FULL BENCH

*Before D. Falshaw, C.J., S. B. Capoor, A. N. Grover, I. D. Dua, and D. K. Mahajan, JJ.*

BHAG SINGH AND OTHERS,—*Appellants.*

*versus*

JAWAHAR SINGH AND OTHERS, —*Respondents.*

**Regular Second Appeal No. 1139 of 1960.**

1964

November, 12th.

*Punjab Tenancy Act (XVI of 1887)—Ss. 50, 50-A and 77—Tenant wrongfully dispossessed from his tenancy — Whether can bring a suit for dispossession in the civil Court under the general law after the period of one year—Jurisdiction of Court to try a suit—Whether to be determined on the averments made in the plaint.*

*Held*, that a dispossessed tenant, who omits to bring an action under section 50 or 50-A of the Punjab Tenancy Act, 1887, within one year of his dispossession, loses his right to sue in the civil Court thereafter. It would indeed be anomalous that while in view of section 50-A the remedy in a civil Court of the dispossessed tenant, who has sought relief under section 50, is barred, if he chooses to sit back and does nothing for a year he would be allowed to file a suit in the civil Court after the lapse of one year from the date of his dispossession. It does not stand to reason that the Legislature was

merely excluding the jurisdiction of the civil Courts for one year in a suit by a tenant for possession who had been forcibly dispossessed from the land forming part of his tenancy, and was leaving it open to him to claim possession in a civil Court thereafter till the period of 12 years provided by Article 142 of the Indian Limitation Act had run out from the date when the cause of action to sue for possession accrued to the tenant. The overall scheme of the Act is that it provides speedy remedies with regard to disputes between landlords and tenants, and also under what circumstances that relationship will come to an end. In this connection reference may be made to one of the sections in the Act, namely, section 38. It provides a period of one year for the extinguishment of the right of occupancy in the event of a tenant abandoning the cultivation of the land. The underlying object seems to be that the cultivation of the land should not be impaired for any length of time. This purpose would be wholly defeated if a tenant-at-will, who is out of possession for any reason, is given the right to recover possession within a period of 12 years. Such a tenant need not do anything for a period of 11 years and in the 12th year rake up a claim to his tenancy while the land under his tenancy has, in the meantime, been sold to some other person, or some other tenants have been brought on the land, or a permanent tenancy has been created thereon. This is one of the considerations which has to be kept in view to gather the true import of section 50 read with section 77 of the Act. The question of jurisdiction should ordinarily depend on the nature of the suit and not on the length of time that has elapsed since the cause of action arose. Such a suit would be expressly barred by the provisions of sub-section (3) of section 77 of the Act and on that view the general principle, that enactment which restricts the jurisdiction of civil Courts ought to be construed strictly, is not applicable.

*Held*, that it is an established proposition of law that for determining the question of jurisdiction the nature of the suit must be decided on the basis of the averments made in the plaint and not on the basis of any defence that may be taken up or any evidence that may be led during the trial of the suit.

*Case referred by the Hon'ble Mr. Justice D. K. Mahajan, on 10th February, 1961 to a larger Bench for decision of an important question of law involved in the case. The Full Bench consisting of the Hon'ble the Chief Justice Mr. D. Falshaw, the Hon'ble Mr. Justice S .B. Capoor, the Hon'ble Mr. Justict A. N. Grover, the Hon'ble Mr. Justice I. D. Dua and the Hon'ble Mr. Justice D. K. Mahajan, after deciding the question referred to them returned the case to the Single Judge on 12th November, 1964 and the case was finally decided by the Hon'ble Mr. Justice D. K. Mahajan on 2nd December, 1964.*

*Regular Second Appeal from the decree of the Court of Shri Raj Inder Singh, District Judge, Barnala, dated the 29th day of July, 1960, reversing that of Shri Raj Kumar Sharma, Sub-Judge, 1st Class, Dhuri, dated the 31st March, 1960, and granting the plaintiffs a decree for possession of the land in dispute against defendants Nos. 1 and 2 and leaving the parties to bear their own costs throughout.*

J. N. KAUSHAL AND M. R. AGNIHOTRI, ADVOCATES, for the Appellants.

RAJ KUMAR AGGARWAL, AMRIT SAGAR AND DALJIT SINGH KEER, ADVOCATES, for the Respondents.

ORDER OF THE FULL BENCH

Capoor, J. CAPOOR, J.—This regular second appeal has been placed before the Full Bench in accordance with the reference order of Mahajan, J. dated the 10th February, 1961.

The suit giving rise to this appeal was instituted on the 17th March, 1959, the plaintiffs being Jawahar Singh and Panjab Singh, who are now the contesting respondents to the appeal. There were three sets of defendants, Bhag Singh, son of Santa Singh being described as defendant No. 1, Arjan Singh and Santa Singh being described as defendant No. 2, and Hazura Singh and Kapura Singh as defedant No. 3. The suit as described in the heading was for possession of 33 *bighas* 5 *biswas* of agricultural land comprising of *khasra* Nos. 263, 264, 265, 266, 345 and 272 situated in village Harchandpura and relief was claimed on the basis of possessory title as well as an agreement and other rights of the plaintiffs. In addition, there was a claim of Rs. 200 as compensation by way of damages. The following were the allegations in the plaint. In the beginning of 1954 the plaintiffs had obtained the land in suit along with other land for cultivation from defendant No. 3, who were the owners of the land of which the plaintiffs had entered into possession. Thereafter on the 19th June, 1954, there was a written agreement between Jawahar Singh plaintiff and defendant No. 3 to the effect that so long as the debt due from them to Jawahar Singh plaintiff was not paid, defendant No. 3 would not be entitled to get back possession of the suit land from the plaintiffs. The plaintiffs then cultivated the suit land from 1954 to October, 1957 and had sown the *rabi* crop of gram and wheat in that land but in that month viz., October, 1957, defendants Nos. 1 and 2 took forcible possession of the land as well as the crops thereon and

without the decree or order of any Court and subsequently cut the growing crop. It was stated in paragraph 5 of the plaint that on the 7th August, 1957, defendant No. 3 had sold the suit land along with some other land to defendant No. 2 and Jawhar Singh plaintiff had instituted a suit for possession by pre-emption, which was decreed. The damage to the plaintiffs on account of their crops having been illegally cut was estimated at Rs. 260. In paragraph 7 of the plaint it was maintained that at the time of taking of forcible possession, there was between the plaintiffs and defendant No. 2 a relationship of landlord and tenant but as more than one year had elapsed from the date of taking of forcible possession, the relationship of landlord and tenant had ceased to subsist and hence the civil Court has jurisdiction to entertain the suit.

