

tax under item 54 of Schedule 'B' to the Act. Fodder has been held to mean 'feed for the cattle or animals' in which category the product of the petitioners squarely falls.

(9) For the reasons given above, these petitions are accepted and the impugned orders of assessment are quashed. The respondents are further directed to refund the sales tax, if any, recovered from the petitioners on the turnover relating to the sales of 'Guar meal' or 'Guar Giri' by them. Since there was a conflict of views in the Department, I leave the parties to bear their own costs.

N.K.S.

CIVIL MISCELLANEOUS

REVISIONAL CRIMINAL

Before R. S. Sarkaria and C. G. Suri, JJ.

THE STATE OF PUNJAB,—*Petitioner.*

versus.

SHAM KAUR, ETC.,—*Respondents.*

Cr. Re. No. 85-R of 1968.

January 14, 1971.

Code of Criminal Procedure (Act V of 1898)—Section 195—Punjab Land Revenue Act (XVII of 1887)—Section 37—Officer acting and deciding a matter in course of mutation proceedings under Punjab Land Revenue Act—Whether a "Court" within the meaning of section 195(1)(c) and (2) of the Code.

Held, that sub-section (2) of section 195 of the Code of Criminal Procedure provides that the term 'Court' in clauses (b) and (c) of sub-section (1) includes a civil, revenue or criminal Court but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877. These officers have been made an example as border line cases about which there could be two opinions as to whether they are Courts or not. This appears to be illustration which is a guide in interpreting the term 'Court' occurring in clauses (b) and (c) of section 195(1). The Registrar or Sub-Registrar appointed under the Indian Registration Act has much better trappings of a Court than a revenue officer deciding mutation proceedings under the Punjab Land Revenue Act. If the Registrar or the Sub-Registrar is not to be treated as a Court within the meaning of section 195(2) of the Code

The State of Punjab v. Sham Kaur etc. (Suri, J.)

of Criminal Procedure then there is hardly any reason why a revenue officer with fewer trappings of a Court should be clothed with any higher authority. Hence an officer acting and deciding a matter in the course of mutation proceedings under Punjab Land Revenue Act is not a "Court" within the meaning of section 195(1) (c) and (2) of the Code. (Para 27).

Case referred by the Hon'ble Mr. Justice S. S. Sandhawalia,—vide his order dated 29th May, 1969 to a Division Bench for deciding the question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Ranjit Singh Sarkaria and Hon'ble Mr. Justice G. G. Suri decided the question on 14th January, 1971.

Case reported under section 438 Cr. P. C. by Shri Gurcharan Singh Dhaliwal, 2nd Additional Sessions Judge, Ludhiana, with his letter No. 466 dated 21st May, 1968 for revision of the Order of Shri S. S. Sohal, Judicial Magistrate First Class, Jagraon dated 16th October, 1967 committing the case to the Sessions Judge under section 471/465/467/109 Indian Penal Code.

KARTAR SINGH KWATRA, ADVOCATE, for the petitioners.

KULDIP SINGH AND R. S. MONGIA, ADVOCATES, for the respondents.

ORDER OF THE SINGLE BENCH.

S. S. SANDHAWALIA, J.—The sole point of law arising in this petition is whether an officer acting and deciding a matter in the course of the mutation proceedings under the Punjab Land Revenue Act is a Court within the meaning of section 195(1) (c) and (2) of the Code of Criminal Procedure.

(2) The facts which deserve notice for the limited purpose of this order are that on a complaint filed by Karam Singh against Smt. Sham Kaur and seven others under sections 465, 467 and 474, Indian Penal Code, the accused persons were committed to the Court of Session by the order of the Judicial Magistrate, 1st Class, Jagraon, on the 16th of October, 1967. The allegations in the said complaint were that after the death of one Anokh Singh of village Chakar on the 4th of May, 1966, Smt. Sham Kaur and Smt. Dhan Kaur accused persons had conspired with others to forge a will on behalf of Anokh Singh deceased declaring them as his heirs along with one Smt. Surjit Kaur who otherwise was the daughter and the sole heir of the deceased. On the basis of the said forged will a mutation was entered 23 days after the death of Anokh Singh and came up before the Tahsildar Jagraon for sanction in June, 1966. Smt. Sham Kaur accused appeared before the Tahsildar and produced the will and

