and administer oath to the witnesses like a civil Court. The revenue officer deciding mutation proceedings does not seem to enjoy all these trappings of a civil Court. If the Registrar or Sub-Registrar is not to be treated as a Court within the meaning of section 195(2) of the Code of Criminal Procedure then there is hardly any reason why a revenue officer with fewer trappings of a Court should be clothed with any higher authority.

(28) The commitment inquiry and order of the Judicial Magistrate, Jagraon are therefore found to be in order and the recommendation made by the Additional Sessions Judge, Ludhiana is turned down. He should now proceed with the trial of the respondents for offences for which they have been committed to the Court of Session.

January 14, 1971.

R. S. Sarkaria, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Prem Chand Pandit and S. S. Sandhawalia, JJ.

GRAM PANCHAYAT,—*Appellant.*

versus.

AMAR NATH AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 187 of 1967.

January 25, 1971.

The Punjab Village Common Lands Act (XVIII of 1961)—Section 4(3) (ii)—"Persons in cultivating possession"—Whether mean the possession of actual tiller's alone—Possession of Agricultural land through tenant—Whether within the scope of the phrase "cultivating possession".

Held, that the words "persons in cultivating possession" as used in sub-clause (ii) of sub-section 3 of section 4 of the Punjab Village Common Lands Act do not mean that the actual tiller of the soil alone falls with in

the ambit of this phrase and no other person is within its scope. The two phrases "self-cultivation" and "cultivating possession" are not synonymous and are intended to connote different and distinguishable concepts. Moreover, legal possession does not always necessarily and exclusively connote actual physical occupation of the things so possessed. Such possession can and may well be constructive. The significance of the word "cultivating" when used along with "possession" in section 4(3)(ii) of the Act is to refer to *shamilat* land which is both *arable* and is in fact under the plough in sharp distinction to the other category of *Shamilat* land which cannot be possessed through cultivation. Hence possession of agricultural land throrugh a tenant is within the scope of the words "cultivating possession".

(Paras 7, 8, 11 and 13).

Letters Patent Appeal under clause X of the Letters Patent from the decree of the Court of the Hon'ble Mr. Justice Harbans Singh dated the 29th day of March, 1967 passed in R.S.A. 1533/62 reversing that of the Senior Sub-Judge with enhanced appellate Powers, Ludhiana, dated the 25th September, 1962 (which reversed that of the Sub-Judge 1st Class Samrala dated the 29th March, 1967) and granting the plaintiff a decree for declaration that the land in dispute does not vest in the Panchayat and that the Panchayat should not interfere in their possession and enjoyment as heretofore and parties are directed to bear their own costs throughout.

AMAR SINGH AMBALVI, ADVOCATE, for the appellant.

ROOP CHAND, AND S. K. PIPAT, ADVOCATES, for the respondents.

JUDGMENT

S. S. SANDHAWALIA, J.—Whether the possession of agricultural land by a Muafidar through his tenant is within the scope of the words "cultivating possession" as used in section 4(3)(ii) of the Punjab Village Common Lands Act (hereinafter referred to as the Act) is the primary question which has been agitated in these two appeals under Clause 10 of the Letters Patent. Identical question of law and facts are involved and learned counsel are agreed that this judgment will govern both L.P.As. Nos. 187 and 188 of 1967.

(2) We would advert to the facts of L.P.A. No. 187 of 1967 only. Amar Nath and others plaintiff-respondents and prior to them their ancestors have been shown in the revenue records as in possession of the land in dispute for a long time. However, in the ownership column, the land above-said is entered as Shamilat Deh and this entry undisputedly has continued up to date. As early as 1882 in the cultivation column the ancestors of the plaintiff-respondents are shown in possession through their tenant Kabal who is

mentioned as *ghair maurusi.* Similarly the plaintiff-respondents and their ancestors have been continuously described as Muafidars in the relevant record. *Vide* Exhibit P. 4 in the year 1902, the ancestors of the plaintiff-respondents are shown in possession through one Aqal, tenant-at-will and in the relevant entry in the year 1908-09,—*vide* Exhibit P. 1, the Muafidars are shown in actual cultivating possession. In the year 1917-18, one Ismail, tenant-at-will is shown in occupation on behalf of Muafidar,—*vide* Exhibit P. 2 whilst later in the year 1945-46,—*vide* Exhibit P. 15 the plaintiff-respondents are shown in possession through their tenant Jagir Singh. This position continued till the year 1958-59.

