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 JAMIAT RAI.

within the ambit of paragraph 15 (1) (c) is final. A limited appeal as defined in paragraph 16 of Schedule II is allowed from the decree following upon the award and the fact that such an appeal is allowed closes the door to a revision. It does not follow that because an appeal is not allowed on certain points the door is therefore reopened but rather the reverse. The provision of any appeal at all bars a revision.

The appeals and the applications for revision are dismissed with costs.

N. F. E.

Appeals and Revisions dismissed.

APPELLATE CIVIL.

Before Harrison and Addison JJ.

DEWA SINGH AND ANOTHER (DEFENDANTS)

Appellants

versus

GIAN SINGH AND ANOTHER
 (PLAINTIFFS)

UTTAM SINGH (DEFENDANT)

} Respondents.

Civil Appeal No. 1763 of 1928.

Colonization of Government Lands (Punjab) Act, V of 1912, section 21 (a) and (b): Original grant to husband as Abadkar—widow succeeding him—occupancy rights granted to her—Succession on death of widow—whether to her illegitimate son or the collaterals of her husband.

A grant of Abadkar rights in the Lower Chenab Colony was made in favour of one C.S. in 1899. Two years later, before the acquisition of occupancy rights, he died and was succeeded by his widow G. on 3rd May 1907 and occupancy rights were granted to her in accordance with the rules governing the Colony. She gave birth to an illegitimate daughter in 1908 and to an illegitimate son in 1918 and died

in 1926—mutation being effected in favour of C.S.'s nephews (brother's sons). The appeals of the illegitimate children having been rejected by the Collector as well as by the Commissioner they brought the present suit for a declaration that they were entitled to succeed to the occupancy tenancy which had been granted to their mother. The District Judge in appeal held that the son was entitled to succeed to his mother. The nephews of C. S. then appealed to the High Court.

Held, (accepting the appeal) that Section 21 governs the succession to the tenancy of both tenants-at-will and occupancy tenants; that the words "first allotted" describe its creation; that Section 21 (b) governs the succession in a case where the widow has succeeded the original tenant and grantee; the person or persons who would succeed if the tenancy were agricultural land acquired by the original tenant must succeed; the definition of such original tenant being in Section 3 of the Act and being confined strictly to male grantees. In contradistinction to this, Section 21 (a) only applies where the first tenant of the land, that is to say the grantee, was a woman to whom the grant was made on account of her husband, father, son or brother's services, he having presumably died in the performance of his duty.

And that, therefore, the collaterals of C.S. succeeded to the tenancy in preference to the illegitimate son of the widow.

Hira v. Mst. Jai Kaur (1), and *Mussammatt Jowali v. Mangal Singh* (2), differed from.

Narain Singh v. Mst. Sada Kaur (3), referred to.

Second appeal from the decree of Sheikh Ali Mohammad, Additional District Judge, Lyallpur, dated the 21st April, 1928, reversing that of Lala Amrit Rai, Subordinate Judge, 4th Class, Lyallpur, dated the 19th October, 1927, and granting plaintiff No. 1 Jowind Singh a decree for declaration in respect of the property in dispute.

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(1) (1930) 31 P. L. R. 127; 1930 A. I. R. (Lah.) 474.

(2) (1931) 32 P. L. R. 249. (3) (1925) I. L. R. 5 Lah. 134.

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RAM CHAND MANCHANDA and CHANDRA BHAN, for Appellants.

NAWAL KISHORE for (Plaintiffs) Respondents.

HARRISON J.—This appeal has been referred to a Division Bench as the Judge, before whom it first came in Chambers, was of opinion that the matter was not free from difficulty and that one of the alternatives apparently conflicted with the decision in *Narain Singh v. Mst. Sada Kaur* (1). The facts are as follows:—

A grant of *Abadkar* rights in the Lower Chenab Colony was made in favour of one Chamel Singh in 1899. Two years later, before the occupancy rights had been acquired, he died, and was succeeded by his widow *Mussammat* Gurdevi on the 3rd May, 1907. Occupancy rights were granted to her in accordance with the rules governing this particular colony. In the year 1908 an illegitimate daughter was born to *Mussammat* Gurdevi and an equally illegitimate son in 1918. She died in 1926, and mutation was effected by the revenue authorities in favour of Chamel Singh's nephews (brother's sons) Dewa Singh and Mohindar Singh. The two illegitimate children appealed to the Collector. The appeal was rejected and further rejected by the Commissioner. They thereupon brought the present suit for a declaration that they were entitled to succeed to the occupancy tenancy, which had been held by their mother.

The trial Court dismissed the suit. On appeal the District Judge accepted the appeal in so far as to give the son a decree for a declaration that he was entitled to succeed his mother. This second appeal was presented by the nephews of Chamel Singh.

(1) (1925) I. L. R. 6 Lah. 134.

As stated by Dalip Singh J. in his order of reference the question is, whether section 21 (a) of Act V of 1912 or section 21 (b) applies. He was apparently in favour of applying section 21 (a), but pointed out the difficulty arising from the fact that the Collector had taken no action under that sub-section. Since 1929, when this order was written there have been two decisions: *Hira v. Mussammat Jai Kaur* (1) and *Mst. Jowali v. Mangal Singh* (2). In the first the referring Judge wrote the order, and this was followed by another Bench in the later case *Mst. Jowali v. Mangal Singh* (2). On two grounds he was of opinion that section 21 (a) governed that case. The first was that the words used in section 21 (a) are "tenancy first allotted" and not "land first allotted". The original grantee, therefore, he held was not the first tenant though the land was allotted to him. The second ground, and this, more especially, was followed by the second Division Bench, was that section 21 (a) which lays down the law regarding the succession to tenancies, held by certain persons, must be read as laying down the law only in regard to the type of tenancy "to which the dispute relates" and as in that case, *Mussammat Jowali v. Mangal Singh* (2), the tenancy was an occupancy tenancy the sub-section cannot apply to another form or any less developed form of tenancy. With all respect to the learned Judges who have held this view, I cannot follow the reasoning. The section says "tenancy" without qualification. The first case which comes up for decision is that of the succession to an occupancy tenancy. Tenancy is, therefore, read as meaning occupancy tenancy. If in the next case the succession to a tenancy at will is disputed, do the law and the interpretation and meaning of the