prayed that effect should be given to it which, however, was objected to by Karam Singh, complainant, and his wife Smt. Surjit Kaur as they alleged it to be a forged document. On another date, namely, the 23rd of July, 1966, Smt. Sham Kaur again along with her co-accused presented the said will and sought the sanction of the mutation in their favour in accordance therewith. The Tahsildar, however, finding the matter to be a disputed one referred the mutation to the Sub-Divisional Magistrate, Jagraon (Collector) for decision. It appears that in the Court of the Sub-Divisional Officer, Jagraon, the will above-mentioned was not produced and an order was passed sanctioning the mutation of inheritance of Anokh Singh deceased in favour of Smt. Surjit Kaur and Smt. Dhan Kaur in equal shares. It was thereafter that the present complaint was filed before the learned Judicial Magistrate and during the commitment proceedings an objection was taken on behalf of eight accused persons that the learned Magistrate could not take cognizance of the complaint as the will was produced before the Tahsildar who was functioning as a Court and who alone was, therefore, competent to make a complaint against the accused-persons as required by section 195(1)(c). This objection was rejected by the Committing Magistrate and he passed the order above-noticed. On the date of the trial before the Court of the Additional Sessions Judge, the present petition was moved on behalf of the petitioners repeating their earlier objection that as the provisions of section 195(1)(c) of the Criminal Procedure Code, had not been complied with the complaint was incompetent, the cognizance taken by the Magistrate was bad in law without jurisdiction and the commitment of the petitioners should, therefore, be quashed. The learned Additional Sessions Judge by his referring order dated the 6th of May, 1968, has recommended the quashing of the commitment proceedings whilst upholding the objection taken on behalf of the petitioners.

(3) The point arising for adjudication has been elaborately canvassed before me. Mr. S. S. Dhaliwal in support of the petition and the reference has placed primary reliance on *Mohar Singh v. The State*, (1) where on almost indetical facts Bedi J. has held that the Tahsildar or Roving Revenue Assistant acts as a Court when he is deciding the mutation proceedings and as the complaint had not been filed by the said Court as required by section 195 (1) (c), the Magistrate

(1) 1968 C.L.J. 102.

could not take cognizance of the same and the proceedings were consequently quashed. These observations undoubtedly lend direct support to the contention raised by Mr. Dhaliwal. The learned counsel has also placed reliance on three other authorities which were referred to in passing by the learned Judge in *Mohar Singh's case* (1) in *Har Prasad v. Hans Ram and others* (2) a Single Judge of the said Court has held that a Tahsildar dealing with a mutation proceedings under the U.P. Land Revenue Act is a Court within the meaning of section 195(1)(c). This decision, however, seems to have turned on the particular provisions of the said statute and specially on the defining clause in section 4(8) of the United Provinces Land Revenue Act 1901 which reads as under:—

“ ‘Revenue Court’ means all or any of the following authorities (that is to say), the Additional Commissioners, Collectors, Additional Collectors, Assistant Collectors, Settlement Officers, Assistant Settlement Officers, Record Officers and Assistant Record Officers and Tahsildars. ”

Specific reliance had also been placed on the provisions of section 5 of the said Act in pursuance of which the State Government has issued a notification defining the mutation proceedings as judicial. Mr. Dhaliwal was unable to point to any such identical provision in the Punjab Land Revenue Act.

(4) The next case cited was *Assudomal Ramandas Tando Muhammad Khan v. Jhamandos Hotchand Mathi* (3), where also it has been held that a Mukhtiarkar holding an enquiry in mutation proceedings is a Revenue Court. It is, however, noticeable that this finding was also in view of the specific provisions of sections 196 and 189 of the Bombay Land Revenue Code in force at the time. Lastly Mr. Dhaliwal had also referred to *Dr. S. Dutt v. State of U.P.* (4), but the facts and the law laid down therein are wholly inapplicable to the facts of the present case.

(5) In reply Mr. Kang had first referred to section 117 of the Punjab Land Revenue Act and argued from the provisions thereof

(2) A.I.R. 1966 All. 124.

(3) A.I.R. 1940 Sind 100.

(4) A.I.R. 1966 S.C. 523.

that it was only when a revenue officer chose particularly to proceed to determine the question in partition proceedings as though he was such a Court, then alone he would be acting as such. Otherwise it was argued that such officials were merely acting as Revenue Officers and had neither the attributes of a Court nor could be labelled as such. Reliance was then placed on a Single Bench judgment of the Punjab Chief Court in *Emperor Lehna Singh*, where Shah Din J., on a consideration of the relevant provisions of the Punjab Tenancy and the Land Revenue Act, had clearly held that in the case of mutation proceedings held by a Naib-Tahsildar, he acts in his administrative capacity of a 'Revenue Officer' and that the proceedings are not those of a 'Revenue Court' within the meaning of section 195(2) of the Code of Criminal Procedure. Mr. Kang had then by way of analogy placed reliance on four judgments of the Supreme Court. The first of these is *Brajnandan Sinha v. Jyoti Narain*, (6). The question that fell for determination in the said case was whether a Commissioner appointed under the Public Servants (Inquiries) was a Court. After an exhaustive discussion of the principle and the case law, their Lordships approved

the following passage in *Rex v. Electricity Commissioner* (7)—

“An administrative tribunal may act judicially, but still remain an administrative tribunal as distinguished from a Court, strictly so called. Mere externals do not make a direction to an administrative officer by an *Ad-hoc* Tribunal an exercise by a Court or judicial power.”

and it was finally observed—

“It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.”