(3) It is the common case of the parties that the plaintiff-respondents or their predecessors-in-interest had never paid any rent to anyone and that they are still described as Muafidars. The suit out of which the proceedings arose was necessitated because in the column of ownership,—*vide* mutation No. 308 of 30th March, 1955, the appellant Gram Panchayat of Ranwan was shown as owner and it tried to lease the land in dispute. The suit was brought to challenge the right of the Panchayat to do so and seek a declaration that the plaintiff-respondents were the owners in possession of the property for the last more than 12 years without payment of any rent and further sought an injunction against the Gram Panchayat restraining them from realising any rent from them. This suit was decreed by the trial Court but on appeal the first appellate Court reversed the judgment on the ground that the Civil Court had no jurisdiction over any matter arising out of the operation of the Act and further that the disputed land was recorded as Shamilat Deh in the revenue records and vested in the Gram Panchayat because it did not fall within any of the exceptions recorded in sub-section (3) of section 4 of the Act. Consequently the appeal was accepted and the suit dismissed.

(4) On second appeal the learned Single Judge allowed the same and decreed the suit of the plaintiff-respondents firstly on the finding that the question involved was one of title and therefore the Civil Court had jurisdiction. He further found that the case of the plaintiff-respondents stood covered by the exceptions in clauses (i) and (ii) of sub-section (3) of section 4 of the Act.

(5) At the outset we noticed that Mr. Ambalvi in support of the appeal was unable to assail the finding of the learned Single Judge that the dispute between the parties involves a question of

title. Consequently it was fairly conceded that the Civil Court had jurisdiction in the matter.

(6) As the real issue between the parties is whether the case of the plaintiff-respondents falls within the exceptions contained either in clauses (i) or (ii) of sub-section (3) of section 4 of the Act, it is first necessary to set down the relevant portions of the statute :—

"4(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land,—

Vesting of rights in Panchayats and non-proprietors

(a) * * *

(b) * * *

(2) Any land which is vested in a panchayat under the shamilat law shall be deemed to have been vested in the panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the—

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuo-pahus, Saunjidars, Muqararidars;

(ii) rights of *persons in cultivating possession of shamilat deh for* more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon ;

(iii) * * *".

(7) The core of Mr. Ambalvi's attack in support of the appeal is based on the words "persons in cultivating possession" as used in

sub-clause (ii) above-quoted. It is reiterated with vehemence before us as it was done before the learned Single Judge, that this phrase means that such a person must be himself actually tilling the land. Learned counsel contends that in the present case the tenants on the land must be deemed to be in cultivating possession and not the respondent-*muafidars* under whom they held this land. With persistence it is urged that the actual tiller of the soil alone falls within the ambit of the phrase "persons in cultivating possession" and no other person is within its scope.

(8) We are unable to accept so narrow a construction as canvassed by Mr. Ambalvi and which appears to us to border upon the hyper-technical. This is first so because legal possession does not always necessarily and exclusively connote actual physical occupation of the things possessed. Such possession can and may well be constructive. If authority is needed for so elementary a proposition reference may be made to the observations of Vice-Chancellor as early as 1846 in *Trulock* v. *Robey* (1), which was also a case of possession through the agency of tenants—

> "A man may have been in possession of an estate, without having been in the occupation of an acre of it. Anyone is in possession of an estate, who receives rent from the tenants, who do occupy it."

The above observations were expressly noticed with approval in *Shepard* v. *Jones* (2). Of the same import is the view expressed in *Rex* v. *St. Pancras* (3)—

> "Legal possession does not of itself constitute an occupation The owner of vacant house is in possession and may maintain trespass against any one who invades it; but as long as he leaves it vacant he is not in occupation; nor is he an occupier."

