

his bid had been approved by the Settlement Commissioner and the matter had not been left to the whim of the Managing Officer, and ultimately the price which the property has fetched at the reauction in favour of respondent No. 8 is only insignificantly higher than the price offered by the petitioner, I have not been able to see my way to interfere in this case because the impugned orders have been passed by the competent authorities and have been found to be technically within their jurisdiction. This petition accordingly fails and is dismissed.

(17) In view of the fact that the main points urged by the learned counsel for the petitioner, and decided by me in this case, were *res integra*, and were not free from difficulty, I leave the parties to bear their own costs.

B.S.G.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and H. R. Sodhi, JJ.

AMIN LAL,—Petitioner.

versus

FINANCIAL COMMISSIONER (REVENUE), AND OTHERS,—Respondents.

Civil Writ No. 670 of 1971.

July 15, 1971

Punjab Tenancy Act (XVI of 1887)—Sections 5 and 77(3) (d)—Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (VIII of 1953)—Sections 2(a), 2(f) and 3—Suit for declaration of ownership of land on the basis of acquisition of occupancy rights therein—Such suit—Whether triable by Civil Courts—Civil Courts having decided the issue—Revenue Courts—Whether barred to re-hear the same. . . .

Held, that a Civil Court has jurisdiction to try all suits of a civil nature unless its jurisdiction with regard to a particular type of a suit is expressly or impliedly barred. Where a suit is filed in a Civil Court by a person claiming declaration that he is the owner of the land occupied by him as he has acquired occupancy rights under section 5 of the Punjab Tenancy Act, 1887, and those rights on the coming into force of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, ripened into statutory ownership,

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the sum and substance of such a suit is to get determination of the question whether he has become owner of the suit land. The decision on such a question relates to title and is within the cognizance of the Civil Court. Section 77(3) (d) of the Punjab Tenancy Act, 1887, takes out of the jurisdiction of a Civil Court only that suit which is instituted to establish a claim to a right of occupancy and not where title to property is to be decided on the determination of occupancy rights which determination is only to substantiate the plea of ownership. Section 3 of the Vesting of Proprietary Rights Act has the effect of extinguishing all rights, title and interest of the landlord on the appointed day and this extinguishment of rights takes effect in both the categories mentioned in section 2(f) of the Act. The result, therefore, is that even if occupancy right is obtained after the coming into force of the Vesting of Proprietary Rights Act, there is simultaneous extinguishment of that right and conversion of the same into ownership. When occupancy rights have ceased to exist and statutory ownership created in lieu thereof, a suit for declaration of occupancy rights would be wholly meaningless. No tenant claiming to hold occupancy rights on the commencement of the Vesting of Proprietary Rights Act will go to Court and seek a declaration of those rights when after its operation he is no longer holding that status and has become the owner. Prayer for declaration of title in such a suit is not a surplusage. Hence the Civil Court has jurisdiction to decide a suit for declaration of ownership of land on the basis of acquisition of occupancy rights therein and the Revenue Courts cannot subsequently proceed with a suit instituted in that Court with regard to the same issue which has already been finally adjudicated upon by a competent Civil Court. (Paras 7 and 12)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the impugned order of respondent No. 1, dated 18th January, 1971 contained in Annexure 'A' passed by the Financial Commissioner (Revenue), Haryana, who accepting the revision petition of the respondents claiming to be occupancy tenants under the petitioner remanded the case to the Assistant Collector to decide their status as such tenants.

CHANDER SINGH, ADVOCATE, for the petitioner.

ANAND SWARUP, SENIOR ADVOCATE, WITH I. S. BALHARA AND R. S. MITAL, ADVOCATES, for respondent No. 3.