(5) 16 Cr. L.J. Reports 785.

(6) A.I.R. 1956 S.C. 66.

(7) 1924—I.K.B. 171 (c).

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The next case cited is *Virinder Kumar Satyawadi v. The State of Punjab* (8), wherein it has been held that—

“The returning officer deciding on the validity of a nomination paper under section 36(2) of the Representation of the People Act is not a Court for the purpose of section 195(1) (b) of the Code of Criminal Procedure.”

The learned counsel had also placed reliance upon the observations of Suba Rao J. at page 1951 in *Ujjam Bai v. State of Uttar Pradesh* (9), where the learned Judge had noticed with approval the reasoning in *Chaprala Krishna Brahman v. G. Govardhanaiah* (10), wherein it had been held that an Income-tax officer was not a Court. The learned Judge was further of the view that the Tribunals such as the Sales-tax Tribunals, the Income-tax Authorities, sales-tax Authorities, Town Planning Authorities, Regional Transport Authorities were not Courts though they followed certain principles of natural justice in their proceedings. Lastly reliance was placed on *Jagannath Prasad and another v. State of Uttar Pradesh* (11), where their Lordships observed as follows:—

“In our opinion a Sales Tax Officer is not a Court within the meaning of Section 195 of the Criminal Procedure Code and therefore it was not necessary for a Sales Tax Officer to make a complaint and the proceedings without such a complaint are not without jurisdiction.”

In evaluating the rival contention it first deserves notice that as early as 1926, the Privy Council in *Thakur Nirman Singh and others v. Thakur Lal Rudra Partap Narain Singh and others* (12), on considering the nature of mutation proceedings expressed itself in categorical terms as follows:—

“The perusal by their Lordships of the judgment of the Court of the Judicial Commissioner of Oudh, at page 482 of the record, leads their Lordships to think that its judgment is to a great degree based on the mischievous but persistent

(8) A.I.R. 1956 S.C. 153.

(9) A.I.R. 1962 S.C. 1621.

(10) A.I.R. 1954 Mad. 822.

(11) A.I.R. 1963 S.C. 416.

(12) A.I.R. 1926 P.C. 100.

error that the proceedings for the mutation of names is a judicial proceeding, in which the title to and the proprietary rights in immovable property are determined. They are nothing of the kind as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid.

It is little less than a travesty of judicial proceeding to regard the two orders of the Extra Commissioner of Bahraich and Mr. M. L. Ferrar, Deputy Commissioner, as Judicial determinations expelling *proprie vigore* any individual from any proprietary right or interest he claims in immovable property."

This statement of the law is in the clearest terms and the attempt of Mr. Dhaliwal to distinguish this case from the present one is futile. The Allahabad and the Sind cases in which this authority has been referred to in passing were decided on the particular provisions of the relevant statutes.

(6) It is further noticeable that the earlier Punjab authority and the enunciation of the law by Shah Din J. in *Lehna Singh's case* (5) was not brought to the notice of Bedi J. whilst deciding *Mohar Singh's case* (1). On a consideration of the Supreme Court cases it appears that their ratio applicable by analogy to the facts of the present case that the revenue officer though he may have the trappings of a judicial tribunal yet he was not fully within the ambit of the word 'Court' as used in section 195(1)(c).

(7) I regret my inability to agree with the view expressed by Bedi J. in *Mohar Singh's case* (1). A perusal of the judgment shows that the point was not fully canvassed before the learned Judge and the earlier Punjab authority was also not brought to his notice. It has been noticed in the said judgment that the learned counsel for the State had not cited any case to the contrary.

(8) In view of the foregoing discussion I am of the opinion that the revenue officers conducting and deciding mutation proceedings

under the Punjab Land Revenue Act is not a Court within the meaning of section 195(1)(c) and sub-section (2) of the Criminal Procedure Code. However, as there is apparent conflict in the two decisions of this Court and as the law propounded in *Mohar Singh's case* (1) runs contrary to the ratio of the Privy Council's case and the observations in the Supreme Court cases noticed above, and also as the point involved is of great importance and is likely to arise in a number of cases, it is desirable that it should be adjudicated upon by a larger Bench. Let the papers be placed before my Lord the Chief Justice for necessary action.

29th May, 1969.

JUDGEMENT OF DIVISION BENCH.