In the written statement on behalf of defendants Bhag Singh, Arjan Singh and Santa Singh, the assertions made in the plaint were generally denied though it was admitted that the plaintiffs had filed against them a pre-emption suit and appeal against that decree had been filed in the High Court in which the plaintiffs had been restrained from obtaining possession of the land in suit in pursuance of their pre-emption decree. As regards paragraph No. 6 of the plaint, it was said that no question of any damage having accrued to the plaintiffs arose as the plaintiffs were not owners of the land or the crop. As regards paragraph No. 7 of the plaint, it was asserted that the possession of the defendants was not unlawful inasmuch as there was in their favour a sale deed duly registered in respect of the land in suit.

On these pleadings the learned trial Court settled the following issues:—

(1) Whether the plaintiffs are the owners and were in possession of the suit land, when they were illegally dispossessed by defendants Nos. 1 and 2 in October, 1957?

(2) Whether the defendants have illegally removed the plaintiffs' crop and as such the latter is entitled to claim from the former a sum of Rs. 200 as *mesne* profits?

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(3) Whether this Court has no jurisdiction to hear the suit?
(4) Whether the suit is bad for misjoinder of parties?
(5) Relief.

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On issue No. 1, the trial Court found that the entries in the revenue record (Copy Exhibit P. 2) as also the agreement (Exhibit P. 5) between defendant No. 3 and Jawahar Singh showed that not the plaintiffs but defendant No. 3 were the owners of the land and the plaintiffs were tenants at will. As regards the second part of this issue, it held that the plaintiffs had not been able to substantiate that the defendants took forcible possession of the land but on the other hand the defendants have taken the possession of the land in dispute under the sale deed (Exhibit D. 1), dated the 7th August, 1957. Issue No. 2 was held not to have been proved by the plaintiffs. On issue No. 3, it was found on the basis of *Parmanand and others* v. *Rakha and others* (1), that the Civil Court had jurisdiction to hear this suit. Issue No. 4 was found against the defendants. In the result, the suit of the plaintiffs was dismissed with costs.

The plaintiffs appealed to the District Judge, Barnala, who in his judgment dated the 29th July, 1960, considered that issue No. 1 was not properly worded and that the perusal of the plaint showed that the plaintiffs nowhere alleged themselves to be the owners. As regards the second part of this issue, he held that when the sale deed (Exhibit D. 1) by defendant No. 3 in favour of defendant No. 2 was executed, the plaintiffs were in the possession of the land as tenants under the vendors, that they, therefore, became tenants of the vendees who were not entitled to take the law into their own hands and turn out the tenants without due process of law. No question as to the Civil Court not having jurisdiction to hear the suit was raised before him and allowing the appeal he made a decree for possession of the land in dispute in favour of the plaintiffs against defendants Nos. 1 to 3 though he left the parties to bear their own costs throughout.

(1) A.I.R. 1952 Punj. 94.

In the appeal to this Court, as would appear from the referring order, the only question pressed by Mr. J. N. Kaushal on behalf of the defendant-appellants was that of jurisdiction. The argument as developed before us was that the plaintiffs could and should have brought their suit under the provisions of section 50 of the Punjab Tenancy Act, 1887 (Act No. 16 of 1887) (hereinafter to be referred to as the Act), that as provided in that section the suit must have been brought within one year of the date of dispossession from the tenancy and since this had not been done, the jurisdiction of the Civil Court was barred in view of the provisions of sub-section (3) of section 77 of that Act with reference particularly to clause (g) of that sub-section. In view of the conflict of decisions on the question as to whether a tenant who has been wrongfully dispossessed from his tenancy can bring a suit after the period of one year under the general law, the question was referred to the Full Bench.

Mr. Raj Kumar, learned counsel for the contesting respondents, referred to the established proposition of law that for determining the question of jurisdiction the nature of the suit must be decided on the basis of the averments made in the plaint and not on the basis of any defence that may be taken up or any evidence that may be led during the trial of the suit [*see* for instance *Baru and others* v. *Niadar and others* (2) ]. He maintained that on the basis of the averments made in the plaint the suit from which this appeal has arisen would be outside the scope of section 50 of the Act. That section reads as follows:—

"50. In either of the following cases, namely:—

(a) if a tenant has been dispossessed without his consent of his tenancy or any part thereof otherwise than in execution of a decree or than in pursuance of an order under section 44 or section 45;

(b) if a tenant, who, not having instituted a suit under section 45, has been ejected from his tenancy or any part thereof in pursuance of an order under that section, denies his liability to be ejected, the tenant may, within

(2) A.I.R. 1942 Lahore 217 (F.B.).

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one year from the date of his dispossession or ejectment, institute a suit for recovery of possession or occupancy or for compensation; or for both."

