

**APPELLATE CIVIL.***Before Coldstream and Bhide JJ.*

**RICHHPAL AND OTHERS (DEFENDANTS) Appellants**  
*versus*

1934  
Dec. 7.

**SUJAN SINGH AND OTHERS**  
**(PLAINTIFFS) SURTA AND**  
**OTHERS (DEFENDANTS)** } Respondents.

**Civil Appeal No. 2049 of 1930.**

*Jurisdiction — Civil or Revenue — Punjab Tenancy Act, XVI of 1887, sections 77 (3) (h), 100 : Suit by Landlords for possession of land, on the ground that the occupancy rights had become extinct — one of the defendants being a mortgagee from the last occupancy tenant — whether suit triable by Civil or Revenue Court — Decree of Civil Court — when should be registered as a decree of the Collector.*

Mst.L., the last occupancy holder of the land in dispute had mortgaged the holding with possession in favour of G., one of the defendants-appellants. The landlords brought a suit for possession against them on the ground that they were not entitled to succeed, and that the tenancy had become extinguished in default of heirs.

*Held*, that as plaintiffs sought to dispossess G. without payment of the mortgage money there was an issue between the parties which brought the case within clause (h) of section 77 (3) of the Punjab Tenancy Act, and the mere fact that plaintiffs claimed possession on the ground that the tenancy had become extinct would make no difference; nor was the fact, that the issue only affected one of the defendants, material, having regard to the proviso of the same section.

*Chhangu v. Muhammad Bakhsh* (1), relied on.

*But*, as the suit had been tried on the merits on all the necessary issues, and the parties had not been prejudiced, the decree of the trial Court (Civil) should be registered as,

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a decree of the Collector under section 100 of the Act and the appeal presented to the District Judge should be returned to the appellants for presentation to the proper Court.

*Second Appeal from the decree of R. S. Lala Ghanshyam Das, District Judge, Gurgaon, at Hissar, dated 21st July, 1930, modifying that of Sheikh Ata Ilahi, Senior Subordinate Judge, Gurgaon, dated 18th April, 1929, and granting the plaintiffs a decree for part of the land in suit.*

SHAMAIR CHAND, R. C. SONI and M. C. MAHAJAN,  
for Appellants.

J. N. AGGARWAL and J. L. KAPUR, for (Plaintiffs)  
Respondents.

BHIDE J.

BHIDE J.—*Mussammat Lado*, the last holder of the occupancy tenancy in dispute having died, the land was mutated in favour of Gobinda, Richhpal and Sundu (defendants Nos.1 to 3). The landlords thereafter instituted the present suit for possession of the land on the ground that defendants Nos.1 to 3 were not entitled to succeed and that the tenancy had become extinguished in default of heirs. The suit was resisted by defendants Nos.1 to 3 on various grounds and one of the points raised by them was that the suit was triable by a Revenue Court and not by a Civil Court. This contention was not upheld and the suit was decreed by the trial Court. On appeal the learned District Judge confirmed the decree of the trial Court to the extent of the shares of the landlords who had instituted the suit. From this decision defendants Nos. 1 to 3 have preferred a second appeal.

On behalf of the appellants, the question of jurisdiction was again raised before us and it was contended that the suit being triable by a Revenue Court, the decree passed by the Court below in favour of the

respondents was wholly without jurisdiction. This contention was based firstly on the ground that the land having been mutated in favour of the appellants as occupancy tenants and the plaintiffs having also realised rent from the appellants for about six years, the appellants must at any rate be held to be tenants and the suit was, therefore, one between landlords and tenants. As the suit was for ejectment of the appellants and the question of occupancy rights was also in dispute, it was contended that it was necessary for the Court to decide matters falling within the purview of clauses (d) and (e) of section 77 (3) of the Punjab Tenancy Act. It was further contended that as *Mussamat* Lado had mortgaged the holding in favour of the appellant Gobinda, and the plaintiffs were seeking to dispossess him without payment of the mortgage charge, there was also an issue between the parties falling within clause (h) of the same section. In view of these facts, it was urged, that Civil Courts had no jurisdiction to try the suit and the plaint should have been returned to the plaintiffs for presentation to the Collector as required by the proviso to section 77 (3) of the Punjab Tenancy Act.