C. G. SURI, J.—(9) This case was reported for revision under section 438 of the Code of Criminal Procedure (hereinafter briefly referred to simply as 'the Code') by the Additional Sessions Judge, Ludhiana with the recommendation that the commitment proceedings started by the Judicial Magistrate, Jagraon and culminating in an order of commitment to the Court of Session for the trial of the respondents on charges of forgery under sections 465, 467 and 471 read with section 109 of the Indian Penal Code may be quashed as cognizance had been taken by the Magistrate on a private complaint of one Karam Singh in spite of the fact that the offences were alleged to have been committed during mutation proceedings presided over by a revenue officer. The learned Sessions Judge had relied upon a Single Bench decision of this Court in *Mohar Singh v. The State* (1) in holding that the revenue officer acts as a 'Court' while he is deciding mutation proceedings and that in view of the provisions of section 195(1)(c) of the Code, cognizance could not be taken of the commission of these offences without a complaint by the officer presiding over the proceedings.

(10) This case had come up before Sandhwalia J. and the sole point of law raised before My Lord was whether an officer acting and deciding a matter in the course of mutation proceedings under the Punjab Land Revenue Act No. XVII of 1887 was a 'Court' within the meaning of section 195(1)(c) and (2) of the Code. There were conflicting decisions of various High Courts on the point and a Single

Bench of the Punjab Chief Court had taken a view in *Emperor v. Lehna Singh* (5), which was in conflict with the view taken in *Mohar Singh's case* (1) (supra). The ruling in *Lehna Singh's case* (5) had not been brought to the notice of the learned Single Judge who had decided *Mohar Singh's case* (1). Sandhawalia J. also felt that the correctness of the decision in *Mohar Singh's case* (1) could be doubted in view of certain observations of the Hon'ble Judges of the privy Council and later of the Supreme Court in some rulings mentioned in his order of reference. Most of these rulings had not been brought to the notice of the Hon'ble Judge who had disposed of *Mohar Singh's case* (1) sitting alone. This case was, therefore, referred by Sandhawalia J. for the decision of a larger Bench. That is how the case has now been placed before us.

(11) The facts of the case may briefly be stated at this stage. Anokh Singh, a land-owner of village Chakar in Tehsil Jagraon, died in May, 1966 leaving daughter Smt. Surjit Kaur, wife of Karam Singh complainant, as the sole heir. Two ladies Sarv Smt. Sham Kaur and Dhan Kaur, respondents Nos. 1 and 2, whose relationship with the deceased, if any, is not clear from the record set up a will according to which the deceased had devised his property equally in favour of these two ladies and his daughter Smt. Surjit Kaur. This will was described to have been scribed by Mulkh Raj respondent No. 3, a licensed petition writer and to have been attested by respondents Nos. 4 to 8. The will was produced by Smt. Sham Kaur respondent No. 1, before the revenue officer on two dates during the mutation proceedings and the other respondents are said to have come forward to corroborate the story about the execution of this will by the deceased. The genuineness of the will was, however, disputed by Smt. Surjit Kaur, the daughter of the deceased. Surjit Kaur's husband, Karam Singh complainant was prosecuting these proceedings on her behalf. As the mutation proceedings were contested, the Tehsildar referred the case to the S. D. M. Jagraon who finally attested the mutation in favour of Surjit Kaur and Dhan Kaur in equal shares.

(12) After the decision of the mutation, Karam Singh filed a complaint that all the respondents had entered into a conspiracy to deprive his wife of valuable property and that they had forged a will for the purpose and that it had been used in the mutation proceedings. During the enquiry held under section 476 of the Code, respondents Nos. 1 and 3 were called upon to produce the original will and the petition writer's

register respectively so that the disputed signatures of the deceased could be compared with his proved signatures. The will was not forthcoming and Sham Kaur pleaded that the document had been returned by the Tehsildar to Surjit Kaur. This plea was found to be false. Respondent No. 3 produced his petition writer's register, Exhibit R. A., but it was found that it contained no entry relating to the execution of any such will on the date that the disputed document bears. The Judicial Magistrate, Jagraon, who held the enquiry under section 476 of the Code, therefore, framed charges under sections 465, 467 and 471 read with section 109 of the Penal Code and committed all the respondents to the Court of Session for trial. The defence counsel had taken up the plea before the Judicial Magistrate also that in view of provisions of section 195(1)(c) of the Code, cognizance of the alleged offences could not be taken without a complaint by the revenue officer deciding the mutation proceedings. The learned Magistrate was, however, of the view that the revenue officer was not functioning as a 'Court' during those mutation proceedings and that section 195 of the Code was, therefore, not applicable. The same objection was raised in the Court of Session before the commencement of the trial and a different view has been taken by the Additional Sessions Judge on the authority of the Single Bench decision in *Mohar Singh's case* (1) (Supra).

