

## FULL BENCH.

*Before Sir Shadi Lal, Chief Justice, Mr. Justice Fforde and  
Mr. Justice Tek Chand.*

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ALI MUHAMMAD (PLAINTIFF) Appellant

*versus*

Feb. 10.

HAKIM AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2853 of 1922.

*Colonization of Government Lands (Punjab) Act, V of 1912, sections 19, 24, 32 and 36—Private dispute between parties as to lands—Jurisdiction of civil Courts—Civil Procedure Code, Act V of 1908, section 9—Burden of proof—that civil Courts have no jurisdiction—Interpretation of Statutes.*

A, an occupancy tenant under Government of land in an area to which the Colonization of Government Lands (Punjab) Act, 1912, had been applied, issued a notice of ejectment through a Revenue officer against B who had (before the Act came into force) obtained possession of a portion of A's recorded tenancy. B was successful in obtaining from the revenue Court an order setting aside the notice of ejectment on the ground that he was not a tenant under A. A then sued B in a civil Court for possession as against a trespasser. B pleaded that by a private arrangement A had transferred to him all the occupancy rights in the land in suit. On a plea as to the jurisdiction of the Court with reference to section 36 of the Colonization of Government Lands (Punjab) Act,—

*Held*, that in face of section 9 of the Civil Procedure Code it is for the party, who seeks to oust the jurisdiction of the ordinary civil Court, to establish his contention; and that, although the Courts must give effect to a statute which, either by express words or by plain and necessary implication, takes away the jurisdiction of the ordinary Courts, any statute purporting to interfere with the established state of law must receive a strict interpretation.

*Held further*, that the fact that defendant in this case had obtained possession of the land in dispute prior to the coming into force of the Colonization of Government Lands (Punjab) Act, took the case out of the jurisdiction conferred upon the Collector under section 19 of the Act.

*Ghulam Qadar v. Nur*, Civil Appeal No. 1994 of 1922 (unpublished), distinguished.

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*Nor* was the jurisdiction of the civil Courts ousted, either by section 24 of the Act, in the absence of any breach involving the forfeiture of the tenancy ; or by section 32, which is intended as a protection of the rights of Government, and embraces only cases of trespassers or squatters against Government ; *nor* by any other provision of the Act.

*First appeal from the decree of Lala Ghansham Das, Senior Subordinate Judge, Shahpur, at Sargodha, dated the 6th July, 1922, dismissing the plaintiff's suit.*

SHUJA-UD-DIN and DEVI DAYAL, for Appellant.

ABDUL GHANI, for Respondents.

#### JUDGMENT.

SIR SHADI LAL C.J.—The question of law formulated for the decision of the Full Bench is in the following terms :—

“ A, an occupancy tenant under Government of land in an area to which the Colonization of Government Lands (Punjab) Act, 1912, had been applied, issued a notice of ejectment through a Revenue Officer against B who was in possession of a portion of A's recorded tenancy, B sued successfully in a revenue Court to set aside the notice of ejectment on the ground that he was not a tenant under A.”

A then sued B in a civil Court for possession as against a trespasser. B pleaded that he was a partner in A's tenancy by private arrangement between himself and A, and that by a subsequent private arrangement A had transferred to him all the occupancy tenant's rights in the particular land in

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suit. In view of the provisions of the Colonization of Government Lands, (Punjab) Act, 1912, particularly sections 32 and 36, has a civil Court jurisdiction to hear the suit?"

It is an indisputable proposition of law, and indeed it is expressly enacted by section 9 of the Civil Procedure Code, that the Courts have jurisdiction to entertain all suits of a civil nature except those, the cognizance of which is expressly or impliedly barred. It is, therefore, for the party, who seeks to oust the jurisdiction of the ordinary civil Courts, to establish his contention.

