APPELLATE CIVIL.

Before Bishan Narain and Grover, JJ.

BIR SINGH AND BAWA SINGH,—*Defendants-Appellants.*

versus

MST. BACHNI AND MST. JIWI,—*Plaintiffs-Respondents.*

Civil Regular Second Appeal No. 346 of 1949.

1957

Nov. 13th

Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (VIII of 1953)—Section 2(f)—Occupancy tenant—Meaning of—Civil Courts—Whether debarred from determining the rights of the parties—Presumption of fact—Meaning of—When to be raised—Whether rebuttable—Presumption as to the common ancestor holding the land—Whether rebutted by disparity in areas held by his descendants.

Held, that the definition of an occupancy tenant in the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, refers to a tenant who is recorded as occupancy tenant in accordance with law and that the mere entry in the revenue records is not final and that the civil courts are not debarred from deciding the rights of the parties.

Held, that a presumption of fact is a rule that a fact otherwise doubtful may be inferred from a fact which is proved. Such a presumption is not an irrebuttable one and in each particular case it will have to be examined whether it should be raised and whether there is anything in rebuttal of the same.

Held, that a presumption that the land in suit was held by the common ancestor should be considered to have been rebutted by the disparity in the areas held by the different branches of the common ancestor at the material time.

Second Appeal from the decree of the Court of Shri M. R. Bhatia, District Judge, Ludhiana, dated the 16th day of March, 1949, affirming that of Shri Pritam Singh, Sub-Judge, 1st Class, Ludhiana; dated the 23rd August, 1948, decreeing the plaintiff's suit for declaration as prayed for in

the plaint against the defendants. The parties were ordered to bear their own costs throughout by the lower appellate Court.

S. D. BAHRI and N. N. GOSWAMI, for Appellants.

ATMA RAM and N. L. WADHERA, for Respondents.

JUDGMENT

Grover, J.

GROVER, J—The dispute out of which the present appeal has arisen relates to the estate of one Kartara, who died on the 24th of June, 1945. Kartara had occupancy tenancy rights in land measuring 24 *bighas* 4 *biswas* in village Dad, Tehsil Ludhiana. This land was mutated on 16th November, 1946, by the revenue authorities in the names of the defendant-appellants who claimed to be the collaterals of Kartara. In appeal the Collector confirmed the order of mutation sanctioned in favour of the appellants. On 7th July, 1947, the plaintiff-respondents instituted a suit for a declaration to the effect that Kartara deceased had left no heirs and that the defendant-appellants were not entitled to succeed to the occupancy land in suit and that the mutation had been wrongly attested in their favour. It was admitted by the defendants that the plaintiffs were the landlords of the land in suit but they pleaded that they were entitled to succeed to the occupancy rights of Kartara deceased as their common ancestor Bhagu occupied the land. On the pleadings of the parties the only main issue that arose was as follows :—

> "Whether the defendants are the heirs of Kartara deceased under section 59 of the Punjab Tenancy Act and are entitled to inherit the property in suit ?"

The trial Court found that the defendants were the collaterals of Kartara deceased and

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Bhagu was their common ancestor. The next question that was examined was whether the common ancestor Bhagu occupied the land in suit. After going into the entire evidence, the trial Judge came to the conclusion that there was a great disparity in the areas held by different branches of Bhagu, the common ancestor, at the time of the settlement of 1852, and the subsequent settlement of 1882-83, and following the decision of Bhide, J., in *Ranbir Chand* v. *Mangal Singh and others* (1), he held that the defendants had failed to prove that the land in suit was occupied by their common ancestor and the suit was consequently decreed. In appeal the learned District Judge examined the documentary evidence referred to before him and found that the land in dispute was held by Chartu, son of Bhagu in the year 1852, but that the areas which were held by the other sons of Bhagu were very different. He, therefore, came to the conclusion that the presumption when the land is held by a tenant at the time of the first regular settlement did not arise in the present case because the areas of different brothers held at the material time were clearly different and no explanation was forthcoming for the aforesaid discrepancy. He also followed the Lahore decision mentioned above and affirmed the judgment and decree of the trial Court.