JUDGMENT

The judgment of this court was delivered by—

SODHI, J.—(1) This judgment will dispose of a bunch of five connected writ petitions Nos. 670 to 674 of 1971, which raise common questions of law and are directed against the order dated 18th January,

1971, of the Financial Commissioner (Revenue), Haryana, who accepting the revision petitions of the respondents claiming to be occupancy tenants under the petitioner remanded the case to the Assistant Collector to decide their status as such tenants. To appreciate the controversy between the parties, it is necessary to state a few facts.

(2) Amin Lal, writ petitioner, in all the five writ petitions claims to be the purchaser by registered deeds said to have been executed in his favour in the year 1965 by the owners of different parcels of land on which private respondents in these writ petitions claim to be occupancy tenants. The land is situate in village Mubarakpur, tahsil Jhajjar, district Rohtak. Occupancy rights in regard to agricultural land arise on the fulfilment of conditions stated in the relevant provisions of the Punjab Tenancy Act (XVI of 1887), as applicable to the State of Haryana and referred to hereinafter as the Tenancy Act. A tenant has a right of occupancy under section 5 of the said Act in respect of the land occupied by him if he,

- (a) at the commencement of this Act has for more than two generations in the male line of descent through a grandfather or granduncle and for a period of not less than twenty years been occupying land paying no rent therefor beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, or
- (b) having owned land, and having ceased to be land-owner thereof otherwise than by forfeiture to the Government or than by any voluntary act, has, since he ceased to be land-owner, continuously occupied the land, or
- (c) in a village or estate in which he settled along with or was settled by, the founder thereof as a cultivator therein, occupied land on the twenty-first day of October, 1868, and has continuously occupied the land since that date, or
- (d) being jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or having been such jagirdar, occupied the land while he was jagirdar and has continuously occupied it for not less than twenty years.

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has a right of occupancy in the land so occupied, unless, in the case of a tenant belonging to the class specified in clause (c), the landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expense of, the founder.

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefor beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of sub-section (1).

(3) The words in that clause denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir, and relationship by the usage of a religious community.

Ram Singh and others respondents instituted suits somewhere in the year 1960/1961 in the Civil Court at Jhajjar wherein a declaration was sought that they were the owners of the land occupied by them as they had acquired occupancy rights under section 5 of the Tenancy Act and those rights, on the coming into force of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, hereinafter described as the Vesting of Proprietary Rights Act, ripened into statutory ownership. The defendants-landlords in those suits contested the claim of the plaintiffs about the fact of the latter having acquired occupancy rights as alleged by them. One of the issues framed in the suit was "whether the plaintiffs have acquired occupancy tenants rights in the suit land". The whole claim of the plaintiffs was based on the existence of occupancy rights under section 5 of the Tenancy Act as it was pleaded that they being the occupancy tenants automatically became the owners by virtue of the Vesting of Proprietary Rights Act. This Act came into force on 15th June, 1952, and section 3 thereof provided for that vesting of proprietary rights in occupancy tenants and extinguishment of the corresponding rights of the landlords. An extract from section 3 so far as it is relevant in this case may, with advantage, be quoted hereunder :—

"3. Notwithstanding anything to the contrary contained in any law, custom or usage for time being in force on and from the appointed day

- (a) all rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned) of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord.

Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later;

- (b) the landlord shall cease to have any right to collect or receive any rent or any share of the land revenue in respect of such land and his liability to pay land revenue in respect of the land shall also cease;

- (c) * * * * *
- (d) * * * * *

Evidence was led by both the parties without any objection having been taken as to the jurisdiction of the Civil Court and the suits of the plaintiffs were decreed.

(3) Defendant-landlords took an appeal to the District Judge who allowed the appeal on 18th May, 1962, reversed the findings of the trial Court on a consideration of the oral and documentary evidence including revenue records and came to the conclusion that it had not been established that tenancy was ever created by the landlords in favour of the plaintiffs. In other words, the plaintiffs were held not to have held the land as occupancy tenants and they were, therefore, refused the declaration asked for. A copy of the judgment of the District Judge has been filed with the writ petition as Annexure 'X'.