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No doubt, it was alleged in the plaint that initially the plaintiffs rented the land as tenants-at-will but then reliance was placed firstly on the subsequent agreement (Exhibit P. 5) by which according to the plaint defendant No. 3 surrendered the right to evict the plaintiffs and secondly on the decree for pre-emption obtained by the plaintiffs, for setting up a claim to ownership of the land. The trial Court interpreted that agreement against the plaintiff's claim of ownership. As regards the pre-emption decree it appears that consequent upon certain amendments effected in the Punjab Pre-emption Act, 1913, by the Punjab Pre-emption (Amendment) Act, 1960 (Punjab Act No. 10 of 1960), the pre-emption decree became infructuous. It was in view of these averments that issue No. 1 was framed calling upon the plaintiffs to prove that they were the owners of the suit land and the learned District Judge fell in error when he remarked that the plaintiffs nowhere alleged themselves to be the owners. Actually it was on consideration of the evidence that their claim as to ownership was rejected. The reference in paragraph 7 of the plaint to the relationship between the plaintiffs and defendant No. 2 being that of owner and tenant was to set up an alternative cause of action and even there it was not made clear as to which party was the owner and which the tenant. Mr. Raj Kumar, therefore, argued that the cause of action claimed by the plaintiffs on the ground of ownership would be outside the scope of section 50 of the Act, and as I read the plaint I find substance in his contention that initially the jurisdiction giving rise to this appeal was with the Civil Court, though in view of the findings by the learned District Judge on issue No. 2 as to the plaintiffs having been illegally dispossessed by the contesting defendants from the land which was in their tenancy, the question of the applicability of the first proviso to sub-section (3) of section 77 or of section 100 would arise.

Coming now to the matter referred to the Full Bench, it may be stated that section 50 by itself does not contain

any bar to the jurisdiction of the Civil Court as to the cases where it might be resorted to by the tenant. For this one must go to sub-section (3) of section 77. That section provides for the establishment of Revenue Courts and the suits cognizable by them and according to clause (g) of that section, one class of such suits is "suits by a tenant under section 50 for recovery of possession or occupancy, or for compensation or for both." Sub-section (3) provides a list of suits which 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. Then there is section 50-A, which was inserted by the amending Act (Punjab Act No. 5 of 1929) and is as follows:

> "50-A. No person whose ejectment has been ordered by a Revenue Court under section 45, sub-section (6), or whose suit has been dismissed under section 50, may institute a suit in a Civil Court to contest his liability to ejectment, or to recover possession or occupancy rights, or to recover compensation."

*Prima facie* the combined effect of these provisions would be that if a tenant who has been dispossessed without his consent of tenancy and should have brought an action under section 50 within one year from the date of his dispossession, but omits to do so, he would be precluded from bringing suit on the same matter in the Civil Court. If he had brought a civil suit within the prescribed period and that suit had been dismissed by the Revenue Court, a suit by him in a Civil Court to contest his liability to ejectment would of course be barred under section 50-A.

There are, however, certain cases of the Punjab Chief Court and the Lahore High Court which suggest the contrary. The first case in which section 50 was interpreted was *Kesar Singh and Vir Singh* v. *Nihal Singh* (3), though the question referred to the Full Bench was a different one viz. Is a suit by a person, who has been dispossessed more than a year before claim, to recover possession of land from

(3) 45 P.R. 1891 (F.B.).

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the proprietor thereof on the ground that he is the occupancy tenant of the land, a suit falling under section 77(3) (i) of Act 16 of 1887 and, therefore, cognizable by the Revenue Court? This question was answered by saying that such a suit did not fall under either of these clauses but Plowden, J., while considering the defence of the tenant incidentally made certain observations regarding the scope of section 50. He observed—"Ordinarily, then, a tenant is a person who has a right to hold, and does hold, and the person described in section 50 is a tenant only by an exceptional use of the term tenant, and only, as it seems to me, during the period prescribed for bringing this special suit granted to him by section 50, and for the purpose of exercising this right to sue." Section 50 was considered by the learned Judge to be a substitute remedy to the wrongfully dispossessed and ejected tenant for recovery of possession instead of that given, with a shorter period of limitation by section 9 of the Specific Relief Act a remedy which was expressly taken away by section 51 of the Act. He went on to observe "by the combined effect of section 50 and section 51, I take it that the dispossessed tenant still has two remedies, the special suit substituted by them in place of the ordinary summary suit taken away by section 51, and the regular suit within twelve years. If he sues within one year, he must sue by force of section 77(g) in the Revenue Court. If he does not, his second remedy remains, and the suit is *prima facie* cognizable by the Civil Courts."

However, the Full Bench left open the question whether section 50 meant that the right to bring a suit by a person falling within its purview was limited to the Revenue Courts and the limitation for a suit for possession was cut down from the normal twelve years to one year, or whether it meant that for the period of one year the suit could be brought only in the Revenue Courts but thereafter the suit could be brought in the Civil Courts upto the period of twelve years.

The next matter was considered by a Division Bench in *Imam Din* v. *Feroz Khan* (4), and on the basis of the

(4) 64 P.R. 1898.

reasoning of Plowden, J., it was held that a suit of the nature mentioned above was not barred by section 50 of the Act.

*Imam Din* v. *Feroz Khan* (4), was considered and dissented from in *Akbar Hussain* v. *Karam Dad and others* (5), and Chevis, J., who delivered the main judgment held that a dispossessed tenant who omitted to bring an action under section 50 of the Act, lost his right to sue in the Civil Court and that section 50 had cut down the limitation for such a suit to one year. He was not prepared to subscribe to the view that for a period of one year as mentioned in section 50 the person who had been dispossessed from his tenancy was treated as a tenant by legal fiction and he observed as follows:—

> "Section 4 of the Act defines a tenant as a person who holds land under another, but the definition is subject to the reservation "unless there is something repugnant in the subject or context". In section 50 we read of tenants who have been dispossessed or ejected from their tenancy. It seems to me that in this section we must regard the word 'tenant' as meaning a person who formerly held land under another, in other words, an ex-tenant. Now why an ex-tenant should cease to be regarded as such at the end of one year I cannot understand. In my opinion the expiry of the year simply stops his right to bring a suit, but in no way changes his status; from the very date of his dispossession his status is simply that of a person formerly holding land who has been dispossessed, and I cannot see that this description became inapplicable to him after the expiry of the year. Sir Meredyth Plowden speaks of the tenant as being 'regarded by the Act as continuing to hold the land of his tenancy after dispossession'.
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> I should, however, prefer to say that, though the word 'tenant' generally means a person holding land, the word as used in section 50 merely means

(5) 90 P.R. 1918=A.I.R. 1919 Lahore 475 (2) (F.B.).