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word "tenancy" change to suit those facts and are we to add the words "in dispute" after tenancy in section 21 (a)? If we do so, what are we to add to section 21 (b)? I quite understand that if the Act contemplates occupancy tenancies only and is so defective that it makes no provision for succession to any other form of tenancy, section 21 (a) and section 21 (b) must refer to occupancy tenancies alone, but the conclusion that the fact that the woman, whose death gave rise to *Hira v. Mussammatt Jai Kaur* (1), was an occupancy tenant, determines and limits "ex necessitate" the meaning of the word 'tenancy' in section 21 for all time is tantamount, in my opinion, to holding that the case governs the law instead of the law governing the case. The question remains whether the Act regulated the succession to occupancy tenancies alone. Counsel for the respondent urges that there is a difference between a tenant and "an allottee for purposes of cultivation." He would have us hold that the original *abadkar* grantee, Chamel Singh, was such an allottee and not a tenant at all. He further tried to draw a distinction between a lessee and a tenant, but when confronted with the statements of conditions published in the Punjab Colony Manual he abandoned it and finally was constrained to admit that a grantee of land is a tenant-at-will from the very first, and subsequently becomes an occupancy tenant after a lapse of time and after certain conditions have been fulfilled. It is true that in the conditions laid down for the Sidhnai colonist the word used to describe the original grantee is 'lessee' and not 'tenant,' but in other colonies, and more especially in the Lower Chenab Colony, where the land in dispute is situated, the word used is 'tenant.' In the register in which

(1) (1930) 31 P. L. R. 127; 1930 A. I. R. (Lah.) 474.

the facts are duly entered in the Collector's office from which the extract Exhibit P. A. has been taken, the word is "*Muzaria abadkar.*" This is how the original grantee began life in the colony. Now, *Muzaria* means tenant and the word "*abadkar*" is used in contradistinction to capitalist, and yeoman grantees. They are all tenants. This register shows that a history or record is kept of the tenancy. The individuals holding that tenancy may change and the first grantee be succeeded by his son, widow and so on, but the tenancy is one and its continuous history is recorded. At a certain stage, if certain conditions have been observed, it ripens into an occupancy tenancy and is finally extinguished when, and if, the tenant for the time being acquires proprietary rights after a further lapse of time. The Act speaks throughout of a tenancy and a tenant. It nowhere draws a distinction between a tenant-at-will and an occupancy tenant, or any other form of tenant. It is, therefore, necessary, if we are to accept the view taken in these two rulings, to import the word 'occupancy' into section 21. This section describes what happens in the event of a tenant dying who is not an original tenant. The succession to original tenants is governed by section 20. All other tenants are governed by section 21 and are divided into (1) females, to whom the tenancy has been first allotted, and (2) all others. In describing the succession to such female tenants the words used are: "The successor shall be nominated by the Collector" from certain classes being relations of the person "on account of whose services the tenancy was allotted to her." Now, can it be said in a case such as this that a widow, who succeeds her husband two years after the original grant and remains in occupation for six years before the occupancy rights are acquired, has

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only been allotted her tenancy if and when she so acquires the occupancy rights. The whole scheme of the Act and the whole of the conditions published in the Colony Manual treat the tenancy as one from start to finish. The occupancy rights are not granted to the widow on account of the services of the original grantee but as a consequence of her having survived her husband, and held the land, and observed the conditions for the remaining portion of the specified period. The woman, whose death is contemplated in section 21 (a), is the female relation of a man who died before the grant earned by his services could be conferred. To her the tenancy is first allotted but she is not an original tenant because the meaning of those words has been deliberately and artificially limited by the definition in section 3.

Further in section 21 (b) where the rule which governs the vast majority of cases is laid down, the person entitled to succeed is the person who would succeed if the tenancy were agricultural land acquired by the original tenant: The tenancy here cannot mean one thing in the event of the holder dying before occupancy rights have matured and another if he died later. I would repeat, therefore, that, as far as I can understand the conditions and the Act, one tenancy and one only is contemplated. This is allotted in the first instance to the original grantee who is a tenant, whatever the nature and conditions of his grant may be, and he or his successor continues to be a tenant even after the acquisition of occupancy rights and until the tenancy merges into full proprietorship.

I would, therefore, hold that section 21 governs the succession to the tenancy of both tenants-at-will and occupancy tenants; that the words " first allotted "

describe its creation and that section 21 (b) governs the succession in a case of this sort where the widow has succeeded the original tenant and grantee. The succession, therefore, goes to the person or persons who would succeed if the tenancy were agricultural land acquired by the original tenant, the definition of such original tenant being in section 3 of the Act and being confined strictly to male grantees. In contradistinction to this, section 21 (a) only applies where the first tenant of the land, that is to say the grantee, was a woman to whom the grant was made on account of her husband, father, son, or brother's services, he having presumably died in the performance of his duty.

I would, therefore, accept the appeal and dismiss the plaintiffs' suit. The appellants' costs will be paid by the respondents in this Court, and in the Lower Courts parties will bear their own costs

ADDISON J.—I agree

A. N. C.

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ADDISON J.

Appeal accepted