APPELLATE CIVIL

Before Inder Dev Dua, J.

BHOLA RAM,—*Appellant*

versus

MANOHAR LAL AND ANOTHER,—*Respondents*

S. A. O. No. 41 of 1963

1964

August, 5th.

Punjab Tenancy Act (XVI of 1887) as amended by Punjab Tenancy (Amendment) Act (XVIII of 1963)—S. 77(3) (n)—Whether retrospective—Suit decided prior to the amendment and appeal pending when the amendment came into force—Whether ousts the jurisdiction of civil courts in respect of suits which were cognizable by civil courts before amendment—Interpretation of statutes—Retrospectivity of a statute—How to be determined—Appeal is continuation of suit—Meaning of.

Held, that the language of section 77 of the Punjab Tenancy Act, 1887, as amended by the Punjab Tenancy (Amendment) Act, 1963, clearly postulates that it is a mandate to the Courts for the future and it does not seem to affect pending actions. There is, therefore, neither any express manifestation, nor by necessary intendment, of its retrospective operation so as to affect pending actions where Courts have already taken cognizance of disputes or matters with respect to which any suit mentioned therein might be instituted. After the suit had been decided and decree passed by the trial Court, a substantive right had vested in the decree-holder and the appellate court could not, on appeal, claim any power under the amended provision of the Act to hold that the cognizance of the suit by the Court of first instance was contrary to law. A change in procedure can scarcely retrospectively affect a decided matter, unless of course the legislative intention to that effect is reasonably clear either by the use of express language or by necessary implication. Again, retrospective law affecting procedure may be sustained as governing pending actions, but steps already taken, pleadings and all things done under the old law, will stand in the absence of intent to the contrary plainly manifested; pending

actions may be affected by general words only as to future proceedings from the point reached when the new law becomes operative; without clear intention expressed or necessarily implied such law cannot invalidate or even disturb past proceedings, as it cannot create vested right in the new procedure: it certainly cannot be deemed to invalidate lawful assumption of jurisdiction.

Held, that the provisions taking away the jurisdiction of civil courts cannot be considered to be a mere matter of procedure operating retrospectively. A suit instituted at a time when the civil court was fully competent to entertain it cannot be held to have been wrongly entertained by virtue of a later amendment without express words or necessary intendment, divesting the court of the jurisdiction exercised by it at the time of entertaining the suit.

Held, that the legislative function is principally concerned with the establishment of future rules of conduct. Demands for relief against past harm, the correction and validation of past abuses partake more of judicial function than legislative. Nevertheless, there is no dispute of the legislative power to enact laws which operate retrospectively; the presumption of course being that all laws operate prospectively only. Retrospective operation may be more readily ascribed to a legislative measure which is curative or legalising than to legislation which may disadvantageously affect past relations and transaction. Retrospective operation is, therefore, not easily given so as to impair an existing right and where either interpretation is possible, Courts lean in favour of adopting prospective operation. Again even where a legislative measure is retrospective, no larger retrospective effect may be created than is plainly meant by the language. It is true that a legisaltive measure, which is purely procedural in its character, may be assumed to have been intended by the legislature to have retrospective operation but it is not possible to hold that the amendment of section 77(3) (n) of the Punjab Tenancy Act takes away the jurisdiction of the civil court to entertain and try cases which were within its jurisdiction before the amendment.

Held, that the rule that an appeal is a continuation of a suit has its roots in section 107, Civil Procedure Code,

and it merely means that if there is a change in law during the pendency of the appeal or since the institution of the suit, such law, if attracted otherwise, can be taken notice of and applied by the appellate Court.

Second Appeal from the order of Shri M. L. Jain, Senior Sub-Judge, with enhanced appellate powers, Rohtak, dated the 8th August, 1963, reversing that of Shri Inder Mohan Malik, Sub-Judge, 1st Class, Sonepat, at Rohtak, dated the 14th March, 1963, decreeing the suit of the plaintiff in the amount of Rs. 375 only, against the defendants with costs and directing that the recovery of the decretal amount will be effected from defendant No. 2 in the first instance, failing which the plaintiff shall be entitled to recover the decretal amount from defendant No. 1.