How does the defendant, who denies the right of the civil Court to adjudicate upon the dispute, discharge the *onus* which rests upon him? In support of his contention he invokes section 36 of the Colonization of Government Lands Act, which deprives the civil Court of jurisdiction in any matter of which the Collector is empowered by that Act to dispose, and forbids it to take cognizance of the manner "in which the Local Government or Collector or any other Revenue officer exercises any power vested in it or in him by or under this Act". It is not suggested that the Local Government can take cognizance of the claim made by the plaintiff, and the issue is thus narrowed down to the question whether there is any provision in the statute which empowers the Collector to dispose of the dispute between the parties. In this connection the learned counsel for the defendant has, in a half-hearted manner, referred to sections 19 and 24 of the Act; but neither of these sections has any application to the case before us. Section 19 forbids a tenant of Government land to alienate for more than a specified period, his rights or interests in the

land except with the consent in writing of the Commissioner; and declares an unauthorised transfer to be void. The section also provides that if a person has, in pursuance of a void transfer, obtained possession of the land after the commencement of the Act, he shall be ejected under the orders of the Collector.

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It is unnecessary to examine the question whether the transfer in this case was or was not void, for it is admitted that the defendant had obtained possession of the land *before* the commencement of the Act, and that fact alone takes the case out of the jurisdiction conferred upon the Collector by section 19. Our attention has been invited to an unreported judgment of a Division Bench of this Court in *Ghulam Qadar v. Nur* (Civil appeal No. 1994 of 1922), where section 19 was successfully pleaded in order to oust the jurisdiction of the civil Courts. The facts bearing upon the question of jurisdiction in that case are not free from obscurity, but it is clear that the objection to jurisdiction was raised, not by the defendant, but by the plaintiff; and no resistance was apparently offered by the opposite party to that objection. It was taken for granted that the case was governed by section 19, and the learned Judges were not, therefore, called upon to discuss the question of jurisdiction or to express their considered opinion upon the scope of the section.

Nor do I think that section 24 has any bearing upon the question before us. That section authorizes the Collector to impose upon a tenant, who has committed a breach of the conditions of his tenancy, a penalty or to order the resumption of the tenancy; but this authority can be exercised at the discretion of the Collector and only after giving a previous

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notice to the tenant. There is no suggestion by the defendant that either party has committed any breach involving a forfeiture of his tenancy, or that the Collector has exercised the discretion conferred upon him by the section.

The only argument, which has been seriously advanced before us, and which requires consideration, is that founded upon section 32 of the Act. That section runs as follows :—

“ When the Collector is satisfied that any person has taken or is in possession of land in a colony to which he has no right or title, the Collector may, in addition to any other powers he may possess, forthwith re-enter upon the land and resume possession of it and take possession of all crops, trees and buildings thereon on behalf of Government without payment of any compensation whatsoever.”

It will be observed that the Collector is empowered by the Legislature to re-enter upon the land and resume possession of it on behalf of Government. The words “ re-enter ” and “ on behalf of Government ” make it clear that the section applies only to those cases in which Government is entitled to the possession of the land, but a trespasser has interfered with that possession. The matter being simple, it is not necessary for Government to bring against the trespasser an action of ejectment which is neither a cheap nor an expeditious remedy. The Legislature has accordingly provided a summary remedy for recovering the land, and the Collector, acting as the agent of Government, is authorised to remove the trespasser from the land and obtain possession of it on behalf

of Government. The section is obviously intended to protect the rights of Government and embraces the cases of trespassers or squatters against Government.

The Courts must, no doubt, give effect to the language of the statute, which, either by express words or by plain and necessary implication, takes away the jurisdiction of the ordinary Courts. But it is a well established doctrine that a statute interfering with the established state of law must receive a strict construction, and that, when its language is doubtful, the Courts should lean against an ouster of the jurisdiction of the ordinary tribunals. Neither the language of the section, which to my mind is not open to any ambiguity or doubt, nor any principle of law can warrant the contention that the Collector should intervene in a dispute between private persons and that the civil Courts should be debarred from adjudicating upon it.

My answer to the question submitted to the Full Bench is, therefore, in the affirmative.

FFORDE J.—I agree.

TEK CHAND J.—I agree.

N. F. E.

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*Reference replied  
to in the affirmative.*