(4) Having failed in the Civil Court to get a declaration of ownership, the plaintiffs instituted suits in Revenue Courts for a

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declaration that they were the occupancy tenants of the land in dispute it being again pleaded by them that they were cultivating the land under the defendant-landlords for over a hundred years without payment of any rent except the amount of land revenue, rates and cesses chargeable thereon. Further averments were that they had acquired occupancy rights under section 5 of the Tenancy Act and if in any event that was held not to have been proved, they were tenants under section 8 of the same Act. The plea of rights of occupancy under section 8 was for the first time introduced in the Revenue Court. Section 8 is of a residuary nature and permits a person to establish a right of occupancy on any ground other than those specified in the preceding sections which specifically deal with the circumstances under which an occupancy right could be created. The landlord Amin Lal, writ-petitioner, had by then come in the picture as purchaser of the land from the landowners and he resisted the suits. Amongst several other pleas, one of the objections taken was that suits in the Revenue Court were barred by the principles of *res judicata* because the Civil Court had already given the finding that the plaintiffs had not acquired occupancy rights in the suit land. The Assistant Collector 1st Grade, Jhajjar, dismissed the suits. It was held by him that the Civil Court was competent to decide the matter now raised before him and that in view of the decision of that Court, the present suits stood barred by the rule of *res judicata*. Appeals by the plaintiffs to the Collector failed and they took the matter to the Financial Commissioner (Revenue) on the revisional side. The learned Financial Commissioner by a consolidated order, dated 18th January, 1971, allowed the five revision petitions filed by the plaintiffs and remanded the case to the Assistant Collector directing him to proceed with the suits and decide the same in accordance with law. The view taken by him was that the matter of granting a declaration as to whether a person held occupancy rights or not fell within the exclusive jurisdiction of a Revenue Court and that the jurisdiction of a Civil Court was barred under section 77(3) (d) of the Tenancy Act. The decision of the Civil Court was, therefore, in the opinion of the Financial Commissioner, of no avail and the Revenue Court could decide this question afresh. It is in these circumstances that the present five writ petitions have been preferred by Amin Lal, landlord, who is successor-in-interest of the previous land-owners.

(5) We have heard the learned counsel for the parties and are of the view that these writ petitions must be allowed as the Financial Commissioner took a wrong view of law in remanding the cases to a Revenue Court when the same cause had previously been determined by a Civil Court. In supporting the order of the Financial Commissioner, Mr. Anand Swarup, learned counsel for the respondents, strenuously urges that Civil Court had no jurisdiction to determine as to whether the respondents held occupancy rights as, according to him, the prayer in substance before that Court was for a declaration not of ownership but of occupancy rights and that decision by a Court without jurisdiction could not bar subsequent proceedings in a Court of competent jurisdiction. The submission is that the prayer for ownership was a mere surplusage inasmuch as unless occupancy rights were declared to exist, the question of ownership could not arise. As an ancillary argument it is submitted that no amount of consent on the part of the parties could confer jurisdiction on a Court which did not have that jurisdiction and the fact that the respondents themselves approached a Civil Court for relief does not debar them from challenging the jurisdiction of that Court and getting their rights settled in a proper Court. The argument of bar of jurisdiction of the Civil Court is based on section 77(3) (d) of the Tenancy Act, the relevant part of which is in the following terms :—

“77(3) The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognisance of any such dispute or matter with respect to which any suit might be instituted :—

* * * * *
* * * * *

Second Group.

(d) suits by a tenant to establish a claim to a right of occupancy, or by a landlord to prove that a tenant has not such a right.”