(13) It may appear strange that the simple 'Court', in spite of being the seat of all legal activity has defied all attempts at a clear cut and accurate interpretation or construction of its meaning. The only place in the Statute Book where this word of wide and elastic import may appear to have been defined is in an interpretation clause of section 3 of the Indian Evidence Act, 1872 which says that word includes all Judges and Magistrates and all persons, except arbitrators, who are legally authorised to take evidence. The definition appears to be very simple and clear but it poses the question, as to what exactly is 'evidence'. Every one can claim to know the meaning of this word but the legislature has still found it necessary to define this word in another interpretation clause of section 3 of the Indian Evidence Act which runs as follows:—

“ ‘Evidence’ means and includes—

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.”

(14) If one studies these two definitions carefully, he would observe that one definition sends us back to the other for finding out the exact meaning and that we are kept spinning in a vicious circle from one interpretation clause to the other without being led any where definite. Sections 19 to 22 and 34 to 40 of Punjab Act No. X VII of 1887 which authorise the Revenue Officers to summon persons to make statements or to produce documents, or to decide disputes about mutation of entries in records of rights avoid the use of the word 'evidence' or 'witness' and it cannot be said how far this has been done with a set purpose or only accidentally or by oversight. Section 19(3) of this Punjab Act lays down that the person summoned shall be bound to state the truth there is nothing in this Act to suggest that oath has also to be administered to give the mutation proceedings the sanctity of 'judicial proceedings' as defined in clause (m) of section 4(1) of the Code. Even if the word 'evidence' has been used in these sections of the Punjab Act, it may have been doubtful whether the definition of the word 'evidence' in the Evidence Act could have been used for interpreting the provisions of the Punjab Land Revenue Act. The definition of the word 'evidence' in section 3 of the Indian Evidence Act makes it clear that the information or material placed before the revenue officer, whether in the form of word of mouth or in black and white, would be evidence only if that officer could be described as a 'Court'. The definition of 'Court' in the same section then lays down that the officer would be treated as a Court only if the material or information that he is legally authorised to summon can be described as 'evidence'. The way out of this stalemate may appear to have been indicated by the observations of the Hon'ble Judges of the Supreme Court in *Brajnandan Sinha v. Yyoti Narain*, (6) that the definition of 'Court' in section 3 of the Indian Evidence Act is not exhaustive and has been framed only for the purpose of that Act and is not to be extended where such an extension is not warranted.

(15) As the word 'Court' has not been defined in the Code, cue is generally taken from definitions of allied words in the Penal Code and some other Acts. In section 4(2) of the Code, it has been generally mentioned towards the end that all words and expressions used in the Code and not defined therein shall have the meaning

respectively attributed to them by the Indian Penal Code if those words and expressions are defined in that Penal Code. The definitions of the words 'judicial proceeding' in section 4(1)(m) of the Code and the definitions of 'Judge' in section 19 and of 'Court of Justice' in section 20 of the Penal Code have then been relied upon in some cases to give us an idea about what meaning could be given to the word 'Court'.

(16) It may be found useful if we reproduce at this stage these definitions from the two Codes at one place:—

Cr. P. C.

"S.4(1) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

* * * * *

(m) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath:

* * * * *

(2) Words which refer to acts done, extend also to illegal omissions; and

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

* * * * *

S. 195(1) No Court shall take cognizance—

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228,

when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate, or

(c) of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

(2) In clauses (b) and (c) of sub-section (1), the term "Court" includes a Civil, Revenue or Criminal Court, but dose not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877."

"S.19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person—

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment.

ILLUSTRATIONS

* * * * *

(d) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

S. 20. The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

ILLUSTRATION

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice."

(17) Illustration (d) under section 19 of the Penal Code says that a Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge. In chapter XVIII of the Code, a Magistrate holds an inquiry into cases triable by a Court of Session and this is the only way in which a Magistrate exercises jurisdiction in respect of a charge on which he has power only to commit for trial to another Court. This means that a Magistrate holding such an inquiry is not a Judge even though the depositions that he records can be used as substantive evidence when they are transferred under section 288 of the Code at the Session's trial. According to the explanation to section 33 of the Indian Evidence Act, the commitment inquiry and the Session's trial are treated as proceedings between the same parties and this explanation may appear to have been placed on the Statute Book to treat the deposition of a witness at the inquiry as evidence given in a judicial proceeding. Commitment inquiry and Sessions trial may appear to have been treated as different stages of the same judicial proceeding for purposes of section 33 of the Evidence Act. The reason why the committing Magistrate is not treated as a 'judge' appears to be that he does not give a final or definitive judgment on the culmination of the commitment inquiry held under chapter XVIII of the Code. If a witness who commits the offences of forgery or perjury during the commitment inquiry held under Chapter XVIII of the Code has to be prosecuted for the said offences, then it stands to reason that this can be done only on the complaint of the Magistrate holding that inquiry. In that sense, the Magistrate holding an inquiry under Chapter XVIII of the Code may be a Court for the purpose of section 195 of the Code. He administers Oath to the witnesses, is legally authorised to take evidence and presides over a judicial proceeding even though called an 'inquiry'. Illustration (d) to the definition of a 'Judge' as given in section 19 of the Penal Code may, therefore, suggest that 'Judge' and 'Court' are not always taken as synonymous terms.

