APPELLATE CIVIL.

Before Jai Lal and Skemp JJ.

RUP LAL AND SONS (PLAINTIFFS) Appellants

versus

SECRETARY OF STATE (DEFENDANT) Respondent.

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Dec. 6.

Civil Appeal No. 794 of 1933.

Jurisdiction — Civil or Revenue — Suit for compensation by dispossessed tenant on the basis of a lease—whether cognizable by Civil Court — Punjab Tenancy Act, XVI of 1887, section 77 (3), clauses (g) and (i).

Held, that section 77 (3), clauses (*g*) and (*i*) of the Punjab Tenancy Act is applicable to a suit by a dispossessed tenant against the landlord on the basis of a lease for temporary cultivation, and that it is immaterial whether the suit is for possession or merely for compensation for wrongful dispossession—in either case the suit is cognizable only by a Revenue Court and not by a Civil Court.

Joti v. *Maya* (1), *Akbar Hussain* v. *Karm Dad* (2), and *Cheta* v. *Baija* (3), relied upon.

Miscellaneous First Appeal from the order of Syed *Mohammad Abdullah, Subordinate Judge, 1st Class, Lahore, dated 8th May, 1933, holding that the suit is not triable by a Civil Court and returning the plaint.*

ACHHRU RAM, for Appellant.

DIWAN RAM LAL, Government Advocate, and YASHPAL GANDHI, for Respondent.

SKEMP J.—The question in this appeal is whether a certain suit is cognizable by a Civil Court or by a Revenue Court. Messrs. Rup Lal and Sons on the 13th March, 1928, entered into an agreement

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(1) 44 P. R. 1891. (2) 90 P. R. 1918 (F.B.).
(3) (1928) I. L. R. 9 Lah. 38 (F.B.).

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with the Secretary of State through the Conservator of Forests, Western Circle, Punjab. The principal terms of the agreement were as follows:—

The Forest Department handed over specified areas for temporary cultivation for a period of 5 years to Messrs. Rup Lal and Sons. The lessees, Messrs. Rup Lal and Sons, agreed to trench and stock with *shisham* certain parts of these areas and were to be paid for this work at specified rates by the Conservator. The land was to be canal irrigated. The lessees undertook to pay *malikana* at the rate of Rs.24 per *acre* per annum on the total gross area held for cultivation by them each year on the 1st April, besides land revenue at the rate of Rs.2 per *acre* assessed on the matured crop. It was provided that the Secretary of State might recover from the lessees any arrears or moneys due under the agreement in the same manner in which the land revenue might be recovered. The lessees were to deposit as security for the fulfilment of the terms of the agreement Government Promissory Notes worth Rs.50,000 to be returned on the completion of the agreement, "provided that should the Conservator, at any time, decide that the lessees are not faithfully carrying out the terms of this agreement in a proper or workmanlike manner, he shall have the power forthwith to terminate this agreement, and to confiscate the security aforementioned and to eject the lessees from the Daphar Plantation, and the lessees shall have no claims to any compensation on account of such action of the Conservator or on account of any crops which may be standing on the land at the time of such ejectment."

On the 31st August, 1932, the plaintiff firm lodged a suit and after setting forth the principal

terms of the agreement and reciting that the original security was reduced to Rs.25,000 they said that from 1928 to 1930 the contract was carried out smoothly, that in 1930-31 *malikana* was suspended to the extent of one half under Government orders, that on the 1st June, 1931, the plaintiffs were informed that Government had decided that a quarter of the *malikana* for 1930-31 out of the portion already under suspension was remitted and that for the future *malikana* would be reduced to Rs.20-8-0 per gross *acre*. Thereupon the Forest Department revived its demand for the payment of the suspended *malikana*.

Para. 8 of the plaint runs as follows:—

"That about this time it transpired that the defendant had been realising land revenue from the plaintiffs, whereas none was assessed on the land allotted to the plaintiffs inasmuch as on the basis of the previous agreement of 1923 (which the defendant had entered into for the same purpose as the agreement now in dispute) the defendant had been realising land revenue under a mistake of fact, there became due to the plaintiffs a large sum of money amounting to approximately Rs.30,000 in respect of the previous agreement and Rs.16,000 in respect of the present agreement and a dispute arose between parties respecting such cross demands."

Para. 10 of the plaint set forth that the Forest Department on 31st July, 1931, asked the Deputy Commissioner, Gujrat, to recover Rs.33,100-13-9 for and on behalf of the Forest Department and Rs.13,955-8-0 for and on behalf of the Canal Department as arrears of revenue and recoverable as such. This was entirely contrary to law and against the express terms of the agreement for specified reasons.

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On the 6th January, 1932, the Deputy Conservator of Forests, Lahore, terminated the agreement, confiscated the balance of the security deposit, *viz.* Rs.25,000 and had the plaintiffs ejected. This was illegal, unjustfied and contrary to the agreement for specified reasons.

The plaintiffs set forth that they were entitled to compensation for breach of contract and for the illegal acts as follows : —

	Rs.
(*a*) for illegal and unjustified termination of lease ...	25,000
(*b*) for refund of land revenue illegally recovered from the plaintiffs, inasmuch as the contract of lease is void to the extent that it makes the plaintiffs liable for land revenue under both contracts	46,000
(*c*) refund of security money forfeited	25,000
(*d*) refund of acreage ...	2,000
(*e*) value of movable property including standing crop illegally taken possession of by the Collector	30,000
(*f*) loss of moneys advanced to tenants	60,000
Total ...	1,98,000

They admitted, however, that the defendants were entitled to a set off Rs.33,605, but that left still due to the plaintiffs Rs.1,64,395. The plaintiffs, however, sued for Rs.70,000 only in the present case.