S. L. PURI, ADVOCATE, for the Appellant.

P. C. JAIN, ADVOCATE, for the Respondent.

JUDGMENT

Dua, J

DUA, J.—Bhola Ram, appellant in this Court, instituted a suit for the realisation of Rs. 375 from the defendants Manohar Lal and Raghbir Singh, on the basis of an assignment of the arrears of rent pertaining to *kharif* 1960, and rabi 1961; the agreement of assignment being dated 9th June, 1961. It appears, according to the plaintiff's case, that defendant No. 2 had dishonestly and collusively admitted the right of defendant No. 1 Manohar Lal, to receive the rent from him, the admission having been made in proceedings for the recovery of rent filed by defendant No. 1 against defendant No. 2 in the Court of the Assistant Collector II Grade. Defendant No. 1, according to the plaintiff's case, had no right to receive the rent in view of the agreement of assignment. He also pleaded that the defendants were estopped from urging that no agreement had been executed or that the plaintiff was not entitled to realise the arrears of

rent as claimed. A preliminary objection questioning the jurisdiction of the Civil Court to decide the suit was raised, but the same was apparently repelled by the trial Court on 4th June, 1962. The suit was also resisted on the merits. The pleadings gave rise to three issues on the merits, but it is unnecessary to refer to them because this appeal is confined to a very narrow point of jurisdiction which would appear hereafter. The trial Court decreed the plaintiff's suit and also found that defendant No. 1 had waived his right to receive the rent from defendant No. 2 as pleaded in the plaint.

Manohar Lal, defendant, took the matter on appeal to the Court of the learned Senior Subordinate Judge and in that Court, at the outset, reliance was placed on the Punjab Tenancy (Amendment) Act of 1963 (Act No. 18 of 1963) whereby section 77(3)(n) of the Punjab Tenancy Act of 1887 had been amended in April, 1963, that is to say, during the pendency of the appeal in that Court. According to this amendment suits for the recovery of arrears of rent or the money-equivalent of rent by any person other than a landlord to whom a right to recover the same has been sold or otherwise transferred were also included in sub-section (3), with the result that such suits were, according to the amendment, to be instituted in and heard and determined by revenue Courts and no other Court was to take cognizance of any dispute or matter with respect to which any such suit might be instituted. Holding the amended provision to relate to procedure, the lower appellate Court concluded that under general principles this provision would be retrospective in nature and an appeal being continuation of a suit would be applicable to these provisions at that stage. Relying on *Soman and others* v. *Kedar*

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Nath (1), a decision by Misra, J., and on *Bireswar Moral* v. *Indu B. Kundu* (2) the learned Senior Subordinate Judge held that the Civil Court had no jurisdiction to hear the plaintiff's suit and so holding ordered that the plaint be returned to the plaintiff for presentation to the proper Court.

On behalf of the plaintiff (respondent in the Court below), reference had been made to *V. Appalasuri* v. *S. K. Nayuralu* (3), *Ram Parshad* v. *Mukhtiar Chand* (4), *Shri Om Parkash Gupta* v. *The United Provinces* (5), *Zahur Din and another v. Jalal Din* (6), and *Ramdayal* v. *Maji Deydiji* (7), but they were brushed aside with the observation that they did not deal with procedural law and, therefore, were unavailing.

On second appeal, it has been contended by the learned counsel for the appellant that the view taken by the lower appellate Court is completely erroneous and it has declined on illegal grounds to exercise the jurisdiction vested in it by law. The learned counsel has also pointed out that the view taken by Misra J. in *Soman's case* was in 1954 overruled by a Division Bench in *Hublal* v. *Mst. Dulara* (8), and that unfortunately this fact was not brought to the notice of the Court below. It has also been submitted that in *Bireswar Moral's case* after a decree for money had been obtained and while it was being executed, the judgment-debtor applied before the Debt Settlement Board under the Bengal Agricultural Debtors Act and a notice under that Act was

