August, 1949, the date of taking over, till the date of the suit, 10th of January, 1950. The plaintiffs cannot simultaneously have relief by way of damages and also compensation for use and occupation for a particular period. The result, therefore, is that the plaintiffs suit is decreed for Rs. 2,97,694-12-0 with proportionate costs.

D. FALSHAW, C.J.—I agree.

APPELLATE CIVIL

Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.

GRAM PANCHAYAT SIDHBARI AND OTHERS,—*Appellants.*

versus

SUKH RAM DASS AND OTHERS;—*Respondents.*

Regular First Appeal No. 194 of 1957,

1963

April, 8th:

Adverse possession—Co-sharer—When can plead—Joint property and shamlat land—Rules as to adverse possession—Registration Act (XVI of 1908)—S. 49—Unregistered gift deed—Whether admissible in evidence as to ascertain nature of possession—Punjab Village Common Land Regulation Act (XVIII of 1961)—S. 2(g)—House—Meaning of—Whether confined to residential house.

Held, that the rule is well settled that possession of one co-sharer cannot be adverse to another merely because one co-sharer is in exclusive possession of the property and has enjoyed the same to the exclusion of the others without payment of rent. It is also equally well settled that one co-sharer can possess adversely against his other co-sharers provided he manifests an unequivocal intention to the knowledge of the other co-sharers to do so, that is by denying their title to the property exclusively possessed by him as co-sharer.

Held, that the rules as to adverse possession by one co-sharer against the others are not different in the case of joint property and the Shamilat land. Both stand on the same footing and neither on principle nor on authority can any distinction be made on this score.

Held, that an unregistered document, though inadmissible in evidence to prove title of the person relying on the same, is nonetheless admissible in evidence to prove the nature of his possession. Proof as to the nature or character of a person's possession is really proof of a transaction showing in what character a person has come upon the land. Such a transaction is really a collateral one which, by itself, does not require to be effected by a registered deed. It is, therefore, permissible to look at the unregistered deed of gift in order to determine the nature of possession of the person who claims to have entered into possession as a donee and not as a co-sharer.

Held, that the definition of house in section 2(g) of the Punjab Village Common Lands Act, 1961 is an inclusive definition and, therefore, it cannot be restricted to a residential house of which a courtyard has been made a part by the definition itself. In the context of the legislative measure all permanent structures were intended to be excluded from the definition of the word *'Shamilat Deh'* and that is why the word 'house' was used without restricting it to a residential house.

First Appeal from the decree of the Court of Shri Sewa Singh, Senior Sub-Judge, Kangra at Dharamsala, dated the 20th February, 1957, dismissing the plaintiffs suit with costs.

G. P. JAIN (for M. L. SETHI) and B. S. GUPTA with R. S. AMOL, ADVOCATES, for the Appellants.

K. C. NAYAR AND V. C. MAHAJAN, ADVOCATES, for the Respondents.

JUDGMENT

Mahajan, J.

MAHAJAN, J.—This is an appeal by the Gram Panchayat of Sidhbari, tehsil and district Kangra. The Panchayat brought a suit for possession of land

measuring 53 Kanals 10 Marlas bearing Khasra Nos. 78, 616/20 to 23, 191 and 24 in Khata No. 118 of the Jamabandi of 1952-53 situate in Tika Bahgani, Dakhil Sidh Bari, tehsil Kangra. It was further prayed that the possession be delivered by demolition of houses consisting of Tea Kothi, a single one-storeyed residential house, one cattle-shed, two barracks, one quarter and one motor-shed. The only defendant in the case is Sukhram Das proprietor of Tea Estate, Sidh Bari.

The defendant contested the suit on the following grounds:—

(1) that the land in dispute was solely owned and possessed by him;

(2) that the allegation of the plaintiff that the defendant was in possession of the land as co-sharer without any right was denied;

(3) that Mr. Turner had been in possession of the land in dispute as an owner in adverse possession for more than 12 years before sale, that is, from the year 1912 to 1931; and after 1931 the defendant and his other co-sharers had been in possession as owners in adverse possession and have become the sole owners of the land in dispute;

(4) that the entries in the revenue records showing the defendant or other co-sharers as tenants were mere paper entries and were of no consequence;

(5) that the defendant was in exclusive possession of the entire area and it was enclosed by barbed wire and retaining walls

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and the defendant had erected buildings for factory, residential kothi, godowns, barracks, etc.;

(6) that the land was not *shamilat* land any more and, in any case, he could not be deprived of the possession without payment of compensation for the buildings erected on the land; and

(7) that in case it be held that the land was *shamilat,* the civil Courts had no jurisdiction to try the suit.

Objection as to Court-fee was also raised, but it has no significance in appeal. On the pleadings of the parties, the following issues were framed:—

(1) Has not the land in dispute lawfully vested in the plaintiff by virtue of the provisions of Punjab Act 1 of 1954 ?

(2) Has the defendant become owner of the land in dispute by adverse possession for a period of over 12 years before the institution of the suit as alleged and what is its effect ?

(3) Are the Punjab Village Common Lands (Regulation) Rules, 1955, illegal and *ultra vires* as alleged ?

