

APPELLATE CIVIL.

Before Currie J.

MEHAR KHAN AND TWO OTHERS (PLAINTIFFS)

Appellants

versus

ATA MOHAMMAD SHAH (DEFENDANT)

Respondent.

Civil Appeal No. 1262 of 1934.

Punjab Tenancy Act, XVI of 1887 (as amended by Act V of 1929), sections 45, 50-A, 98 : Decision of a suit to contest notice of ejectment by a Revenue Court — whether bars subsequent suit in a Civil Court to contest the plaintiff's liability to ejectment — even where the ground is, title by adverse possession.

The plaintiffs-appellants on whom notice of ejectment had been served instituted a suit in the Revenue Court under section 45 (6) of the Punjab Tenancy Act to contest their liability to ejectment. Their suit was dismissed and an appeal was also dismissed. They then came to the Civil Court and instituted the present suit for a declaration that they were owners by adverse possession.

Held, that the suit, though on the face of it merely one for a declaration, was in substance one to contest the liability of the plaintiffs to ejectment and, therefore, barred by section 50-A of the Punjab Tenancy Act; the whole intention of which was to render *final* the decisions of Revenue Courts in cases under section 45, by expressly barring recourse to Civil Courts for the purpose of attacking the decisions of Revenue Courts in such cases.

Cheta v. Baija (1), referred to.

And, it made no difference to the application of section 50-A that the plaintiff in the Civil Court set up a title by adverse possession, because he could have contested his liability to be ejected in the Revenue Court on any ground he liked; and although the question of title by adverse possession can only be finally decided by a Civil Court, there is a

definite procedure prescribed by the Punjab Tenancy Act for its being referred to such Court by a Revenue Court—*vide* section 98 of the Act.

Thakar Gir v. Baisakhi (1), and *Sadhu Ram v. Mehar Shah* (2), followed.

[*Note*—A Letters Patent Appeal No. 52 of 1935 was filed against this judgment and was heard and dismissed by Addison, A. C. J. and Din Mohammad J. on the 9th July, 1935—Ed.]

Second Appeal from the decree of Mr. G. U. Whitehead, District Judge, Mianwali, dated 17th April, 1934, affirming that of Lala Sultan Singh, Subordinate Judge, 4th Class, Mianwali, dated 24th March, 1933, dismissing the plaintiff's suit, with some variation as to costs.

VASHESHAR NATH SETHI, for Appellants.

MUHAMMAD MUNIR, for Respondent.

CURRIE J.—The circumstances leading to this suit may be briefly stated as follows:—The present respondent *Sayyad Ata Mohammad Shah* had a notice of ejectment under section 45 of the Punjab Tenancy Act served on the plaintiffs-appellants. They instituted a suit under section 45 (6) of the said Act to contest their liability to be ejected. Their suit was dismissed and an appeal was also dismissed. The appellants then came to the civil Court and instituted the present suit for a declaration that they were owners by adverse possession. A preliminary objection was raised that the suit could not be entertained in view of the provisions of section 50-A of the Punjab Tenancy Act which runs as follows:—

“No person whose ejectment has been ordered by a revenue Court under section 45 (6) * * * * may institute a suit in a civil Court to contest his liability to

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ejectment or to recover possession or occupancy rights or to recover compensation.”

The objection was upheld by the Subordinate Judge who accordingly dismissed the suit and the same view was adopted by the learned District Judge who dismissed the appeal. Against this order the present second appeal has been preferred.

The sole question for decision is whether section 50-A of the Punjab Tenancy Act applies. This section was introduced into the Punjab Tenancy Act by the Punjab Tenancy Amendment Act, V of 1929. This Act was passed in consequence of the decision of the High Court in *Cheta v. Baija* (1). In that case a Full Bench decided that where a tenant had been ejected it was open to him subsequently to sue in the civil Courts on the ground that he was entitled to possession as an occupancy tenant. The line of reasoning adopted was that if he had been ejected he ceased to be a tenant and, therefore, could have resort to the civil Courts.

For the appellants Mr. V. N. Sethi contends that the question of title by adverse possession is one that can only be decided by the civil Courts and cannot be tried by a revenue Court. He argues that if section 50-A bars the agitation of such questions of title in the civil Courts it comes to this that the question of title cannot be tried anywhere. It appears to me, however, that this is not a correct statement of the case. Section 77 (3) (f) gives the revenue Court jurisdiction to decide suits by tenants under section 45 to contest liability to ejectment when notice of ejectment has been served. In *Thakar Gir v. Baisakhi* (2), it was held that the word ‘tenant’ in

(1) (1928) I. L. R. 9 Lah. 38 (F. B.).

(2) 3 P. R. 1895.

section 77 (3) (f) should be construed, as meaning 'the person on whom a notice of ejection has been served.' Sir Meredyth Plowden remarked, "There is not a word in section 45 of the Act to restrict the grounds on which the person in possession served with notice of ejection may contest his liability in the suit which he is expressly admonished to bring in a revenue Court." It is, therefore, clear that the plaintiffs could contest the notice of ejection on any grounds in the suit under section 45 (6). No doubt the question of title by adverse possession can only be finally decided by a civil Court as was held by the Financial Commissioners in *Sadhu Ram v. Mehr Shah* (1), but the procedure is that, if it becomes necessary to decide that question, it is the duty of the revenue Courts to take action under section 98 of the Punjab Tenancy Act and refer the claimant to the civil Courts. In the present case, though it appears that the plea of adverse possession was raised in the plaint, the case does not appear to have been fought in the revenue Courts on that basis. The Collector in his order clearly states that the plaintiffs did not base their claim on adverse possession for over 12 years, but from the very beginning they claimed that they were the owners of the land and built the *kotla* and *chhappar* which stand thereon. This they failed to prove and the revenue Courts held that the relation of owner and tenant existed between the parties. There was thus no question of referring any claim to title by virtue of adverse possession to the civil Courts. It appears to my mind clear that the whole intention of section 50-A of the Punjab Tenancy Act was to render final the decision of the revenue Courts in cases under section 45 by expressly barring recourse to civil Courts

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for the purpose of attacking the decision of the revenue Courts in such cases. As both the lower Courts remarked, the present suit, though on the face of it merely one for a declaration that the plaintiffs are owners by virtue of adverse possession, is in substance one to contest their liability to ejection which has already been decided by the revenue Courts.

In my opinion, therefore, the learned District Judge rightly held that the suit was barred by virtue of the provisions of section 50-A of the Punjab Tenancy Act. I, therefore, dismiss the appeal with costs.

P. S.

*Appeal dismissed.***LETTERS PATENT APPEAL.***Before Addison and Din Mohammad JJ.*

PEOPLES BANK OF NORTHERN INDIA,

LTD—Appellant

versus

KANHAYA LAL GAUBA AND ANOTHER—

Respondents.

1935

*Feb. 5.***Letters Patent Appeal No. 1 of 1934.**

Indian Arbitration Act, IX of 1899, sections 11, 14, 15 : Application under section 14 to have the award set aside or not enforced — Order of the Court — whether appealable.

On 1st January, 1930, J. L. G., the son of K. L. G., applied for 1,000 shares in the appellant Bank, which were duly allotted. Subsequently the Bank discovered that J. L. G. was a minor and asked K. L. G. to sign the application in the joint names of himself and his son, which was done on 20th February, 1930, and the entries in the Bank's registers made accordingly, no fresh allotment being considered necessary. The Bank got into difficulties and in February, 1932, K. L. G. wrote and revoked his application for shares on the ground that there had been no fresh allotment, and when the Bank repudiated this revocation he asked that the matter be