(18) Coming now to the definition of 'Court of Justice' in section 20 of the Penal Code, it would appear that an officer or authority must satisfy the condition of being a Judge before we would enter upon the inquiry whether he is empowered by law to act judicially

or not. If the committing Magistrate is not a Judge, he cannot possibly be a 'Court of Justice' even though he is acting judicially. A committing Magistrate may, however, be a 'Court' for the purposes of section 195 of the Code. This again may imply that 'Court' and 'Court of Justice' are not synonymous terms. A committing Magistrate can be a 'Court' even though his order of commitment is not conclusive, final, decisive or determinative. All this digression was to illustrate that we could land ourselves into difficulty or confusion if we were to import definitions from other places in the Statute Book for the interpretation of the provisions of any particular enactment. We only grope for the true meaning of terms of ordinary use by seeking guidance from the meaning given to other words of the same or allied import. We may feel very sure about the meaning of a simple word but still find it so placed in a particular context that we start having doubts about its true significance. Words can be such poor conveyances for our thoughts.

(19) The case law on the subject in hand has been so ably discussed by our learned brother in his order of reference that we would like, with his permission, to adopt that order as the introductory part of our judgment. Extracts from two rulings which appear to have a direct bearing on the point in controversy have been reproduced in that order of reference. Out of a feeling of inertia, there may be a disinclination to turn over the pages and these extracts are being reproduced here again for the sake of continuity; even at the risk of repetition :—

“ Reliance was then placed on a Single Bench judgment of the Punjab Chief Court in *Emperor v. Lehna Singh*, (5), where Shah Din J., on a consideration of the relevant provisions of the Punjab Tenancy and the Land Revenue Act, had clearly held that in the case of mutation proceedings held by a Naib-Tehsildar, he acts in his administrative capacity of a 'Revenue Officer' and that the proceedings are not those of 'Revenue Court' within the meaning of section 195(2) of the Code of Criminal Procedure.”

* * * *

“In evaluating the rival contention it first deserves notice that as early as 1926, the Privy Council in *Thakur Nirman Singh and others v. Thakur Lal Rudro Partab Narain Singh*

and others, (12), on considering the nature of mutation proceedings expressed itself in categorical terms as follows :—

The perusal by their Lordships of the judgment of the Court of the Judicial Commissioner of Oudh, at page 482 of the record, leads their Lordships to think that its judgment is to a great degree based on the mischievous but persistent error that the proceedings for the mutation of names is a judicial proceeding in which the title to and the proprietary rights in immovable property are determined. They are nothing of the kind as has been pointed out times innumerable by the Judicial Committee. They are much more in the nature of fiscal inquiries instituted in the interest of the State for the purpose of ascertaining which of the several claimants for the occupation of certain denominations of immovable property may be put into occupation of it with greater confidence that the revenue for it will be paid.

It is little less than a travesty of judicial proceeding to regard the two orders of the Extra Commissioner of Bahraich and Mr. M. L. Ferrar, Deputy Commissioner, as Judicial determinations expelling *proprie vigore* and individual from any proprietary right or interest he claims in immovable property.

This statement of the law is in the clearest terms and the attempt of Mr. Dhaliwal to distinguish this case from the present one is futile. The Allahabad and the Sind cases in which this authority has been referred to in passing were decided on the particular provisions of the relevant statutes."

(20) Without meaning any disrespect to the Hon'ble Judge who decided *Mohar Singh's case* (1) (*supra*), it may be observed that no sufficient reasons were given for making a departure from the law so authoritatively laid down by the Punjab Chief Court in *Lehna Singh's case*, (5) and then by the Privy Council in *Thakur Nirman Singh's case* (12). It has in fact been mentioned in the Single Bench decision in *Mohar Singh's case* (1) that the counsel for the State had been unable to cite any case in his favour. Some rulings cited by the counsel for the petitioner in that case are mentioned

and the Supreme Court ruling in *Virinder Kumar Satyawadi v. The State of Punjab*, (8) is one of them. There is, however, no discussion of these rulings and it has not been mentioned as to which portions of the Supreme Court ruling were found to support the proposition canvassed by the counsel for the petitioners in that case. The rulings of the other High Courts of Allahabad and Sind mentioned in the order of reference cannot be taken to be laying down good law so far as the Courts in Punjab are concerned and the view taken by the Punjab Chief Court in *Lehna Singh's case* (5) and by Privy Council in *Thakur Nirman Singh's case* (12) has to prevail in this State. It may appear to have been correctly pointed out in the order of reference that the provisions of the Punjab Land Revenue Act are not in *pari materia* with the land revenue legislation in those other States and that could be the reason why a different view could be taken by the High Courts of those States. Rulings of Allahabad, Sind and Bombay High Court, cannot, therefore, be treated as a safe guide for deciding the question referred for our decision.

