. 2|1-AL, Tahsil Okara, District Montgomery, for the year 1947-48. The tender of the plaintiff having been accepted the sum of rupees 11,125 was paid to the defendant as stated in para No. 3 of the plaint. In para No. 4 of the plaint it is said that owing to disturbances in West Punjab it became impossible for Hindus and Sikhs to do their business in Pakistan and that being so, the plaintiff migrated to India from Chak No. 2|1-AL in August 1947. In para No. 5 (a) the plaintiff pleaded that he was not given possession of the land for *Kharif* 1947 and *Rabi* 1948. On these facts the plaintiff claims rupees 11,125, on account of the lease

money together with interest at the rate of annas 8 per cent per mensem. **Thakar Dalip Singh**

Defendants resisted the suit pleading, *inter alia*, that the suits were cognizable by a Revenue Court and not by a Civil Court and that in any case the land being situate in Montgomery District the suits were not cognizable by the Courts in Kangra District. **Court of Wards v. Dada Siba Estate and Kanwar Rajindar Singh, etc.**

Of the issues fixed by the Court of first instance the issues specified hereunder have been treated as preliminary issues :—

Harnam Singh J.

- (1) Whether the suit is not cognizable by this Court as the lands leased out are situated in Montgomery District ?
- (2) Whether the suit is cognizable by a Revenue Court and not by a Civil Court ?

In deciding issue No. 2 the Court of first instance has found that Civil Suits Nos 39 and 40 of 1950 are triable by a Revenue Court and not by a Civil Court. No decision has been given on issue No. 1. On the finding on issue No. 2, the Senior Subordinate Judge at Kangra has returned the plaints in Civil Suits Nos 39 and 40 of 1950 to the plaintiff for presentation to a Revenue Court having jurisdiction to hear the cases.

From the orders passed by the Senior Subordinate Judge in Civil Suits Nos 39 and 40 of 1950 the plaintiff has come up to this Court in appeal under rule 1 of Order XLIII of the Code of Civil Procedure.

Mr Daya Krishan Mahajan appearing for the appellant in F.A.O. Nos 89 and 90 of 1950, urges that the Court of first instance was in error in finding that the suits fall within section 77 (3), Second Group (i), of the Punjab Tenancy Act, 1887, hereinafter referred to as the relevant clause of the Act.

In plain English section 77 (3) Second Group (i) provides that a suit between landlord and tenant arising out of the lease or the conditions on which the lease is held shall be heard and determined by Revenue Courts and no other Courts shall take cognizance of

Thakar Dalip
Singh
v.
Court of Wards
Dada Siba
Estate and
Kanwar Raj-
indar Singh,
etc.
—
Harnam
Singh J.

any such dispute or matter with respect to which any suit might be instituted. The proviso appended to section 77 (3) then enacts that where in a suit cognizable by and instituted in a Civil Court at becomes necessary to decide any matter which can under section 77 (3) be heard and determined only by a Revenue Court, Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by Order VII, rule 10, Civil Procedure Code, and return the plaint for presentation to Collector. The sole question for determination is whether Civil Suits Nos 39 and 40 of 1950 fall within the relevant clause of the Act.

Now, the relevant clause of the Act contemplates that the relationship of landlord and tenant subsists between the parties. In the Tenancy Act "tenant" means a person *who holds* land under another person and is, or but for a special contract would be liable to pay rent for that land to that other person. In construing the definition of the word tenant as used in section 4 (5) of the Act Plowden, J. (Roe and Rivaz, JJ., concurring) said in *Joti and another v. Maya and others* (1) :—

"The conclusion to which I come from all these considerations is that, to establish the complete relation of landlord and tenant between two persons in respect of land, within the meaning of the Tenancy Act, it is essential that two things shall concur, viz (1) a right to enter upon and possess the land, and (2) an entry into possession".

Clearly, the continuance of possession (actual or constructive) is necessary for the continuance of relation between landlord and tenant except for purposes for which the Legislature has laid down the contrary, e.g., in cases covered by sections 50 and 50-A

(1) 44 P. R. 1891 (F.B.).

of the Act. For an authority on this point *Baru and Thakar Dalip Singh v. Niadar and others* (1), may be seen.

That being the position of law, the answer to the question arising in these appeals depends upon whether Civil Suits Nos 39 and 40 of 1950 can be held to be suits between landlord and tenant, or, in other words whether on the date of the institution of the suits the relation of landlord and tenant subsisted between the parties.

Court of Wards
Dada Siba
Estate and
Kanwar Raj-
indar Singh,
etc.
Harnam
Singh J.

As mentioned above, the tenancy in each case was for *Kharif* 1947 and *Rabi* 1948. Clearly, the tenancy in each case expired by efflux of time in 1948, long before the institution of Civil Suits Nos 39 and 40 of 1950. In other words, on the 6th of February 1950, when the suits were instituted *Thakar Dalip Singh*, plaintiff, had neither the right to enter upon and possess the land leased to him in 1947, nor was he in possession of that land. Clearly, the suits out of which these proceedings have arisen were *not suits between a landlord and a tenant* within the meaning of the relevant clause. In this view of the matter it is not necessary to go into the other question whether *Thakar Dalip Singh* was put in possession of the land for *Kharif* 1947 and *Rabi* 1948.

For the foregoing reasons, I allow F. A. O. Nos 89 and 90 of 1950, set aside the orders under appeal and remanding the cases order the Court of first instance to readmit the suits under their original numbers in the register of Civil Suits and then decide the suits in accordance with law. The records, original plaints and a copy of this order may be sent to the Court of first instance.

Having regard to the circumstances of the cases I leave the parties to bear their own costs in F. A. O. Nos 89 and 90 of 1950.

Parties are directed to appear in the Court of first instance on the 12th of October 1951.

(1) A. I. R. 1943 Lah. 217 (F. B.).