(6) Mr. Anand Swarup has invited our attention to the definition of the expression “occupancy” as given in section 2(f) of the Vesting of Proprietary Rights Act, and contended that for the purposes of this Act, an occupancy tenant has been given a restricted

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meaning inasmuch as it is limited to a tenant who immediately before the commencement of the Act is recorded as an occupancy tenant in the Revenue records. What is sought to be suggested by this argument is that to make an occupancy tenant an owner all that is needed to be looked into is the entry in the Revenue records what ever be the forum in which the question of conversion of occupancy tenancy into ownership is raised. To put it differently, the contention is that the inquiry made by the Civil Court in the instant case was a very narrow one since it had to be confined to the examination of Revenue records whereas an occupancy tenancy could be established by other evidence and that such a Court could not embark upon an extensive inquiry. In this aspect of the matter, the proposition canvassed for our acceptance is that even the jurisdiction of the Civil Court was a limited one and that the exercise of that jurisdiction could not prevent a proper inquiry in a proper Court. The argument is really ingenious and to appreciate it the definition of the expression "occupancy tenant" as given in section 2(f) *ibid* may be reproduced hereunder :—

“2(f) ‘Occupancy tenant’ means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant.”

(7) We are afraid there is no substance in any one of the afore-said contentions advanced on behalf of the respondents. The sum and substance of the suits filed before the Civil Court was to get determination of the question whether the respondents who were plaintiffs there had become owners of the suit land. There can be no manner of doubt that decision on such a question relates to title and was within the cognisance of a Civil Court. It may be that in order to decide title it becomes necessary to examine the conditions prescribed by the Vesting of Proprietary Rights Act and see whether they stood fulfilled or not since ownership depended on fulfilment of those conditions. A Civil Court has jurisdiction to

try all suits of a civil nature unless its jurisdiction with regard to a particular type of a suit is expressly or impliedly barred. A suit in which the right to property is to be decided is beyond doubt a suit within the cognisance of a Civil Court. A provision of law which takes away such a jurisdiction has to be strictly construed. Section 77(3) (d) of the Tenancy Act takes out of the jurisdiction of a Civil Court only in that suit which is instituted to establish a claim to a right of occupancy and not where title to property is to be decided on the determination of occupancy rights which determination was only to substantiate the plea of ownership. After the coming into force of the Vesting of Proprietary Rights Act, occupancy rights had ceased to exist and all of them were automatically converted into statutory ownership. As a matter of fact, after the appointed day as given in the said Act, no occupancy rights whether at present or in future could continue giving rise to any occasion for independently establishing a claim to those rights except that proof of such rights may sometime be necessary to prove ownership. "Appointed day" as defined in section 2(a) means—

- “(i) in relation to any tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant of any land in the revenue records, the 15th day of June, 1952;
- , (ii) in relation to any tenant who obtains a right of occupancy in any land after the commencement of this Act, the date on which he obtains such right of occupancy.”

The expression “occupancy tenant” includes two types of such tenants, namely (i) those who were recorded as such in the revenue records immediately before the Act came into force, and (2) those who after the commencement of the Act obtain a right of occupancy in respect of the land held by them in the manner stated therein. Appointed day for those falling in the first category was the 15th June, 1952, and for those obtaining a right of occupancy after that day is the date on which such rights are obtained. Section 3 of the Vesting of Proprietary Rights Act has the effect of extinguishing all rights, title and interest of the landlord on the appointed day and this extinguishment of rights takes effect in both the categories. The result, therefore, is that even if an occupancy right is obtained after the coming into force of the Vesting of Proprietary Rights