(21) The case law on the subject has then been reviewed again by a Full Bench of five Judges of this Court in *Vidya Devi v. Firm Madan Lal Prem Kumar* (13). Following observations of the Supreme Court in *Virinder Kumar Satyawadi's case* (8) were reproduced in the Full Bench decision :

"It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it.

And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question, therefore, arises as to whether an authority created by an Act is a court as distinguished from a quasi-judicial tribunal what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court."

The State of Punjab v. Sham Kaur etc. (Suri, J.)

(22) The following extract from another Supreme Court decision in *Thakur Jugal Kishore Sinha v. The Sitamarhi Central Co-operative Bank Ltd. and another*, (14) was also relied upon by the Full Bench :

“A Registrar exercising powers under section 48 of Bihar and Orissa Co-operative Societies Act. No. VI of 1935 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary civil Courts of the land by the Code of Civil Procedure including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in section 151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred under section 48 of the Act, the Registrar is, to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do.”

(23) In *Brajnandan Sinha v. Jyoti Narain*, (6) it was then observed as follows :—

“The definitions of the words ‘Judge’ and ‘Court of Justice’ in Ss. 19 and 20 of the Penal Code indicate that the pronouncement of a definitive judgment is considered the essential ‘*sine qua non*’ of a Court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a Court.

It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal power to give a decision or a

definitive judgment which has finality and authoritative-ness which are the essential tests of a judicial pronouncement."

(24) Shri Kuldip Singh, the learned counsel for the respondents, then argued that within his own small sphere, however circumscribed, a revenue officer also makes a final or definitive decision. The argument may appear to be quite novel and does not appear to have been urged or discussed in any of the rulings cited before us. If we turn to voluminous legal tomes like the "corpus juris scandum" or "Words and Phrases", we find pages devoted to explaining the meaning of the words 'final' and 'definitive'. At places, these two words have been held to have equivalent meaning and at other places a distinction has been drawn between these two words. The rights of appeal or revision were in some cases found to detract from the final or definitive character of a judgment. The brief meaning given to the word 'definitive' in Black's Law Dictionary is as follows :--

"DEFINITIVE. That which finally and completely ends and settles a controversy. A definitive sentence or judgment is put in opposition to an interlocutory judgment. *Thomson v. Graham*, (15) *Interstate Electric Co. v. Interstate Electric Co. of Shreveport* (16).

A distinction may be taken between a final and a definitive judgment. The former term is applicable when the judgment exhausts the powers of the particular court in which it is rendered; while the latter word designates a judgment that is above any review or contingency of reversal, *U.S. v. The Peggy*, (17)."

(25) The consensus of authority, however, is that the words 'definitive' or 'final' have the same meaning and when used in respect of any judgment and order denote that it is conclusive, decisive, authoritative etc. etc. To that extent the ordinary English dictionaries compiled for the laity may appear to be quite as good guides to the meanings of these words. The Webster's New International Dictionary explains as follows :—

"Definitive : 1. Serving to decide or settle something finally, as a controversy or state of uncertainty; determinative; conclusive; as, a definitive answer, sentence, treaty.

(15) 246 Pa. 202, 92-A, 118, 119.

(16) La. App. 6 S.O. 2nd 39, 40.

(17) 1 Cranch 103, 2 L. Ed. 49.

2. Determined or resolved in opinion; also, absolute.
3. Serving to establish as perfected, irrevocable or indisputable; as, a definitive text of a poem.
4. Serving to define or specify precisely; as, definitive distinctions; distinguishing; as, a definitive name for a sect.
5. Clearly defined; exact; express; loosely, definite.
6. Biol. Complete; fully developed; final; as a definitive organ or part; opposed to primordial or primitive.
7. Philately. Designating an issue of postage stamps designed for permanent or regular use Cf. PROVISIONAL. Syn.—See DEFINITE. Ant—Indecisive, inconclusive, definitively, advt.-definitiveness, n.
8. A final judgment or sentence.”