The first point that has been raised on behalf of the appellants is that the suit of the plaintiffs, who are the landlords, merited dismissal in view of the change of law effected by the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, Punjab Act, No. 8, of 1953. Reliance is placed on section 3 of the aforesaid Act according to which "on and from the appointed day, all rights title and interest.....of the landlord in

(1) A.I.R. 1929 Lah. 198 (2)

the land held under him by an occupancy tenant, shall be extinguished and such rights, title and interest shall be deemed to vest in the occupancy tenant". It is contended that an occupancy tenant as defined by section 2(f) means a tenant who, immediately before the commencement of the Act was recorded as an occupancy tenant in the revenue records and that this definition would cover the case of the appellants who were recorded as occupancy tenants in the revenue records by virtue of the mutation dated the 16th of November, 1946.

It is true that this Court in certain circumstances will take notice of subsequent events and, particularly, of any change of law during the pendency of the appeal, but the appellants never sought by any petition or otherwise to agitate this point or to raise a new ground of appeal, the decision of which depends on a question of fact, namely, whether even after the decision of the District Judge, dated the 16th of March, 1949, the mutation entry remained as before and was not corrected. No material has been placed before this Court by way of affidavit or otherwise which would show that immediately before the commencement of the aforesaid Act the appellants were recorded as occupancy tenants in the revenue records. Even otherwise it is not possible to accept the contention raised on behalf of the appellants that no matter what the decision of the civil Court may be or may have been with regard to a particular dispute arising out of a mutation entry, that entry remains final for all purposes. This would lead to the extraordinary result that any person who can get himself recorded by fair or foul means as an occupancy tenant in the revenue record immediately before the Act came into force or whose name happens to be there by mistake or accident should be deemed to be the occupancy tenant who by virtue

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of section 3(a) of the Act would be entitled to all the rights and interests of the landlord. Furthermore it could never have been intended by the Legislature that any one who is recorded as an occupancy tenant in the revenue records should be able to defeat the real claimants who may have even established their rights in a Court of law. It seems to me that the definition of an occupancy tenant in the Act refers to a tenant who is recorded as an occupancy tenant in accordance with law and that the mere entry in the revenue records is not final and that the civil Courts are not debarred from deciding the rights of the parties. For these reasons it must be held that the appellants cannot take any advantage of the new enactment.

The other submission which has been made relates to the question whether Bhagu, the common ancestor of Kartara and the appellants, occupied the land. It is contended on behalf of the appellants that the land in dispute was held by Chartu, son of Bhagu in the year 1852, and, therefore, a presumption should be raised that Bhagu occupied the land. For this purpose reliance has been placed on *Sher Dil* v. *Shah Nawaz and others* (1), in which it was held that where one of the two brothers whose rights were identical had been shown to have been in possession as an occupancy tenant in 1842 and then in 1882, a fair presumption arose that the land was acquired by the brothers from their father. The learned Judge did not follow the decision of Shadi Lal, J., in *Bhagwan Das* v. *Shamsher Singh* (2), and relied mainly on some other decisions of the Chief Court. But the main basis of his decision was that he accepted the findings of the Courts below which were based upon

(1) A.I.R. 1937 Lah. 141
(2) 44 I.C. 433

presumptions of fact. In *Ganda Singh and others* v. *Jawand Singh and another* (1), Abdul Rashid, J., laid it down as a rule that in case of occupancy rights there was a strong presumption that the land held by a tenant at the time of regular Settlement and of which he was recorded a *maurusi* was inherited by him from his father, who must be presumed to have occupied the land for the purposes of section 59 of the Punjab Tenancy Act. The learned Judge did not consider the other cases which did not accept the said rule as an absolute one. It is well known that a presumption of fact is a rule that a fact otherwise doubtful may be inferred from a fact which is proved (*vide* Lawson's Presumptive Evidence, rule 177, sub-rule 1). Such a presumption is not an irrebuttable one and in each particular case it will have to be examined whether it should be raised and whether there is anything in rebuttal of the same.