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Act, there is simultaneous extinguishment of that right and conversion of the same into ownership. When occupancy rights have ceased to exist and statutory ownership created in lieu thereof, a suit for declaration of occupancy rights would be wholly meaningless. No tenant claiming to hold occupancy rights on the commencement of the Vesting of Proprietary Rights Act would go to Court and seek a declaration of those rights when after the operation that had started on 15th June, 1952, he was no longer holding that status and had become the owner. It is difficult to understand how the learned counsel can reasonably urge that the prayer for declaration of title was only surplusage and the real prayer in the civil suits was for a declaration of occupancy rights. In this connection he cited a single Bench judgment of Delhi High Court reported as *Raghubir Singh v. Beli Ram* (1). The facts of that case are distinguishable and if it is to be construed as laying down that the relief prayed for in such a case is for a declaration of occupancy rights and that declaration of ownership is mere surplusage, we, with all respect to the learned Judge, do not find ourselves in agreement with him. The plaintiffs in that case were in occupation of certain agricultural land as tenants when consolidation proceedings took place in the village. They continued to hold cultivating possession after the consolidation but of a lesser area. The claim set up by them was that they were occupancy tenants whereas the plea of the landlords was that they were tenants at will. The dispute was taken to the Civil Court by the tenants who wanted declaration of title of ownership under the Vesting of Proprietary Rights Act on the ground that they were occupancy tenants. It was in these circumstances that the learned Judge took the view that real controversy between the landlords and the tenants was about the nature of the tenancy and the suit lay in a Revenue Court.

(8) More directly in point is the Single Bench judgment of Mehar Singh J. in *Achhar Singh and another v. Shrimati Kartar Kaur and another*, (2), where a view almost similar to that of ours was taken. Defendant in that case was in possession of a garden for life paying rent to the landlords. It was agreed between the parties that defendant be recorded in the revenue records as occupancy tenant of the garden under section 6 of the Tenancy Act.

(1) 1967 P.L.R. 396.

(2) 1959 P.L.R. 231.

Defendant 1 was so recorded. The plaintiffs challenged this entry on the ground that it was due to a legal mistake that the defendant was not in fact an occupancy tenant since their intention was that defendant 1 was to remain in possession for her life as a tenant. A dispute having arisen between the plaintiffs and defendant 1 as the latter would refuse to accept the position as a tenant for life, the plaintiffs filed a suit in a Civil Court for declaration to be given to them that defendant 1 was not an occupancy tenant of the garden, or, in the alternative, even if she is the occupancy tenant of the garden, such rights could not be converted into ownership rights in her favour. The defence of defendant 1 was that she had become owner of the garden under section 3 of the Vesting of Proprietary Rights Act. The suit had admittedly been instituted after the coming into force of the said Act. In these circumstances, the learned Judge held that the only dispute between the parties could be whether or not the defendant had become owner of the land and such a question was obviously one of title determinable by a Civil Court.

(9) Observations of their Lordships of the Supreme Court in *Musamin Imam Haider Bax Razvi v. Rabari Govindbhai Ratnabhai and others*, (3), to our mind sufficiently help in resolving the present controversy. It was a case under the Bombay Tenancy and Agricultural Lands Act (67 of 1948). Mussamiya Imam Haider Bax Razvi, plaintiff, filed a suit for possession of the disputed agricultural lands which the defendants claimed to be holding as tenants by virtue of lease granted to them by the Collector. The plaintiff contended that the lease was void and that he was entitled to recover possession of the lands and also damages for use and occupation. The defendants in reply raised an objection as to jurisdiction of the Civil Court because of the bar created by section 85 of the Bombay Tenancy and Agricultural Lands Act, 1948. Section 85 reads as follows :—

“85. Bar of jurisdiction.—(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Bombay Revenue Tribunal in appeal

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or revision or the Provincial Government in exercise of their powers of control.

- (2) No order of the Mamlatdar, the Tribunal, the Collector or the Bombay Revenue Tribunal or the Provincial Government made under this Act shall be questioned in any civil or criminal court.

Explanation.—For the purposes of this section, a Civil Court shall include a Mamlatdar's Court constituted under the Mamlatdars' Courts Act, 1906."