(9) The contention that 'cultivating possession' means 'possession of the actual tiller of the soil' who directly expends physical labour

(1) (1846) 60 E.R. 619.
(2) 1882 Ch. D. 469.
(3) (1877)2 Q.B.D. 581.

upon it does not appear to be supported either on principle or on authority. Learned counsel did not eleborate the principle at all and his contention appears contrary to judicial opinion. In *Banwarilal* v. *Ankurnath* (4), it is laid down as follows:—

> "The contention of Mr. Mazudar, on behalf of the plaintiffs, is that the defendant is a colliery owner and not a cultivator and, therefore, he could not acquire any 'korkar' right in the land in suit. I do not think there is any substance in the contention. A person may be a colliery owner and even then he may be a cultivator. The word 'cultivator' used in section 64 of the Chota Nagpur Tenancy it must be understood in its ordinary dictionary sense. Any one who cultivates land either himself or with the help of his servants or labourers may be a cultivator. The defendant has been found to be a cultivator by the Courts below. Therefore, on this finding, the contention of Mr. Mazudar cannot prevail."

In *Nallakaruppan* v. *Subbish* (5), Ramaswami, J., whilst interpreting the meaning of the words 'cultivator' or "occupier" as used in the Cattle Tresspass Act 1871 observed as follows:—

> "Though there is apparently no difficulty in the term 'cultivator', in actual application it may raise some questions of importance. Obviously the term includes not only the person who actually toils on the land on his own account but also the owner of the land who gets it cultivated through his farm-servant or daily labourer."

In the above context, therefore, the learned Single Judge was right in repelling the contention raised before him with the following observations:—

> "The very idea of excluding from the definition of *shamilat deh*, such portion of it, as is in cultivating possession of a co-sharer, and which is not in excess of his share, is that if a co-sharer has actually taken possession of some part of the *shamilat deh* before 1950, then he will continue to be

(4) A.I.R. 1952 Patna 340.
(5) A.I.R. 1960 Mad. 331.

in possession thereof, and the Gram Panchayat will have nothing to do with it. The idea apparently is that if a co-sharer, is utilising a portion of the *shamilat* to the exclusion of all others, then he is not to be disturbed. Wouldn't a co-sharer be taken to be utilising the land to the exclusion of all other co-sharers, if instead of cultivating the land himself he gets it cultivated through a servant, whom he pays a monthly salary or a share in the actual produce? I see no reason how a distinction can be made in the possession of a co-sharer in one case or the other. On the same reasoning, his possession will still be exclusive if he gets the land cultivated through a tenant of his choice."

(10) We are equally unable to subscribe to the view that the tenant in occupation of land is in the cultivating possession of the same whilst the *muafidars* from whom he derives his right and title to remain on that land is not so. It is in this context that judicial opinion has drawn the distinction between 'occupation' and 'possession'. Mr. Roop Chand on behalf of the respondents contends with force that the tenant is merely in occupation whilst the legal possession of the land continues to be vested in the owner or the landlord from whom the tenant derives his title. In support of this submission it is contended that the legislature in the Punjab has consistently used the terms 'hold' or 'occupy' in the context of lands held by the tenants in the various enactments pertaining to land legislation. A reference in this behalf is first made to the defining section of the Punjab Tenancy Act, 1887, wherein section 4(5) and (8) are in the following terms:—

"4(5) 'tenant' means a person, who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person; but it does not include—

(a) an inferior landowner, or

(b) a mortgagee of the rights of a landowner, or

(c) a person to whom a holding has been transferred, or an estate or holding has been let in farm, under the Punjab Land Revenue Act, 1887, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, or

(d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it :

(6) * * *.

(7) * * *.

(8) 'tenancy' means a parcel of land held by a tenant of a landlord under one lease or one set of conditions."

Our attention is next drawn to section 5 clauses(a), (c) and (d) of the above-said Act where in Chapter II relating to the 'Right of Occupancy', a tenant is described as either occupying or having occupied the land comprised in his tenancy. Similarly in the Punjab Pre-emption Act, 1913, section 15(1)(a) Fourthly, sub-clause (b) Fifthly and sub-clause (c) Fourthly, the word used in the context of tenants is 'hold' with reference to their tenancies and word "possession" does not find any place therein. In the relatively recent legislation of the Punjab Security of Land Tenures Act, 1953, counsel had relied on sections 17 and 18 thereof which give the right to tenants to pre-empt sales or purchase the land held by them. In both these sections in reference to tenants, the language used is "continuous occupation of the land" comprised in their tenancies. Basing himself by way of analogy on the above-said provisions Mr. Rup Chand contended that the legal cultivating possession in the present case remained that of the *muafidar* and not that of the tenant who was merely occupying the land under him. We find considerable merit in this submission raised on behalf of the respondents and whilst it cannot be said that the use of terminology is absolutely conclusive yet the use of the words 'hold' or 'occupy' in distinction to "possession" in the statutes above-mentioned undoubtedly lends ample support to the position taken up on behalf of the respondents. The position canvassed on behalf of the respondents finds further support from the observations in *Mahabir Prasad* v. *Smt. Bhaggoo* (6), wherein the Division Bench was considering the analogous terminology used in the U.P. Tenancy Act of 1939. Therein it is observed as follows:—