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a person who formerly held it. The same learned Judge also refers to section 51 of the Act, and reading it jointly with section 50, is of opinion that the latter "section gives a summary remedy to the dispossessed tenant instead of that given by section 9, Specific Relief Act, but that if the ex-tenant does not avail himself of this remedy, he can still later on bring a regular suit in the Civil Court. But in a suit to recover possession under section 50 the plaintiff has to prove more than in a suit under section 9, Specific Relief Act; it is not enough merely to prove dispossession, he must also prove a right to recover possession, just as he would have to prove in a regular suit in the Civil Court, and so I fail to see how section 50 can be said to provide a 'summary' remedy. Either section 50 combined with section 77 lays down the sole remedies open to a dispossessed tenant excluding the cognizance of the Civil Courts and laying down a period of limitation, or else it lays down a remedy excluding the cognizance of the Civil Courts for one year only leaving it open to the plaintiff to sue in the Civil Court after the expiry of that year. Now reading the Tenancy Act as a whole, that Act seems to me, when dealing with suits and applications, to mark off certain classes of suits and applications as cognizable only by Revenue Officers or Revenue Courts. The cognizance of Civil Courts in all such cases is jealously excluded, see sections 76 (1) and 77(3) of the Act. Certain matters are to be dealt with by Revenue Officers, and no Court is to take cognizance of any dispute or matter with respect to which any such application or proceeding might be made or had. Certain suits are to be heard and determined by Revenue Courts, and no other court is to take cognizance of any dispute or matter with respect to which any such suit might be instituted. Thus certain suits, including suits under section 50 are carefully fenced off from the Civil Courts. It seems to me most unlikely that in such circumstances the legislature could ever have contemplated that

because section 50 provides for institution of suits within one year, a suit which would otherwise have fallen under section 50 should at the end of a year become entertainable by a Civil Court.

What I think was intended by section 50 was that the remedy was provided and the period of limitation also laid down. If a tenant is to get the full period of limitation allowed by the Limitation Act, what possible object can there be in giving jurisdiction to one class of Courts for the first year only and after that shifting the cognizance to another class of Courts? If the subject is one which is to be excluded from the cognizance of the Civil Courts at all, why not keep jurisdiction with the Revenue Courts for the full period of limitation? If the Revenue Court is for any reason better fitted to deal with the case than the Civil Court during the first year, what change occurs at the end of that year which renders it necessary or advisable to take away the jurisdiction of the Revenue Court and restore that of the Civil Courts? Surely the question of jurisdiction should ordinarily depend on the nature of the suit, and not on the length of time that has elapsed since the cause of action arose. And to hold that after the first year cognizance changes from the Revenue to the Civil Court means that the plaintiff is at liberty to choose his forum. This too can surely not have been intended. It appears to me that the legislature intended that certain classes of suits should be heard by Revenue Courts, presided over by officers who had training and experience of revenue matters; this intention would be entirely frustrated if simply by waiting for a year the plaintiff could bring his suit in a Civil Court presided over by an officer who had possibly never had any experience in all his service of Revenue matters, thus evading the jurisdiction of the Revenue Courts presided over by revenue experts".

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I have reproduced *in extenso* these paragraphs because they express succinctly the very same grounds which Mr. J. N. Kaushal advanced in support of his arguments. The objection as to the weight of this authority made by the learned counsel for the respondent was that inasmuch as the plaintiff in that case had before bringing the suit recovered possession under the decree, these remarks are *obiter*. This is so, but all the same they are entitled to great weight unless some defect in the reasoning can be pointed out and Mr. Raj Kumar, learned counsel for the respondents, was not able to do so. *Akbar Hussain* v. *Karam Dad and others* (5), was followed in *Lochangir* v. *Sada and others* (6), by a Division Bench in *Mahinder Singh and another* v. *Allah Ditta* (7), and again in *Nand Ram and another* v. *Ishar and others* (8). The next case which requires consideration is *Cheta* v. *Baija and others* (9). The question referred to the Full Bench was whether a Civil Court has jurisdiction to try a suit brought by a person, who has been dispossessed from his tenancy after a notice issued to him under section 43 of the Tenancy Act, and who has been unsuccessful in a suit under section 45 to contest his liability to ejectment, for possession of the land from which he has been ejected on the ground that he had a right to occupancy therein, and whether section 77(3)(d) of the Act bars such a suit or not? It was held that clause (d) of sub-section (3) of section 77 is no bar to the trial of such suit by the Civil Court but if in the course of the trial of that suit it became necessary to decide any matter which can under sub-section (3) of section 77 be heard and determined by a revenue Court alone, the Civil Court shall decline to proceed further and shall deal with the suit (not the matter alone) in the manner laid down. It was in view of this decision that the Legislature promptly stepped in and by the Punjab Act No. 5 of 1929, section 50-A was inserted in the Act. This is made clear by the Statement of Objects and Reasons in which it was stated that the intention of the Tenancy Act was undoubtedly to make the decision of the Revenue Courts

(6) A.I.R. 1920 Lahore 344 (2).
(7) A.I.R. 1924 Lahore 539.
(8) A.I.R. 1926 Lahore 128.
(9) I.L.R. 9 Lah. 38=A.I.R. 1927 Lahore 452 (F.B.).

under sections 44 and 45 of the Act final and that intention had received judicial confirmation in *Akbar Hussain* v. *Karam Dad and others* (5), that any further remedy in a Civil Court by a tenant who had failed in an action under section 50 is impliedly barred. As a matter of fact Addison, J., who was one of the Judges constituting the Full Bench, categorically said that *Akbar Hussain* v. *Karam Dad and others* as correctly decided but distinguished it on the ground that it did not cover the case where a tenant had instituted his suit under section 45(6) of the Act prior to being ejected by decree of the Revenue Court which dismissed his claim to occupancy rights. *Cheta* v. *Baija and others* (9), therefore, if anything, upholds the position taken up by the plaintiffs to this case on the question of jurisdiction.

The next case which requires consideration is *Baru and others* v. *Niadar and others* (2), in which the questions referred to the Full Bench were as follows:—

(1) Is a suit by a dispossessed occupancy tenant to recover possession from his landlord of the land to which he claims the occupancy rights initially within the jurisdiction of the Civil Court or not?