Section 70 deals with the duties of the Mamlatdar and one of his duties and functions is,—

“(a) * * * * *

- (b) to decide whether a person is a tenant or a protected tenant (or a permanent tenant);

* * * * *

Bombay Act 13 of 1956 made certain tenants statutory owners and the defendants pleaded that they had become statutory owners of the lands by virtue of the said Act. The Joint Civil Judge, Ahmedabad, held that the Civil Court had jurisdiction to hear the suit and that defendants were trespassers. The High Court of Gujarat on appeal by the defendants reversed the judgment of the trial Court and took the view that the Civil Court had no jurisdiction to deal with the question as to whether the defendants were or were not tenants from the date of the suit and this question could only be decided by the Revenue Authorities. It was directed by the High Court that the issue about the existence of relationship of landlord and tenant be referred to the Mamlatdar having jurisdiction in the matter. Appeals by special leave were brought before the Supreme Court which reversed the judgment of the High Court. The same argument was repeated that the matter lay within the exclusive jurisdiction of a Revenue Court under section 70 of the Bombay Tenancy and Agricultural Lands Act, and that the issue of ownership was not the primary issue before the Civil Court. This contention

was repelled. It will be useful to quote **in extenso** some of the observations of their Lordships :—

“Section 70(b) of the Act imposes a duty on the Mamlatdar to decide whether a person is a tenant, but the sub-section does not cast a duty upon him to decide whether a person was or was not a tenant in the past whether recent or remote. The main question in the present case was the claim of the defendants that they had become statutory owners of the disputed lands because they were tenants either on the ‘tillers day’ or on the date of the release of the management by the Court of Wards. In either case, the question for decision will be not whether the defendants were tenants on the date of the suit but the question would be whether they were or were not tenants in the past. The question whether the defendants were tenants on July 28, 1956 or on May 11, 1958, was not an independent question but it was put forward by the defendants as a reason for substantiating their plea of statutory ownership. In other words, the plea of tenancy on the two past dates was a subsidiary plea and the main plea was of statutory ownership and the jurisdiction of the Civil Court cannot therefore be held to be barred in this case by virtue of the provisions of section 70 of the Act read with the provisions of section 85 of the the Act.

We are accordingly of the opinion that section 85 read with section 70 of the Act does not bar the jurisdiction of the Civil Court to examine and decide the question whether the defendants had acquired the title of statutory owners to the disputed lands under the new Act. In this context it is necessary to bear in mind the important principle of construction which is that if a statute purports to exclude the ordinary jurisdiction of a Civil Court it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion.

* * * * *

In our opinion, there is nothing in the language or context of section 70 or section 85 of the Act to suggest that the

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jurisdiction of the Civil Court is expressly or by necessary implication barred with regard to the question whether the defendants had become statutory owners of the land and to decide in that connection whether the defendants had been in the past tenants in relation to the land on particular past dates. We are also of the opinion that the jurisdiction of the Civil Court is not barred in considering the question whether the provisions of the Act are applicable or not applicable to the disputed land during a particular period. We accordingly reject the argument of Mr. Hathi on this aspect of the case."

(10) In the case before us the situation is almost the same. The plea of the plaintiffs before the Civil Court was that they were occupancy tenants in the past and acquired ownership on 15th June, 1952, when the Vesting of Proprietary Rights Act came into force. In *Musamia Imam Haider Bax Razvi's case* (3), it had to be decided whether the defendants were tenants either on the "tillers' day" or on the date of the release of management by the Court of Wards. Similarly, the plaintiffs in the present case did not want to establish that they were occupancy tenants on the date of the suit but their plea was that they were such tenants on 15th June, 1952, and had acquired ownership by virtue of the Vesting of Proprietary Rights Act. Admittedly the suits were filed several years after the coming into force of the said Act and the plea of tenancy on the past dates was "subsidiary" plea and the real dispute was about the acquisition of ownership rights.

