

APPELLATE CIVIL.

Before Mr. Justice LeRoussignol and Mr. Justice Martineau.

SANTA SINGH AND OTHERS (DEFENDANTS),

Appellants :

versus

VIR SINGH AND OTHERS (PLAINTIFFS) } Respondents.
AND SADHU SINGH (DEFENDANT) }

Civil Appeal No. 805 of 1920.

Jurisdiction (Civil or Revenue)—suit by tenants-at-will against the occupancy tenants for a share in the occupancy rights—Punjab Tenancy Act, XXI of 1887, section 77.

The plaintiffs (collaterals of the defendants) who were entered in the Revenue records as tenants-at-will under the defendants, the occupancy tenants, sued the latter for a declaration that they were entitled to occupancy rights in the holding according to their ancestral shares. The occupancy tenancy was in 1852 entered in the name of one Lehna Singh, and it was found by the lower Courts that he acquired the tenancy as representative of the whole family. The landlords had not been made parties to the suit. The question for decision was whether the Civil Courts had jurisdiction to hear the suit, having regard to the provisions of section 77 of the Punjab Tenancy Act.

Held, that the Civil Courts had jurisdiction to hear the suit, the plaintiffs seeking to establish their right to a share in an already established occupancy tenure, and the suit not being one between a tenant and a landlord to establish occupancy rights.

Second appeal from the decree of A. H. Brasher, Esquire, District Judge, Amritsar, dated the 17th day of March 1920, affirming that of Lala Gokal Chand, Mehta, Munsif, 1st class, Amritsar, dated the 21st July 1919, decreeing the plaintiff's claim.

FAQIR CHAND, for Appellants.

SHEO NARAIN and BADRI DAS, for Respondents.

The judgment of the Court was delivered by—

LEROSSIGNOL J.— A reference to the pedigree table which will be found in the body of the lower Appellate Court's judgment, will explain the relationship between the parties. The main question in the case is whether the plaintiffs are entitled to share in

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the occupancy tenancy which in 1852 was entered in the name of Lehna Singh alone. The contention for the plaintiffs has been that the acquisition of the tenancy was effected by the whole family, and that Lehna Singh's name alone was entered in the revenue records as the representative of the whole family.

The Courts below have decided that Lehna Singh was acting on behalf of the whole family and this decision, right or wrong, being one of fact, cannot be challenged in second appeal. The question which has been hotly debated in this Court is whether this is a suit entertainable by a Civil Court and, even if it is such, whether the issue regarding the claim to occupancy rights was not such as should have been transferred for decision to a Revenue Court under the *proviso* to section 77 of the Tenancy Act.

Had the plaintiffs not been recorded as tenants-at-will under the defendants the matter would have been easier of decision. The suit would then have been one for a declaration that the plaintiffs were entitled to a share in the occupancy rights already established by the defendants and for joint possession. The complication in the case, however, arises from the fact that since 1862 the plaintiffs have been recorded as tenants-at-will in respect of a portion of the land, holding under the defendants. In 1916 the plaintiffs claimed occupancy rights and were served by the defendants with a notice of ejection whereupon the plaintiffs contested their liability to ejection by suits in the Revenue Courts. The Collector held that the plaintiffs were not occupancy tenants but tenants-at-will, and the plaintiffs were, accordingly, ejected from the land to recover which they have brought this suit.

If the issue whether the plaintiff are occupancy tenants must be referred to the Revenue Courts under the *proviso* to section 77 of the Tenancy Act, it is obvious that the matter will be *res judicata* between them in those Courts, and it is admitted on behalf of the respondents that, if the matter is one determinable by the Revenue Courts, the case should not be remitted to the Revenue Courts but should be finally settled in this Court. There can be no doubt that, strictly speaking the landlords, who have not been made parties to this

suit, should have been impleaded for clearly they will be affected by the result. Instead of having in prospect the extinction of the occupancy on the failure of the defendants' line the prospects of such extinction will become far more remote and problematic if it be held that plaintiffs' line also must disappear before the occupancy becomes extinct. We have to envisage the fact, however that the landlords are not parties to this suit, and to bear in mind that they will not be bound by any decision in this case.

The position then is as follows:—The defendants are the admitted owners of an occupancy right, and the question for decision is whether the plaintiffs are entitled to a share in that right. It will be observed that this is not a suit between a tenant and a landlord to establish occupancy rights. It is a suit in which the plaintiffs seek to establish their right to a share in an already established occupancy tenure. The plaintiffs deny that they were ever tenants holding under the defendants and claim an interest in the tenancy equal to that of the defendants. Though the result will be anomalous in that the landlords, who are not parties to this suit may refuse to recognize the plaintiffs' title, we are unable to hold that the matter is one which, under the statute can be heard and determined only by a Revenue Court, and we conclude that the Civil Courts have jurisdiction.

On this finding, we dismiss the appeal with costs.

C. H. O.

Appeal dismissed.

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