(2) Even if the first question be answered in the affirmative, is the Civil Court precluded from trying the question whether the occupancy right has been extinguished by abandonment by reason of proviso (1) to section 77(3), Punjab Tenancy Act?

The first was answered in the affirmative and the second in the negative. Dalip Singh, J., in the main judgment as delivered by him has discussed most of the previous rulings bearing on the point. It is no doubt true that the learned Judge while discussing *Akbar Hussain* v. *Karam Dad and others* did doubt its correctness but he went on to point out that the question raised before the Full Bench in *Baru and others* v. *Niadar and others* (2), was totally different one from the decision in the former case, viz., that the Civil Courts had no jurisdiction to hear a suit brought by an ex-tenant after the period of limitation prescribed by section 50 for a suit in the Revenue Courts.

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It is, however, significant that none of the other four learned Judges constituting the Full Bench shared his doubts as to the correctness of the decision in *Akbar Hussain's case*. Accordingly, the decision in *Baru and others* v. *Niadar and others* cannot be availed of on behalf of the respondents.

In *Parmanand and others v. Rakha and others* (1), it was held that there were two remedies open to a dispossessed occupancy tenant—(1) within one year a suit in a revenue Court under section 50 of the Punjab Tenancy Act and (2) after that an ordinary suit for possession within the period allowed by the Limitation Act in a Civil Court. The learned Judge followed *Cheta* v. Baija and *others*, and *Baru and others* v. *Naidar and others* but with very great respect I cannot for the reasons already given accept the proposition that the two Full Bench cases have overruled *Akbar Hussain* v. *Karam Dad and others*.

Finally, on behalf of the respondents, two unreported Single Bench judgments by my learned brother, Grover, J., were cited but these merely followed *Parmanand and others* v. *Rakha and others* (1).

A review of the above authorities leads to the conclusion that the Full Bench decision in *Akbar Hussain* v. *Karam Dad and others* has not so far been dissented by any *Full Bench* of the Lahore or the Punjab High Court and still holds the field. The main reason which prevailed with Plowden, J., in *Kesar Singh and Vir Singh* v. *Nihal Singh* (3), for holding that if the dispossessed tenant did not sue within one year, his second remedy, that is a suit in the Civil Court remained, was that the remedy provided under section 50 was a summary remedy in substitution of that given in section 9 of the Specific Relief Act. The remedy provided under section 50 of the Act cannot, however, be said to be a summary remedy because under the Scheme of the Punjab Tenancy Act, there is a regular hierarchy of Courts in which the judicial decisions *vide* sections 80 and 84 can be challenged by way of appeal and revision.

Finally, Mr. Raj Kumar, on behalf of the respondents, placed his reliance on *Raja Durga Singh of Solon* v. *Tholu*

*and others* (10), in which it was observed by Madholkar, J., who spoke for the Supreme Court, that every item in all the three groups of sub-section (3) of section 77 of the Punjab Tenancy Act, related to a dispute between the tenants on the one hand and the landlord on the other and there was no entry or item relating to a suit by or against a person claiming to be a tenant whose status as a tenant was not admitted by the landlord. The Legislature barred only those suits from the cognizance of a Civil Court where there was no dispute between the parties that a person cultivating land or who was in possession of the land was a tenant. The plaint in the suit giving rise to the appeal before the Supreme Court was by the Raja of Bhagat, who claimed that certain fields were his Khudkasht land and the defendants cultivated them as his licensees but as they contravened the terms of the license he leased out the land to another person and the defendants obstructed that person in taking possession of the land. On behalf of the respondents it was contended that they were the occupancy tenants of the land for the last two or three generations. The suit was decreed by the trial Court which decree was confirmed by the District Judge but the Judicial Commissioner, Himachal Pradesh allowed the appeal holding that the respondents were occupancy tenants of the lands and that consequently the provisions of section 77(3) read with the first proviso thereto barred the jurisdiction of the civil Court. On these facts it was held by their Lordships of the Supreme Court that items (d) and (e) in sub-section (3) of section 77 was not attracted to the case. Section 50 and item (g) of sub-section (3) of section 77 of the Act were not under consideration in that case, and as pointed out by Chevis, J., in the passage quoted above, the term 'tenant' in these two provisions does not in view of the context bear the same meaning as in the interpretation clause. The general observations relied upon cannot, therefore, be availed of by the respondents for the purpose of the instant case. The other judgment of the Supreme Court cited was *Magiti Sasamal* v. *Pandab Bissoi and others* (11), but that proceeded on the interpretation of the peculiar provisions of the Orissa Tenants Protection Act 3 of 1948.

(10) 1962 P.L.R. 837 (S.C.).
(11) A.I.R. 1962 S.C. 547.

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It would indeed be anomalous that while in view of section 50-A the remedy in a Civil Court of the dispossessed tenant who has sought relief under section 50, is barred, if he chooses to sit back and does nothing for a year he would be allowed to file a suit in the Civil Court after the lapse of one year from the date of his dispossession. It does not stand to reason that the Legislature was merely excluding the jurisdiction of the Civil Courts for one year in a suit by a tenant for possession who had been forcibly dispossessed from the land forming part of his tenancy, and was leaving it open to him to claim possession in a Civil Court thereafter till the period of 12 years provided by Article 142 of the Indian Limitation Act had run out from the date when the cause of action to sue for possession accrued to the tenant. The overall scheme of the Act is that it provides speedy remedies with regard to disputes between landlords and tenants, and also under what circumstances that relationship will come to an end. In this connection reference may be made to one of the sections in the Act, namely, section 38. It provides a period of one year for the extinguishment of the right of occupancy in the event of a tenant abandoning the cultivation of the land. The underlying object seems to be that the cultivation of the land should not be impaired for any length of time. This purpose would be wholly defeated if a tenant-at-will who is out of possession for any reason, is given the right to recover possession within a period of 12 years. Such a tenant need not do anything for a period of 11 years and in the 12th year rake up a claim to his tenancy while the land under his tenancy has, in the meantime, been sold to some other person, or some other tenants have been brought on the land, or a permanent tenancy has been created thereon. This is one of the considerations which has to be kept in view together with the true import of section 50 read with section 77 of the Act. In the words of Chevis, J., in *Akbar Hussain* v. *Karam Dad and others* "the question of jurisdiction should ordinarily depend on the nature of the suit; and not on the length of time that has elapsed since the cause of action arose". Such a suit would, to my mind, be expressly barred by the provisions of sub-section (3) of section 77 of the Act and on that view the general principle, that an enactment which restricts the jurisdiction of Civil Courts ought to be construed strictly, is not applicable.