Mr. Som Datta Bahri relies on various facts for raising the presumption that the land in dispute was occupied by Bhagu. He says, firstly, that it was entered in the name of Chartu, the son of Bhagu, at the time of the first settlement as mentioned above. Secondly, two sons of Bhagu, Mehru and Mana, were entered in joint possession of occupancy rights at the material time ; and, thirdly, the entries in exhibit D. 6, showed that all the three sons of Sukha were recorded as occupancy tenants, and it had further been stated that they were cultivating the land for the last three generations. All these matters were considered by the trial Court as well as by the lower appellate Court, but the main fact, which weighed with both the Courts below, was that the areas held by the sons of Bhagu in 1852, were clearly different and no

(1) A.I.R. 1939 Lah. 171

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explanation had been furnished for the discrepancy. A similar situation existed in *Ranbir Chand* v. *Mangal Singh and others* (1), in which Bhide, J., held that, in view of the disparity in the areas held by the brothers, the Court of first instance had rightly refused to infer that the land had been occupied by the common ancestor. The District Judge in that case had reversed the judgment of the first Court on the ground that the tenants' cultivation dated back to three generations and it ought to be presumed that the common ancestor did occupy the land. Bhide, J., set aside the judgment of the lower appellate Court and restored that of the first Court and observed that the burden of proving positively that the land in dispute was occupied by the common ancestor lay on the plaintiffs and conjectures could no more take the place of proof in the case of occupancy land than in the case of proprietary land. In doing so, he followed the decision of Shadi Lal, J., in *Bhagwan Dass and others* v. *Shamsher Singh*, (1) Reliance has been placed by Mr. Bahri on various cases, namely *Sohan Singh and others* v. *Rahmat Ullah and others* (2), *Ude Singh and others* v. *Nur Mohammad and others* (3), *Sipadar Khan and others* v. *Kadheru and others* (4), and *Paltu* v. *Mahammad Hussain and others* (5), In all these cases the facts were different and the presumption was raised on the facts as proved.

In view of what has been stated above, it must be held that the Courts below rightly refused to raise the presumption that the land in suit was held by the common ancestor. In any case, the concurrent findings of the Courts below are findings of fact on which there can justifiably be no

(1) 44 I.C. 433
(2) 1931 P.L.R. 601
(3) 21 I.C. 561
(4) 101 P.R. 1908
(5) 62 P.R. 1882

interference in second appeal. Even if any presumption could be raised on the facts stated, it should be considered to have been rebutted by the disparity in the areas held by the different branches of Bhagu, the common ancestor at the material time.

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In the result, the appeal fails and is dismissed with costs.

BISHAN NARAIN, J.—I agree.

R.S.

Bishan Narain, J.

SUPREME COURT.

Before Sudhi Rajan Das, C. J., and Syed Jafar Imam, and A. K. Sarkar, JJ.

MST. KIRPAL KAUR,—*Appellant.*

versus

BACHAN SINGH AND OTHERS,—*Respondents.*

Civil Appeal No. 137 of 1953.

1957

Nov., 15th

Custom—Predeceased son's widow—Whether an heir on the death of her father-in-law—Such daughter-in-law taking possession of her father-in-law's property on his death—Whether takes it as an heir or adversely to the heirs—If adversely, whether she acquires widow's estate or full ownership by adverse possession—Daughter-in-law making a gift of a part of the property in favour of her daughter—Gift objected to by the collaterals—Dispute settled and document executed wherein she agreed to hold the property for her life and after her death her daughter to hold the same for her life but not entitled to alienate the same—Document, whether requires registration—Registration Act (XVI of 1908)—Section 49—The document not being registered, whether could be admitted into evidence to prove the nature of her possession subsequent to the date of the document—Mother making gift in favour of her daughter—Gift challenged by collaterals—Collaterals succeeding in the High Court—Mother and daughter filling appeal in the Supreme Court—Mother withdrawing from appeal—Daughter alone, whether can continue the appeal—Practice