(26) If the presumption of correctness mentioned in section 44 of the Punjab Land Revenue Act is to have any meaning, the records of rights must be overhauled from time to time and kept up-to-date. All changes in the world of reality, in so far as these affect the records, must be posted and entered and the revenue officer is only a part of the machinery that has been set up to secure a timely mutation of entries. He is only a book-keeper or chronicler of events taking place from day to day. He decides a dispute only to the extent that a munim at a shop determines the business policy of his master. He can claim to make a final decision to the same extent that a store-keeper in the cricket ground can claim to decide the fate of the match. The Cricket score-book may be more inviolate than the mutation entries which only carry a rebuttal presumption and which are subject to the decision of a civil Court. It cannot, therefore, be said that the revenue officer has in a certain sphere exclusive jurisdiction, wherein he brooks no interference. A party to the dispute can, with impunity, choose to keep away from the mutation proceedings and say that in view of the futility of these proceedings up to highest revenue officer in the heirarchy, he would not like to waste his time before the revenue set-up and will carry the dispute straightaway to the civil Court for final determination.

(27) Sub-section (2) of section 195 of the Code provides that the term 'Court' in clauses (b) and (c) of sub-section (1) includes a civil, revenue or criminal Court but does not include a Registrar or

Sub-Registrar under the Indian Registration Act, 1877. These officers have been made an example as border line cases about which there could be two opinions as to whether they are Courts or not. This may appear to be an illustration which is to guide us in interpreting the term 'Court' occurring in clauses (b) and (c) of section 195(1). To my mind, the Registrar or Sub-Registrar appointed under the Indian Registration Act has much better trappings of a Court than a revenue officer deciding mutation proceedings under the Punjab Land Revenue Act. The orders of the Registrar or Sub-Registrar under the Registration Act with regard to registration of documents can lead to serious legal consequences and the provisions of the Registration Act on the subject would be enforced by the Courts. Orders of the revenue officer presiding over mutation proceedings are, however, made subject to the decision of Courts of general jurisdiction in view of the provisions of sections 36(3) and 45 of the Punjab Land Revenue Act. The Registrar and Sub-Registrar are given the powers of enforcing or compelling the attendance of witnesses by sections 36 to 39 of the Indian Registration Act and can avail of the ordinary process of the civil Courts for the purpose. Sections 19 to 22 of the Punjab Land Revenue Act lay down a separate procedure for summoning of persons and the implication is that the provisions of the Civil Procedure Code with regard to summoning of witnesses are not applicable. Section 19(3) of the Punjab Act says that the person summoned is bound to state the truth but there is no provision in the Punjab Act for the administration of oath to the person summoned. In disputed cases of mutation, the revenue officer is supposed, in view of the provisions of section 36(1) of the Punjab Act to determine the entry to be made after such inquiry as he thinks fit. The parties to the dispute do not appear to have the right of reasonable opportunity to produce all the evidence that they may like to produce. The revenue officer is, therefore, supposed to make only a summary inquiry which only satisfies him as to the entry that he would make in the records of rights in accordance with the provisions of section 37 of the Punjab Act. The parties are thereafter left to have the matter more fully gone into or thrashed out in the civil Courts. Under section 75(4) of the Registration Act, the Registrar can for the purpose of an inquiry under section 74 summon and enforce the attendance of witnesses and to compel them to give evidence as if he were a civil Court. He can order payment of costs of any such inquiry before him and can secure the realisation of these costs as if these had been awarded in a suit under the Code of Civil Procedure. This may imply that the Registrar can issue process of law

Gram Panchayat v. Amar Nath etc. (Sandhawalia, J).

and administer oath to the witnesses like a civil Court. The revenue officer deciding mutation proceedings does not seem to enjoy all these trappings of a civil Court. If the Registrar or Sub-Registrar is not to be treated as a Court within the meaning of section 195(2) of the Code of Criminal Procedure then there is hardly any reason why a revenue officer with fewer trappings of a Court should be clothed with any higher authority.

(28) The commitment inquiry and order of the Judicial Magistrate, Jagraon are therefore found to be in order and the recommendation made by the Additional Sessions Judge, Ludhiana is turned down. He should now proceed with the trial of the respondents for offences for which they have been committed to the Court of Session.

January 14, 1971.

R. S. Sarkaria, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Prem Chand Pandit and S. S. Sandhawalia, JJ.

GRAM PANCHAYAT,—Appellant.

versus.

AMAR NATH AND OTHERS,—Respondents.

Letters Patent Appeal No. 187 of 1967.

January 25, 1971.

The Punjab Village Common Lands Act (XVIII of 1961)—Section 4(3) (ii)—“Persons in cultivating possession”—Whether mean the possession of actual tiller's alone—Possession of Agricultural land through tenant—Whether within the scope of the phrase “cultivating possession”.

Held, that the words “persons in cultivating possession” as used in sub-clause (ii) of sub-section 3 of section 4 of the Punjab Village Common Lands Act do not mean that the actual tiller of the soil alone falls with in