I would answer the question before the Full Bench in the negative.

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D. K. MAHAJAN, J.—I agree.

Mahajan, J.

D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

GROVER, J.—I agree but not without some hesitation. I would hesitate not to follow the view of Sir Meredyth Plowden, who was not only an eminent Judge but was also known for his mastery over the Punjab Laws, expressed in *Kesar Singh* v. *Nihal Singh* (3), about the meaning of the word "tenant" as defined in the Punjab Tenancy Act, 1887, which was later on accepted as correct; by other Punjab Judges, namely, Dalip Singh, J.; and Tek Chand: J. who in a separate but concurrent judgment agreed with Dalip Singh, J., in *Baru* v. *Niadar* (2); and Kapur J., (as he then was) in *Permanand* v. *Rakha* (1). Although my decision in *Ram Sarup v. Budh Ram* (12), was based on the same view, I am impelled by the weighty reasons which have been given by my learned brother Capoor, J., for accepting what was said by Chevis, J., in *Akbar Hussain* v. *Karam Dad* (5); as correct. On fuller consideration I cannot reconcile myself to the difficulties which will be created if a tenant who has been forcibly dispossessed from the land forming part of his tenancy is left to elect whether to institute a suit within one year under section 50 of the Act in a Revenue Court or to have a period of 12 years under Article 142 of the Indian Limitation Act for filing a suit in a Civil Court. If the matter is left to the tenant's choice, it is bound to lead to such complications as have been noticed by my learned brother Capoor, J., and I cannot accept that the Legislature ever intended to create the anomalous situation which will result from the tenant being given the option to act according to his own desire and to select not only the forum for litigation but also the period within which the action is to be instituted.

Grover, J.

DUA, J.—I too agree with a certain degree of diffidence and hesitation. I had my doubts about the correctness of the view expressed by Chevis, J., in *Akbar Hussain* v. *Karam*

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*Dad and others* (5), on which reliance has been placed on behalf of the appellant and I must confess that those doubts have not yet been completely dispelled. The point canvassed at the bar is by no means easy and, indeed, the arguments pro and con appear to be equally cogent and efficacious but on reading the opinion prepared by my learned brother Capoor, J., with whom my Lord the Chief Justice has agreed, for the opinion of both of whom I entertain the greatest regard and respect, I am unable to venture to press my doubts to the point of dissent.

It is unnecessary to restate the facts which are clear from the judgment of my learned brother Capoor, J. The main difficulty, as I view the position, has arisen on account of the clash of chaotic and apparently contradictory observations in the various judicial pronouncements relating to the true scope and effect of sections 77 and 50 of the Punjab Tenancy Act (hereinafter called the Act). The difficulty is enhanced by the fact that none of the precedents brought to our notice is directly on the point and it is the observations generally made therein, some of them merely obiter, which have been considered and taken into account for the purpose of construing the said sections. I may here only briefly comment on the principal Full Bench decisions.

In so far as *Akbar Hussain* v. *Karam Dad and others* (5), a decision by a Full Bench of three Judges of the Punjab Chief Court, is concerned, it was a case in which the tenant had been dispossessed in May or June, 1915, by the landlord, but on suing in a Revenue Court, he secured a decree on 8th May, 1916. More than a year after his dispossession, the tenant instituted a suit in a Civil Court for compensation. The Civil Court holding the suit to fall under sections 14 and 77(3) (n) of the Act returned the plaint for presentation to the Revenue Court. The Revenue Court, however, dismissed the suit as barred by limitation under section 50 of the Act as it had been instituted more than one year after dispossession. On appeal, the Collector observed that the issue whether the case was cognizable by the Revenue Court had not been decided and that the suit did not fall under section 77 (3)(g) because it had not been brought within one year of the dispossession. The case was accordingly referred to the

Punjab Chief Court through the Commissioner. It is in this background that the decision of the Full Bench has to be read. The Court considered the reference to be under section 100 of the Act which empowered the Chief Court to validate the proceedings had under mistake as to jurisdiction. Chevis, J., to quote what I consider to be an observation of some importance to the consideration of the point facing us, said, after reproducing from *Imam Din* v. *Feroz Khan* (4), a quotation from the opinion of that eminent and renowned Judge Plowden, J., in *Kesar Singh* v. *Nihal Singh* (3):—

> "So the right to sue in the Civil Court after the expiry of the year is allowed on the ground that after the expiry of the year the claimant is no longer a tenant. It seems to me obvious that this line of argument cannot apply to the present suit, for the plaintiff before us has actually recovered possesion of the land and was undoubtedly a tenant at the time when the present suit was instituted. If the tenant is to be regarded as still a tenant for the period of one year from the date of his dispossession then, since the plaintiff recovered possession within the year, he never ceased to be tenant, and the present suit must, in my opinion, be regarded as one between tenant and landlord. Thus the present case seems to me clearly distinguishable from the cases dealt with in the Full Bench ruling *Kesar Singh* v. *Nihal Singh* (3) and in *Imam Din* v. *Feroz Khan* (4) and I would hold that the present suit being one between landlord and tenant the cognizance of the Civil Courts is barred by section 77 of the Act, and the suit has rightly been entertained by the Revenue Court."

