

## APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Harrison.

CHUHA, & C. — (DEFENDANTS) — *Appellants*,

*versus*

ASA, & C. — (PLAINTIFFS) — *Respondents*.

Civil Appeal No. 914 of 1919.

*Jurisdiction (Civil or Revenue)*—question whether occupancy tenants have lost their rights of occupancy decided in a Civil suit, though exclusively triable by a Revenue Court—appeal to High Court—proper procedure—Punjab Tenancy Act, XVI of 1887, Section 77 (3) (d) and proviso and section 100 (3).

The plaintiffs sued on the allegation that they were in possession of the land in suit till 8th April 1916, under a lease granted by the occupancy tenants, defendants 17—20, for ten years and that they were wrongfully dispossessed by the proprietors, defendants 1—16, and they claimed to recover possession and the sum of Rs. 38 on account of damages. The defendant-proprietors pleaded that the occupancy tenants had lost their rights of occupancy in accordance with the conditions set out in the *Wajib-ul-arz*. This was decided against them by the first Court which granted plaintiffs a decree for possession of the land and this decree was upheld by the District Judge on appeal. The defendant-proprietors appealed to the High Court.

*Held*, that having regard to the *proviso* to section 77 of the Punjab Tenancy Act the lower Courts had no jurisdiction to decide the question whether the occupancy tenants had lost their occupancy rights under the terms of the *Wajib-ul-arz* or not.

The High Court consequently accepted the appeal and directed under section 100 (3) of the Punjab Tenancy Act, that the decree of the Munsif be registered as that of an Assistant Collector of the first grade, and that the appeal be returned by the District Judge to the appellants to be presented in the Court of the Collector.

*Second appeal from the decree of F. W. Kearaway, Esquire, District Judge, Hoshiarpur, dated the 16th January 1919, affirming that of Sayad Nisar Kutab, Munsif, 1st Class, Una, District Hoshiarpur, dated the 1st August 1918, decreeing the claim.*

SUNDAR DAS, for Appellants.

O. L. GULATI, for Respondents.

*The order of Sir Henry Rattigan, C. J., dated 20th October 1913, referring case to a Division Bench—*

Defendants 1—16 are the proprietors of the land in suit, defendants 17—20 are occupancy tenants thereof, and plaintiffs allege that they were in possession of the land till 8th April 1916, under a lease granted by the occupancy tenants to themselves for a period of ten years. Plaintiffs' further allege that they were wrongfully dispossessed of the land and ejected therefrom by the proprietors; and the present suit is to recover possession and the sum of Rs. 38 on account of damages alleged to have been caused to their cotton field. The first Court granted plaintiffs a decree for possession of the land, and this decree was upheld by the District Judge on appeal.

The first ground of appeal urged before me is that the Civil Courts had no jurisdiction to entertain the suit which was one falling under section 77 (3) (g) of the Punjab Tenancy Act and as such cognizable by the Revenue Courts only. The District Judge has held on the authority of *Kesar Singh v. Mangal Singh* (1) that the plaintiffs are in no sense the tenants of the proprietors, and that the suit is therefore one cognizable by the Civil Courts. The ruling referred to is that of a Division Bench and undoubtedly supports the District Judge's view. But it is urged before me that the learned Judges who decided it overlooked the provisions of section 58 (2) of the Punjab Tenancy Act, and reference is also made to the ruling of Sir Michael Fenton, Financial Commissioner, which is reported as *Wasawa Singh v. Mahana Singh* (2). As at present advised I am inclined to think, though with every deference, that the ruling of the Division Bench of this Court is open to question, and I accordingly refer the point to a Division Bench for consideration. There are two subsidiary questions involved in the case, (1) whether it is open to the Civil Courts, even if they have jurisdiction to entertain the claim, to decide the question whether the occupancy rights originally enjoyed by defendants 17—20 had terminated, and (2) whether the lease granted by the occupancy tenants for a period of ten years is invalid under the provisions of section 38 of the Act. These

1922

CHUNDA  
S.  
A.B.A.

(1) 84 P. R. 1913.

(2) I P. W. R. (Ber.) 1911

1922

CHUHA  
v.  
ANA.

questions might also be decided, if necessary, by the Division Bench.

The judgment of the Division Bench was delivered by—

SCOTT-SMITH, J.—The facts of the case out of which the present second appeal arises are given in the judgment in Chambers of Rattigan, C. J., of the 20th October 1919, by which he referred the case to a Division Bench. The questions for our consideration are :—

(1) Whether the plaintiffs who claim to hold under a lease from the occupancy tenants of the land in question are tenants of the landlords, defendants appellants, (2) whether it is open to the Civil Courts, even if they had jurisdiction to entertain the claim, to decide the question whether the occupancy rights originally enjoyed by defendants 17—20 had terminated, and (3) whether the Civil Courts can decide the question whether the lease granted by the occupancy tenants for a period of ten years is invalid under the provisions of the Tenancy Act.

In *Kesar Singh v. Mangal Singh* (1) a Division Bench of the Chief Court held that the lessees of land held by occupancy tenants are not themselves the tenants of the landlord, but a contrary view was held by Sir Michael Fenton, Financial Commissioner, in the case reported as *Wasawa Singh v. Mahana Singh* (2). We do not find it necessary to decide at present which of these views is correct because, in our opinion, it was not open to the Civil Courts to decide whether defendants 17—20 had lost the occupancy rights which they originally had in the land, having regard to the proviso to section 77 (3) of the Punjab Tenancy Act, which lays down that where in a suit cognisable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the 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 the Collector. The proviso also lays down that on the plaint being

(1) 84 P. R. 1913.

(2) 1 P. W. R. (Rev.) 1916.

presented to the Collector, the suit should be heard either by him or by an Assistant Collector of the first grade according as the value exceeds Rs. 1,000 or not. Now a suit by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right, is exclusively triable by a Revenue Court under section 77 (3) (d) of the Punjab Tenancy Act.

In the present case the landlords allege that the occupancy tenants have no longer a right of occupancy in the land in question they having lost that right in accordance with the condition appearing in the *Wajib-ul-Arz*. It was, therefore, necessary to decide in the present case whether the occupancy tenants had lost their right or not. Issue No. 4 was accordingly framed by the trial Court. The trial Court and the District Judge concurrently held that the occupancy tenants had not lost their right; in other words, that they had a subsisting right of occupancy. This, in our opinion, was a matter which they had no jurisdiction to decide having regard to the proviso to section 77.

We, therefore, accept the appeal and direct in accordance with the provisions of section 100 (3) of the Punjab Tenancy Act that the decree of the Munsif, first class, dated 1st August 1918, be registered as that of an Assistant Collector of the first grade in the district of Hoshiarpur. The records will therefore be returned to the District Judge who will return the appeal filed in his Court to the appellants in order that they may institute it in the Court of the Collector. Costs in this Court will be costs in the case.

A. R.

*Appeal accepted*

1922  
—  
CHUNDA  
v.  
A.S.A.