(1) A.I.R. 1953 All. 254.
(2) A.I.R. 1943 Cal. 573 (D.B.)
(3) A.I.R. 1926 Madras 6.
(4) I.L.R. 1958 Punj. 1553=1958 P.L.R. 332 (D.B.)
(5) A.I.R. 1951 All. 225.
(6) A.I.R. 1944 Lah. 319 (F.B.)
(7) A.I.R. 1956 Raj. 12 (D.B.)
(8) 1954 All. Law Journal 762.

issued to the opposite party. In pursuance of that notice, the Munsif stayed execution proceedings. A few days later, the Bengal Agricultural Debtors' Amendment Act (No. 8 of 1940) came into force, according to which section 20 of the earlier Act (No. 7 of 1936) was amended so as to confer on the Board jurisdiction to decide the question whether a liability was a debt or not. In this setting, the question arose whether the Settlement Board had jurisdiction to decide whether the liability in question was or was not a debt. It was in this context that it was observed that the amendment in question pending the execution of the decree covered the case and the Munsif had jurisdiction to determine whether the liability of the debtor under the decree was a debt within the meaning of Act 7 of 1936. On this ground, the appellant's learned counsel has contended that the Calcutta decision is far from relevant for the purposes of the present case.

The respondents' learned counsel has, however, placed reliance on the Calcutta decision mentioned above and also on some of the other decisions relied on by the Court below. In fairness to the learned counsel, however, it may be stated that he has also brought to my notice a decision given by me in *Gram Panchayat* v. *Kesho Narain and another* (9), where I observed that the provisions taking away the jurisdiction of the Civil Courts cannot be considered to be a mere matter of procedure operating retrospectively. A suit instituted at a time when the Civil Court was fully competent to entertain it cannot be held to have been wrongly entertained by virtue of a later amendment without express words or necessary intendment, divesting the Court of the

(9) 1964 P.L.R. 518.

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jurisdiction exercised by it at the time of entertaining the suit. Contrary view was, in my opinion, against the general cannons of statutory interpretation and would also tend to defeat the cause of justice and fair play.

Since the point has been agitated before me afresh, I have reconsidered the matter uninfluenced by the view expressed in my prior judgment. The legislative function is principally concerned with the establishment of future rules of conduct. Demands for relief against past harm, the correction and validation of past abuses partake more of judicial function than legislative. Nevertheless, there is no dispute of the legislative power to enact laws which operate retrospectively; the presumption of course being that all laws operate prospectively only. Retrospective operation may be more readily ascribed to a legislative measure which is curative or legalising than to legislation which may disadvantageously affect past relations and transactions. Retrospective operation is, therefore, not easily given so as to impair an existing right and where either interpretation is possible, Courts lean in favour of alopting prospective operation. Again, even where a legislative measure is retrospective no larger retrospective effect may be created than is plainly meant by the language. It is true that a legislative measure which is purely procedural in its character may be assumed to have been intended by the legislature to have retrospective operation, but I am unable, as at present advised, to sustain the view of the Court below that to take away the jurisdiction of the Civil Court to entertain and try cases like the one in dispute was a mere matter of procedure and the impugned amendment is attracted to the present case at the appellate stage. As observed by

Lord Macnaghten, who prepared the opinion of the Judicial Committee in the *Colonial Sugar Refining Company, Ltd.*, v. *Irving* (10), to deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure and in principle there is no difference between demolishing an appeal altogether and transferring the appeal to a new tribunal because in either case there is an interference with existing rights contrary to well-known general principle that statutes are not to be held to act retrospectively unless a clear intention to that effect is manifested. It need hardly be repeated that impairment of the right of appeal has in more cases than one been held by the Supreme Court not to relate to a matter of procedure only as it impairs or imperils a substantive right and an enactment which does so is not retrospective unless so made expressly or by necessary intendment. In *United Provinces* v. *Mt. Atiqa Begum and others* (11), Sulaiman, J., at p. 37, stated the position thus:—

> "It is a well-recognised rule that statutes should, as far as possible, be so interpreted, as not to affect vested rights adversely, particularly when they are being litigated. When a statute deprives a person of his right to sue or affects the power or jurisdiction of a Court in enforcing the law as it stands, its retrospective character must be clearly expressed. Ambiguities in it should not be removed by Courts, nor gaps filled up in order to widen its applicability. It is a well-established principle that such statutes must be construed strictly and not given a liberal interpretation."