This observation would seem to me to conclude the reference before that Full Bench and subsequent expression of view by Chevis, J.; would seem; with all respect, to be unnecessary or what is usually described as obiter. Le Rossignol, J., agreed generally with Chevis, J. In his view; section 77(3)(g) and (i) covered all conceivable cases of litigation between a landlord and his tenant qua-tenant and ex-tenant in that capacity can look for

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no relief outside the Revenue Courts and Civil Courts can hear his plaint only if he sets forth a claim to relief in a capacity other than that of ex-tenant. Shah Din, J., the third Judge, began his opinion with these opening words:—

> "The question involved in this reference is not free from difficulty, and there is much force in the reasoning employed by Sir Meredyth Plowden in his referring order in the Full Bench case reported as *Kesar Singh and Vir Singh* v. *Nihal Singh* (3), in support of the opinion tentatively expressed by him that if a wrongfully dispossessed tenant does not sue in a Revenue Court for recovery of possession within the period of one year prescribed by section 50 read with section 77(3)(g) of the Punjab Tenancy Act, he can still avail himself of his ordinary remedy in a Civil Court and can bring a suit for recovery of possession within 12 years of the date of his dispossession (pp. 243 and 244 of the report)."

But having regard to the general scheme of the Act and to the policy underlying section 77, the learned Judge thought the legislative intent to take away the jurisdiction of a Civil Court in regard to a suit contemplated by sections 50 and 77(3)(g) as also to cut down the period of limitation prescribed by the Indian Limitation Act for suits for recovery of possession or for compensation by a dispossessed tenant. The learned Judge was apparently induced to arrive at this conclusion by reading sections 50, 51 and 77(3)(g) in the background of the general policy underlying them as regards the substitution of the jurisdiction of the Revenue Courts for that of the Civil Court. A dispossessed tenant failing to institute a suit within one year under section 50, according to him, loses his remedy altogether. *Imam Din's* case was accordingly expressely stated to have been wrongly decided. The next decision to which it may be necessary to refer is *Baru* v. *Niadar* (2), the facts of which are uncommon and interesting. The plaintiffs in that case were the occupancy tenants and the defendants were the landlords, Alleging that the plaintiffs occupancy tenants had put the landlord-defendants in possession as tenants-at-will, who had refused to pay rent, they were sought to be ejected. The defendant-landlords denied that they had ever been the tenants of the plaintiff-occupancy tenants and pleaded instead that the

plaintiffs having abandoned their right of occupancy, the same had been extinguished and the defendants had come into possession in these circumstances. This plea was upheld by the Revenue Court. The plaintiffs were found to have abandoned their rights of occupancy which had been extinguished as a result of abandonment. Then followed a suit in Civil Court by the plaintiffs claiming possession as occupancy tenants describing the defendants as trespassers. The Civil Court upheld the plaintiffs' plea that they were occupancy tenants and had not abandoned their right of occupancy, but the matter was found to be within the jurisdiction of the Revenue Courts, with the result that the plaint was returned for presentation to that Court. On appeal, the learned Senior Subordinate Judge disagreed with the conclusion on jurisdiction, but agreeing on the merits, decreed the suit for possession. This decision was affirmed on second appeal, but on further appeal under the Letters Patent, the following two questions were referred to a Bench of five Judges which included some Judges of acknowledged eminence, for the reason that separate judgments of the learned Judges constituting the Full Bench in *Cheta* v. *Baija and others* (9); had proceeded on different lines and it was not clear whether the reasoning of the Judges was equally reconcilable and also as to what was the decision on the second question.

"(1) Is a suit by a dispossessed occupancy tenant to recover possession from his landlord of the land to which he claims the occupancy rights initially within the jurisdiction of the Civil Court or not?

(2) Even if the first question be answered in the affirmative, is the Civil Court precluded from trying the question whether the occupancy right has been extinguished by abandonment by reason of proviso (1) to section 77(3), Punjab Tenancy Act?".

The reference was necessitated because the earlier decision of five Judges in *Cheta's case* was to be re-examined. A new point on the plea of *res judicata* based on the decision of the Revenue Court was also attempted to be raised but the same was not permitted at that stage.

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Before the Full Bench, the word "dispossession" in question No. 1 was understood to have been merely used in the general sense of "out of possession" and no distinction was sought to be made between unlawful dispossession and dispossession which was lawful or made in due course of law. Dalip Singh, J., who was also a member of the Bench in *Cheta's case*, construed the reasoning in his earlier judgment to be against the exclusion of the Civil Court's jurisdiction in so far as the question of the existence of occupancy rights by reason of proviso (1) to section 77(3) is concerned, though the reasoning of the other learned Judges seemed to imply to the contrary, of course in the opinion of Dalip Singh, J., all that was held in *Cheta's case* was that if a question arose which by reason of the proviso had to be decided by a Revenue Court, then the whole case would have to be sent to that Court. Dealing with the first question after closely scrutinising the earlier case-law, he put his conclusion thus:—

> "The decision of this point; therefore, clearly turns on the meaning to be assigned to the word 'holds' in section 4(5), Tenancy Act. Now the way I look at the matter is this: I consider that *Joti* v. *Maya* (13), was rightly decided because even under the general law a person does not become a tenant unless he has entered into possession. I am unable to see anything in the Act or in the scheme of the Act whereby a person who has never entered into possession could be held to be a tenant by reason of the definition. This could only happen if 'holds' was construed to mean or to include 'the right to hold'. The result would be curious. If a landlord executed a lease in favour of a tenant and thereafter refused to let him into possession, then if 'holds' includes the right to hold, the person claiming under the lease would be a tenant and a suit brought by him to recover damages for breach of contract or for specific performance of the contract would be in the Revenue Courts. I cannot see anything to justify so startling a change in the whole system

(13) 44 P.R. 1891.

of law, nor do I know of any case where it has been held that such a suit would lie only in the Revenue Courts. Even if it was a question of doubt whether the word 'holds' should be construed as 'actually holds' or including 'the right to hold', then I would say that since it is a general principle of law that the Act restricting the powers of Courts of ordinary jurisdiction must be strictly construed, it would follow that the narrower interpretation must be preferred to the wider interpretation. For both these reasons, I am clearly of opinion that *Joti* v. *Maya* (13), was rightly decided and if this was rightly decided, it follows that *Kesar Singh* v. *Nihal* Singh (3), was also rightly decided because, as rightly pointed out by the learned Judges in that case, if 'holds' does not include 'the right to hold', it follows that a person who does not actually hold the land is not a tenant within the meaning of section 4(5). If this is so, then it follows that in the present [illegible] purview of section 77(3)(d) and I need say no more upon this point."