I do not think there is any force in the first contention. The plaintiffs sued the defendants as trespassers and not as tenants and the Courts below have not come to any finding that the appellants were treated by the plaintiffs as tenants. Nor was the learned counsel for the appellants able to point out any evidence worth the name on the record to show that the plaintiffs had recognised the appellants as tenants.

The second contention of the learned counsel, *viz.* that there was an issue between the parties falling under clause (h) of section 77 (3) of the Punjab

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Tenancy Act, which required decision in the suit, appears, however, to be correct. There is no doubt that the occupancy holding was alleged to be mortgaged with possession in favour of the appellant Gobinda by *Mussammat* Lado, the last holder, and the plaintiffs wanted to dispossess him. A suit for such a relief would clearly fall under clause (h) of section 77 (3) of the Punjab Tenancy Act and the mere fact that the plaintiffs were claiming possession on the ground that the tenancy had become extinct on the death of *Mussammat* Lado would not make any difference [cf. *Chhangu v. Muhammad Bakhsh* (1)]. The learned counsel for the respondents contended that the issue affected only one of the appellants, but this is immaterial, for according to the proviso to section 77 of the Punjab Tenancy Act referred to above, as soon as the Civil Court finds it necessary to decide *any* matter which is cognizable exclusively by a Revenue Court under section 77 (3) of the Punjab Tenancy Act, its jurisdiction is ousted and the whole suit becomes triable by a Revenue Court. The contention of the learned counsel for the appellants on this question of jurisdiction must, therefore prevail.

The suit has been, however, tried on the merits on all the necessary issues and I do not think the parties have been prejudiced. Under section 100 of the Punjab Tenancy Act I would, therefore, in accepting the appeal and setting aside the decree of the learned District Judge, direct that the decree passed by the trial Court be registered as a decree of the Collector and that the appeal presented to the District Judge be returned to the appellants for presentation to the proper Court. I would leave the parties to bear their

costs in this Court as well as the District Judge's Court in view of all the circumstances of the case.

COLDSTREAM J.—I agree.

P. S.

*Appeal accepted.*

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### APPELLATE CIVIL.

*Before Addison and Din Mohammad JJ.*

FATEH SHAH (PLAINTIFF) Appellant

*versus*

MST. HASSAN KHATUN AND OTHERS  
(DEFENDANTS) Respondents.

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Civil Appeal No. 1910 of 1930.

*Custom — Succession — Ancestral property — Shirazi Sayyads — Village Jarahi — Tahsil Kabirwala — District Multan — originally belonging to the Jhang district — Daughter (married to near collateral) versus collaterals — Riwaj-i-am, Jhang.*

*Held*, that the plaintiff, on whom the *onus* lay, had failed to prove that among *Shirazi Sayyads* of village Jarahi, *tahsil* Kabirwala, district Multan (originally belonging to district Jhang), a daughter married to a near collateral does not exclude collaterals, in succession to her father's ancestral property.

*Khizar Hayat v. Allah Yar Shah* (1), and *Allah Wasaya v. Mst. Zohran* (2), referred to.

*Riwaj-i-ams of Jhang district, discussed.*

*First Appeal from the decree of Mir Ghulam Yazdani, Senior Subordinate Judge, Multan, dated 27th August, 1930, dismissing the plaintiff's suit.*

BADRI DAS and ACHHRU RAM, for Appellant.

R. C. MANCHANDA and M. C. MAHAJAN, for Respondent No.1.

VISHNU DATTA, KRISHNA SARUP and S. C. MANCHANDA, for Respondents Nos.2 to 5.