"* * *. It would also be seen that the word used is 'let' or 'held'. 'Let' obviously means let out to a tenant. 'Held'

(6) 1965 A.L.J. 777.

means held by a tenant. In other words, the land contemplated by section 180 U.P. Tenancy Act is the land which is agricultural in nature and is either let out or is meant to be let out to or held by a tenant.

* * *

* * * It would be noticed that throughout the U.P. Tenancy Act the word 'occupy' or 'occupation' has been used with regard to the possession of a tenant. The reason is obvious. The word 'possession' connotes not only physical occupation of a property or a piece of land, but also dominion or control over it. 'Occupation' on the other hand, means the right to occupy or to cultivate or to use the land. The landlord can be in possession of a plot of land even though the same is in the occupation of a tenant. The mere right to cultivate does not and cannot amount to possession."

(11) It was further urged on behalf of the respondents that as early as 1955, the Punjab Legislature had the concept of 'self-cultivation' in contemplation when it introduced its definition in section 2(9) of the Punjab Security of Land Tenures Act in the following terms:—

"2(9) 'self-cultivation' means cultivation by a land owner either personally or through his wife or children, or through such of his relations as may be prescribed, or under his supervision."

From the above it was plausibly contended that in all those cases where the legislature had in mind direct cultivation of the land by its owner or through a limited number of close relations in contradistinction to cultivation through tenants, it had advisedly used the phrase 'self-cultivation'. Nevertheless when subsequently the Punjab Village Common Lands (Regulation) Act, 1961, was enacted in this statute the terminology used both in section 2(g)(v) and (viii) and in 4(3)(ii) is cultivating possession. From this it is sought to be contended that the intention of the legislature was, therefore, to connote a different concept than 'self-cultivation'. This submission raised on behalf of the respondents is also not without merit. Obviously the two phrases 'self-cultivation' and 'cultivating possession' are not synonymous and are intended to connote different and distinguishable concepts.

(12) It remains to advert to *Sarat Chandra* v. *Dharani Mohan* (7) and *Secretary of State* v. *Jitendra Nath Roy* (8), on which reliance was sought to be placed by the learned counsel for the appellants. Both these decisions are in the context of the definition of 'cultivating raiyat' as defined in section 4 of the Bengal Cess Act (9 of 1880) which is in the following terms:—

> " 'cultivating raiyat' means a person cultivating land and paying rent therefore not exceeding one hundred rupees per annum."

A close perusal of *Sarat Chandra's case* (7), would show that there is nothing therein which could possibly be of any assistance to the appellants. Counsel had, however, sought to draw support from an isolated reference in *Jitendra Nath Roy's case* (8) that a cultivating raiyat must be an actual cultivator of the soil and the total rent payable by him for all his holdings must not exceed Rs. 100 per annum. These observations made in the special context of a definition in a different statute by another legislature can obviously not be called in for the purpose of interpretation in the present case. One has only to hearken to the warning given by their Lordships in *L. A. Adamson* v. *Melbourne Board of Works*, (9)—

> "Moreover, their Lordships would observe that it is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act of Parliament in the definition clauses of other statutes dealing with matters more or less cognate, even when enacted by the same legislature. A *fortiori* must it be so when resort is had, as in the *Swinburne* vs. *Federal Commissioner of Taxation* (10), for this purpose to the enactments of other legislatures."