(11) The view that Civil Court had jurisdiction to decide the dispute between the parties finds support from some observations in a Full Bench judgment of the Lahore High Court reported as *Cheta v. Baija and others* (4). The plaintiffs in that case were tenants of agricultural land under the defendant landlord. The landlord applied to a Revenue Officer for the service of a notice of ejectment upon the plaintiffs under section 43 of the Tenancy Act. The plaintiffs instituted a suit in a Revenue Court to contest their liability to be ejected, it being pleaded by them that they were occupancy tenants of the suit land. They, however, failed in this plea and

(4) (1928) 9 I.L.R. 38.

the Revenue Court gave a decree for ejection in execution of which they were ejected. They then filed a suit in a Civil Court for possession on the ground that they were the occupancy tenants. The question of law referred to the Full Bench was whether in such circumstances the Civil Court had jurisdiction to try the suit. Answer given by the Full Bench was in the affirmative, it being held, that the Civil Court had jurisdiction to try such a suit by ejected tenants and the same was not barred under section 77(3)(d) of the Tenancy Act, which, according to the learned Judges constituting the Full Bench, should be construed strictly as it entrenches upon the jurisdiction of a Civil Court.

(12) Shamsheer Bahadur J. following another Full Bench Judgment of the Lahore High Court reported as *Baru v. Niadar* (5), held in *Tek Singh v. Bur Singh and others* (6), that section 77(3)(d) of the Tenancy Act applies only when the nature of tenancy alone is in dispute. The crux of the whole matter thus is that what is to be seen is the real nature of the controversy between the parties. In the instant case, occupancy rights had extinguished on 15th June, 1952, and the plaintiffs wanted a declaration in a suit filed 7-8 years thereafter that they had become owners. The relief that the plaintiffs wanted in the Civil Court was not to get a declaration of a status as occupancy tenants but to be declared as owners. The Civil Court had, therefore, in the circumstances of this case, jurisdiction to decide as to whether the plaintiffs were proved to be occupancy tenants or not so as to be declared statutory owners. Revenue Courts cannot consequently proceed with the suits instituted with regard to the same matter which has already been finally adjudicated upon by a competent Civil Court.

(13) In view of our finding that the Civil Court had jurisdiction, it is not necessary to decide any other question. We are, however, of the opinion that even if it be assumed that the Civil Court had no jurisdiction, it is a fit case where, to cut short litigation and save the parties from further unnecessary harassment, we should act under section 100 of the Tenancy Act and direct that it is a fit case where if the suits were not to lie with the Civil Court, the decrees

(5) A.I.R. 1942 Lah. 217.

(6) 1961 P.L.J. 64.

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passed by it should be registered in the Revenue Court. The parties undoubtedly acted in good faith and no prejudice can be caused to them.

(14) For the foregoing reasons, the writ petitions are allowed and the impugned order of the Financial Commissioner (Revenue), dated 18th January, 1971 (Annexure 'A'), remanding the cases to the Revenue Court quashed. The parties, in the peculiar circumstances of this case, are left to bear their own costs.

B.S.G.

REVISIONAL CRIMINAL

Before C. G. Suri, S. C. Mital, and M. R. Sharma, JJ.

STATE,—Petitioner.

versus

MEHAR SINGH AND OTHERS,—Respondents

Criminal Revision No. 34—R of 1973

August 31, 1973.

Code of Criminal Procedure (Act No. V of 1898)—Sections 173 and 561-A—Final report under section 173 submitted to a Court—Such Court taking cognizance of the crime—Police—Whether entitled to investigate the case thereafter—Some of the accused—persons absconding when the Court takes cognizance—Investigation regarding such accused—Whether can proceed—Fresh material information having direct bearing on the cases coming to the notice of the investigating agency after the submission of the report under section 173 and the Court taking cognizance of the case—Such Court—Whether can suspend the cognizance to allow fresh investigation—Inherent powers of the High Court—Scope of—Subordinate Criminal Courts—Whether have such powers.

Held (per Mital and Sharma, JJ., Suri, J., Contra.), that the Code of Criminal Procedure, 1898, shows that up to the stage when the police submits a report under section 173 of the Code, the Magistrate cannot interfere with the functions of the police. When such a report is submitted before a Magistrate, he can, of course, direct further investigation under section