(10) L.R. 1905 A.C. 369.
(11) A.I.R. 1941 F.C. 16.

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The rule that an appeal is a continuation of a suit has its roots largely in section 107, Civil Procedure Code, but it cannot be taken to the extreme length to which the Court below has done; and it was certainly a misapplication of the rule when the lower appellate Court set aside the judgment and decree of the Court below on this basis. What the Federal Court said in *Lachmeshwar Prasad Shukul, etc.*, v. *Keshwar Lal Chaudhuri*, (12), is that the hearing of an appeal under the procedural law of India is in the nature of re-hearing and, therefore, in moulding the relief to be granted in a case on appeal, the appellate Court is entitled to take into account even facts and events which have come into existence after the decree appealed against, with the result that the appellate Court could appropriately take into account legislative changes since the decision in appeal was given and its powers are not confined only to see whether the lower Court's decision was correct according to the law as it stood at the time when its decision was given. This merely means that if there is a change in law during the pendency of the appeal or since the institution of a suit, such law, if attracted otherwise, can be taken notice of and applied by the appellate Court.

Section 77, Punjab Tenancy Act, as amended, would, so far as relevant for our purposes, seem to read thus:—

> "77. The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted:—
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> * * * * *

(12) A.I.R. 1941 F.C. 5.

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(n) suits by a landlord for arrears of rent or the money-equivalent of rent, or for sums recoverable under section 14 or suits for the recovery of such arrears or sums by any other person to whom a right to recover the same has been sold or otherwise transferred."

The language clearly postulates that it is a mandate to the Courts for future and it does not seem to affect pending actions. There is, therefore, neither any express manifestation, nor by necessary intendment, of its retrospective operation so as to affect pending actions where Courts have already taken cognizance of disputes or matters with respect to which any suit mentioned therein might be instituted. Whether or not the amendment could have affected the power of the trial Court to further proceed with the adjudication of the controversy—a question on which I am not called upon to and I do not express any opinion on this occasion— I have little doubt that after the judgment had been given and the decree passed by the Court below and a substantive right had vested in the decree-holder, the appellate Court could not on appeal claim any power under this Act to hold that the cognizance of the suit by the Court of first instance was contrary to law. A change in procedure can scarcely retrospectively affect a decided matter, unless of course the legislative intention to that effect is reasonably clear either by the use of express language or by necessary implication. Again, retrospective law affecting procedure may be sustained as governing pending actions, but steps already taken, pleadings and

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all things done under the old law, will stand in the absence of intent to the contrary plainly manifested; pending actions may be affected by general words only as to future proceedings from the point reached when the new law becomes operative; without clear intention expressed or necessarily implied such law cannot invalidate or even disturb past proceedings as it cannot create vested right in the new procedure; it certainly cannot be deemed to invalidate lawful assumption of jurisdiction.

For the foregoing reasons, this appeal must be allowed and the order of the lower appellate Court set aside. The case must, therefore, go back to the Court below for disposing of the appeal on the merits in accordance with law and in the light of the observations made above. The parties have been directed through their counsel to appear in the lower appellate Court on 7th September, 1964 when a short date would be given for further proceedings.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua, J.

SUBHADRAN DEVI AND OTHERS.—*Petitioners.*

versus

SUNDER DASS AND ANOTHER—*Respondents.*

Civil Revision No. 580 of 1962

1964

August, 6th.

East Punjab Urban Rent Restriction Act (III of 1949)—S. 13(a)—Bona fide requirement of the landlord for his own occupation—How to be determined—Rent Restriction Acts—Purpose of.

Held, that the word "requires" in section 13(a) of the East Punjab Urban Rent Restriction Act, 1949, connotes