Similarly a Division Bench consisting of Chief Justice Grille and Hidayatullah J., as he then was, in *Jainarayan Ramkishan* v. *Motiram Gangaram* (11), have held—

> "It is well-known rule of construction that it is not permissible in interpreting one Act to travel beyond it and to apply

(7) A.I.R. 1928 Cal. 508.
(8) A.I.R. 1936 Cal. 70.
(9) A.I.R. 1929 P.C. 181.
(10) (1920) 27 C.L.R. 377.
(11) A.I.R. 1949 Nag. 34.

definitions (except in the General Clauses Act) of other Acts."

Consequently the two authorities relied upon by the learned counsel for the appellant are of no aid or assistance to the argument canvassed by him.

(13) Lastly we must notice that the learned counsel for the appellant had sought to lay particular emphasis on the word "cultivating" which has been used in conjunction with "possession" to argue that the possession through tenants was not within the scope of the composite phrase. We are unable to accept this contention and particularly so in the context of the relevant statutory provisions and its preceding legislation. A reference to the earlier Punjab Village Common Lands (Regulation) Act of 1953 and the present Act which substitutes the same would show that in both these statutes *shamilat* land has been broadly categorised into land which is primarily of an agricultural nature and that which is not so. In latter category would fall the shamilat land reserved for the benefit of the village community like the streets, lanes, play-grounds, schools, drinking wells or ponds, *banjar qadim* land used for common purposes, and land which has been described in the revenue records as being in use for common purposes in the *tarafs, patties, pannas* and *tholas etc.* Of a similar nature would be the land in the *shamilat deh* which is entered in the record as pasture land or which is subject to river action and has been so reserved as *shamilat.* In sharp contrast to this category is the kind of land in the *shamilat deh* which is primarily agricultural in nature and is capable of possession by cultivation whilst the earlier category may not be so. In the Punjab Village Common Lands (Regulation) Act of 1953 sections 3(b) and 5(b) referred to such land which was either within the *abadi deh* and under the house owned by a non-proprietor or on which a house or other structure had been erected. Similarly in the present Act, section 4(b) refers to *shamilat* land within or outside the *abadi deh* of the village which is under the house owned by a non-proprietor and which would be deemed to have vested in such non-proprietor. Viewed in this perspective, there is obvious merit in the contention raised on behalf of the respondents that the word "cultivating" when used along with "possession" is of no other significance apart from refering to *shamilat* land which was both *arable* and was in fact under the plough in sharp distinction to the other category of shamilat

land which could not obviously be possessed through cultivation. We are hence of the view that the use of the word "cultivating" can be of no aid to the contention advanced by the learned counsel.

(14) In view of the foregoing discussions we are unable to find any merit in these two appeals which must fail and are dismissed, but without any order as to costs.

P. C. PANDIT, J.—I agree.

N. K. S.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

RAM RANG AND ANOTHER,—*Appellants.*

versus.

NARAIN SINGH AND OTHERS,—*Respondents.*

Execution Second Appeal No. 1368 of 1969.

January 27, 1971.

Code of Civil Procedure (V of 1908)—Section 47—Ejectment decree passed against a statutory tenant—Death of such tenant during the execution of the decree—Legal representatives of the deceased tenant—Whether can resist execution.

Held, that on the death of a statutory tenant, the tenancy comes to an end as such a tenancy has no transmittable incidence and cannot be inherited. The legal representatives of such tenant become trespassers in the premises. They cannot refuse to vacate the same when the owner wants its possession in execution of the decree obtained against the statutory tenant. The owner has not to file any other proceedings for that purpose and can continue the execution proceedings of the decree till they are ended. The legal representatives cannot, therefore, resist the execution of the ejectment decree passed against the statutory tenant. (Paras 8 and 9)

Execution Second Appeal from the order of the Court of Shri Gurnam Singh District Judge, Rohtak, dated 14th May, 1969 reversing that of Shri S. B. Ahuja, Additional Sub Judge, Rohtak dated 30th April, 1968 ordering that the decree in dispute is not executable against the legal representatives of Kesar Singh who was a statutory tenant. The decree is also inexecutable under section 13(1) of the act and the objection petition of Kesar Singh had been wrongly dismissed and leaving the parties to bear their own costs of the appeal.

RAM RANG, ADVOCATE, for the appellants.

R. K. CHHIBBER, J. S. WASU, ON 21ST JANUARY, 1971, ADVOCATES, for the respondents.