After noticing some difference in the text of section 77(3) as reported in the Punjab Record and as published in the original Gazette, and preferring the latter, the learned Judge continued:—

"The words 'dispute or matter' must be read as qualified by the words 'with respect to which any suit might be instituted'. But it is obvious that with respect to the dispute or matter between the parties now no such suit could be instituted by either party within the meaning of section 77(3)(d). If the suit was brought, as it has been by the tenant, I have already given reasons for holding that the suit is not within the purview of section 77(3) (d). If brought by the landlord, it could not be within the purview of section 77(3)(d) because the landlord on the facts of this case does not admit the tenant to be a tenant and under section 77(3)(d) such a suit

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must be by a landlord to prove that a tenant ha not such a right. As under no circumstances can this suit fall within the purview of section 77(3)(d) and no other clause was urged to be applicable, it follows that the suit does not come within section 77(3) either and is not barred from the jurisdiction of the Civil Court by the operation of Section 77(3)."

In the result, Dalip Singh, J., answered the first question in the affirmative and the second in the negative. Abdul Rashid and Mahammad Munir, JJ., agreed with Dalip Singh, J., Tek Chand; J, in a separate judgment also expressly agreed with the views of Plowden, J., in *Kesar Singh's case* and with the reasoning and conclusion of Dalip Singh, J., at p. 227 of *Baru and others* v. *Niadar and others* (2). The comments of Bhide, J., while examining the opinions of the Judges constituting the Bench in *Cheta's case* are instructive and they suggest that some of the observations in the earlier case were obiter. Since in *Baru's case,* the decision in *Cheta's* case has been re-examined, it is scarcely fruitful to refer in detail to the latter decision.

Ignoring for the moment the reported decisions and observations made therein and considering the provisions of the Act on its language; in the absence of sections 77(3), 50 and 50-A, there would apparently be no question of excluding the jurisdiction of the Civil Court for a suit like the present. Section 77(3) excludes the jurisdiction of the Civil Courts in regard to disputes or matters with respect to which any suit mentioned therein might be instituted. We are only concerned with the suits mentioned in clause (g). According to the statutory definition of the word "tenant" contained in section 2(5), a tenant means a person who, *inter alia,* holds land under another person. A dispossessed person is thus not included in this definition. Section 50, however, expressly provides for a suit by a tenant unlawfully dispossessed or who has been ejected in pursuance of an order under section 45 and who; without instituting a suit under this section, denies his liability to be ejected. Such a suit can be instituted within one year which may be for possession or for compensation or both. Does this provision take away the right of a suit in a Civil

Court by a person who has been dispossessed of his tenancy? The decision in *Cheta's case* preserved to a person dispossessed of his tenancy a right to sue in Civil Court, although he had unsuccessfully sued under section 45. This decision gave rise to the amendment of the Act in 1929 by addition of section 50-A. Now this section creates a bar to a Civil suit by a person whose ejectment has been ordered by a Revenue Court under section 45(6) or whose suit has been dismissed under section 50 for contesting his liability to ejectment or for recovery of possession of occupancy rights or for recovery of compensation. The question posed is: in case a person does not sue under section 50 within one year in a Revenue Court, can he institute a suit in a Civil Court after the expiry of one year? It is urged for the respondents that in terms this section does not bar such a suit. Is the bar necessarily implied? The appellants submit that it is, for otherwise, it would lead to certain anomalies. The respondents, on the other hand, contend that the exclusion of the jurisdiction of the Civil Court is not to be easily inferred and if the Legislature intended such a result, then there was no difficulty in saying so explicitly in [illegible] various decisions of the Punjab Chief Court and the Lahore High Court had repeatedly emphasised that exclusion of Civil Court's jurisdiction requires clear and unambiguous expression of this intendment. Why was section 50-A in terms confined only to the cases of persons whose ejectment had been ordered by a Revenue Court under section 45(6) and where such suit had been dismissed under section 50? A person who has a legal right to be a tenant but who does not hold land actually or constructively and is, therefore, not a tenant according to the statutory definition, may according to the respondents' submission, claim a right to approach the Civil Court for enforcing his right. Section 50-A, according to the counsel, does not expressly take away that right. And then, expiry of period of limitation ordinarily only bars the remedy and in the absence of a statutory provisions to the contrary does not extinguish the right. The Indian Limitation Act contains a contrary provision for certain class of cases in the form of section 28. Is there any such provision applicable to the case in hand which extinguishes the right of a person who claims a right in tenancy but does

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not hold land under the landlord and is, therefore, not a tenant as defined in the Tenancy Act? ~~It~~ the question posed. Can a special provision for relief from a special tribunal constituted for a special limited purpose not co-exist with a general right of relief obtainable from a Civil Court when the two reliefs do not come into direct clash? Particularly so, when the right enforceable in Civil Court has been created under the general law and not by a special statute providing for restricted relief from a special tribunal created by it. Again, it may be asked: Does a suit like the present not raise a question of title regarding the decision of which the jurisdiction of the Civil Courts was perhaps not intended to have been excluded? I may also incidentally point out that even in *Imam Din's case*, the question whether such a right exists after the expiry of one year, not having been raised; was left open. These are some of the questions which do seem to me to arise for consideration and section 50-A does not seem to me to provide a clear conclusive answer. Indeed the unhappy drafting of both section 50 and section 50-A merely serves to add to the difficulty and this in spite of research and industry by both the counsel. The factor that the period of limitation for a Civil suit is very long and the impression that the Legislature could not have intended to leave the position of the landlords uncertain appears to me to possess a feeable cogency and may not be given undue importance, because instances are not wanting in enactments of providing long periods of limitation for suits entailing uncertainties of title.

But as stated earlier, the great esteem in which I hold the opinion of my learned brothren, I am not prepared to venture to disagree, but would concur with the order proposed by my learned brother Capoor, J.

*B.R.T.*

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