They also sought an injunction to restrain the Conservator, Forest Department and the Deputy Commissioner of Gujrat from realising further sums.

This suit was lodged in the Court of the Subordinate Judge, First Class, Lahore. The defendants through Mr. Abdul Rashid took a preliminary objection that the Civil Court had no power to take cognizance of the plaintiffs' claim because it was one between a landlord and a tenant arising out of the terms of the lease or conditions on which the tenancy was held under section 77 (3) (*i*) of the Punjab Tenancy Act and was also for recovery of overpayments of rent and land revenue and thus barred by section 77 (3) (1) of the Punjab Tenancy Act and section 158 of the Land Revenue Act. The learned Subordinate Judge accepted this plea and returned the plaint for presentation in a Revenue Court. The plaintiff firm has appealed through Mr. Achhru Ram while the respondents were represented by the Government Advocate.

Now, let us construe section 77 of the Tenancy Act, which provides that certain suits "shall be instituted in and heard and determined by Revenue Courts," and no other Court shall take "cognizance of any dispute or matter with respect to which any such suit might be instituted." Sub-sections (*g*) and (*i*) were discussed before us.

Mr. Achhru Ram took the point that the section did not apply, because the land let was not land as defined in the Tenancy Act. Land, as defined in section 4 (1) of the Punjab Tenancy Act, means land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture. The argument is that the trenching or planting of *shisham*, which is the main object of the agreement,

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is not agriculture but forestry. Assuming that this is so, nevertheless the whole area was leased to the plaintiff firm for temporary cultivation and, therefore, this argument falls to the ground.

The next point taken is that the suit cannot be under section 77 (3) (*i*) of the Punjab Tenancy Act, which runs: 'Any other suit between landlord and tenant arising out of the lease or conditions on which a tenancy *is* held,' because the tenancy had terminated before the date of the suit; the plaintiffs having been ejected 7 months before they lodged their suit.

In *Joti* v. *Maya* (1), a suit by a person out of possession claiming the possession of land from the proprietor on the ground that he had a right of succession as a tenant, it was held that the test under the Tenancy Act whether a person has or has not become a tenant is whether such person having the right to enter upon and possess particular land has or has not entered into possession, in pursuance of that right. If such person has entered he is a tenant. The particular suit was held cognizable only by a Civil Court on the ground that plaintiff had never entered into possession.

In *Akbar Hussain* v. *Karm Dad* (2), it was held that a suit brought by a tenant, who had been expelled by a landlord, for compensation, more than a year after dispossession, was cognizable only by the Revenue Courts, the suit falling under section 77 (3) (*g*) of the Punjab Tenancy Act, leRossignol J. said: "Section 77 (3) (*g*) and (*i*) appear to me to cover all conceivable causes of litigation between a landlord and his tenant *qua* tenant. My conclusion is that an

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ex-tenant in that capacity can look for no relief outside the Revenue Courts and that the Civil Courts can hear his plaint only if he sets forth a claim to relief in a capacity other than that of a tenant."

In *Cheta* v. *Baija* (1), Addison J. approved of this view of leRossignol J. (p.57), Broadway J. approved of *Joti* v. *Maya* (2), and added that " a person who has been in possession of land with the right to possess it continues to hold the land and to be a tenant in spite of having been wrongfully put out of possession (p.46), Fforde J. concurred (p.52). Addison J. approved of the view of leRossignol J., already cited, from *Akbar Hussain* v. *Karm Dad* (3) (p.57).

This suit was brought by the plaintiff who had been dispossessed from his tenancy after a notice under section 43 of the Tenancy Act and had been unsuccessful under section 45 to contest his liability to eject him. The plaintiff sought possession of the land from which he had been ejected.

It has been suggested that these two latter suits were suits by persons claiming a right of possession whereas the present plaintiff accepts his dispossession, does not wish to return to the land and sues for compensation by way of damages. It is further suggested that this distinction between an ex-tenant claiming possession and an ex-tenant accepting his dispossession may be in accordance with the general principles that jurisdiction is determined by the plaint, but after consideration I am of opinion that any attempt to make such a distinction between different classes of ex-tenants is unsound and that the same principle must apply to all persons who have

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been tenants, whatever they claim against their landlord. *Akbar Hussain* v. *Karm Dad* (1) and *Cheta* v. *Baija* (2) support this view.

Thus the plaintiff firm is a tenant, and once this is held I see no escape from the conclusion that the suit is triable by a Revenue Court. This was admitted by Mr. Achhru Ram in reference to item (*a*) and he suggested withdrawing that item in order to bring the suit within the jurisdiction of the Civil Court. But to my mind the whole suit arises out of the terms of the lease or conditions on which the tenancy is held. Mr. Achhru Ram contended that items (*b*) and (*e*) were damages consequential on breach of the lease. It may be so, but it does not take the items out of the section.

I would, therefore, dismiss this appeal with costs.

JAI LAL J. JAI LAL J.—I agree.

A. N. C.

Appeal dismissed.

(1) 90 P. R. 1918 (F.B.). (2) (1928) I. L. R 9 Lah. 38 (F.B.).