(4) If issues Nos. 1 to 3 are found against the defendant, is not the plaintiff entitled to the possession of the land in dispute ?

(5) Is not the suit triable by the civil Court ?

(6) Has the defendant effected improvements on the land in dispute? If so, at what cost and is the defendant entitled to be reimbursed for the same by the plaintiff before he is dispossessed of the land in dispute ?

(7) Relief.

The trial Court dismissed the suit holding that the land in dispute had vested in the Gram Panchayat under the provisions of the Punjab Village Common Lands (Regulation) Act (No. 1 of 1954), that the defendant had become owner of the land in dispute by adverse possession for a period of more than 12 years before the institution of the suit, that the Punjab Village Common Lands (Regulation) Rules were neither illegal nor *ultra vires*, that the plaintiff was not entitled to possession of the land in view of the finding on issue No. 2, that the suit was triable by the civil Court and that the defendant had effected improvements on the land at a cost of Rs. 97,611 and the plaintiff was only entitled to its possession on payment of this amount. The plaintiff who is dissatisfied with this decision has come up in appeal to this Court.

At this stage, it will be proper to notice a preliminary objection raised by the learned counsel for the respondent. The contention is that the plaintiff could only be entitled to a decree on payment of Rs. 97,611 and as the memorandum of appeal is not properly stamped, the appeal should be rejected. It is no doubt true that ground No. 10 in the memorandum of appeal has been taken against issue No. 6 which was decided against the plaintiff, but that ground is not seriously pressed before us. The only ground that has been urged is that the Court below was in error in holding that the defendant had become owner of the suit land by adverse possession. On the other hand, it is contended by learned counsel for the defendant that the plaintiff's suit is liable to dismissal in view of the Village Common Land (Regulation) Act (18 of 1961), because the land in dispute has been excluded from the definition of *shamilat* by section 2(g) of the Act. The relevant part of section

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2(g) of the Act on which reliance is placed reads thus:—

"2. (g) Shamilat *deh* includes—

* * * * * * *

but does not include land which—

* * * * * * *

(vi) lies outside the abadi *deh* and is used as *gitwar,* bara, manure pit or house or for cottage industry;

* * * * * * *

(viii) was *shamilat deh,* was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such *shamilat deh* on or before the 26th January, 1950; or

* * * * * * *."

It is also maintained that even if it be held that the land is *shamilat deh* and has vested in the Panchayat under Act 18 of 1961, still the plaintiff is not entitled to disturb possession of the defendant in view of the provisions of section 4. The relevant provisions of section 4 for our purposes are set out below:—

"4. (1) * * * * * *

(2) Any land which is vested in the *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 (i) and in sub-section (2) shall affect or shall be deemed over to have affected the—

(i) * * * * * * * *

(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) * * * * * * * *."

It is conceded by learned counsel for the plaintiff that if the case falls within sub-section (ii) of sub-section (3) of section 4 of the Act, then it is only the rights in the land which is in cultivating possession that would be saved. The land which is in cultivating possession is admitted to be 41 Kanals 13 Marlas.

Before dealing with the respective contentions of the parties, it will be proper to refer to the entire history of the land leading to its possession by the defendant, from the year 1912 onwards.

In the Jamabandi of 1908-09, Exhibit D. 13, in the column of ownership, the entry is—"*Shamilat deh* according to the shares in Malguzari". In the column of tenants, Smt. Radho and Smt. Iso are shown as tenants and Ganesha is shown as their sub-tenant. Ganesha pays *batai* to the landlords. The revenue and cesses amount to Rs. 12-10-9, land revenue being Rs. 11-2-0 and the balance being cesses.

In the Jamabandi of 1911—13, Exhibit D.4, the only change is that Mr. Stanley Duntze Turner is shown as the tenant in place of Smt. Radho and Smt. Iso. This change was brought about by reason of Exhibit D. 3, a deed of gift, dated the 29th August, 1912, executed by one Sudama and others namely 170 co-sharer-zamindars of village Sidh Bari in favour of the aforesaid Mr. Turner. This deed of gift relates to 49 Kanals 10 marlas of land which during the course

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of settlements has increased to the area now in dispute and on this fact of increase the parties are agreed. It may be mentioned that Mr. Turner was also a co-sharer of the Shamilat he being the owner of the Sidh Bari Tea Estate. It appears that Mr. Turner had filed a suit for partition of the Shamilat land and in order to settle that suit, these *zamindars* agreed to relinquish their right, title and interest in these 49 Kanals 10 Marlas of land, or in other words, in the land in dispute. That is how Mr. Turner came to be recorded in the column of tenants as tenant under the Shamilat in the Jamabandi of 1911—13, Exhibit D. 4. This entry has continued right up to the year 1931, when after the death of Mr. Turner, his brother Mr. Stephen Davis Rilley Duntze Turner sold the land in dispute along with the Tea Estate to the present defendant Sukhram Das for a sum of Rs. 27,000. It may be mentioned that Mr. Turner was in exclusive possession of this land and had constructed certain buildings thereon and had planted an orchard. The defendant after the sale also got into exclusive possession of this property and constructed further buildings and planted orchards thereon.

In the Jamabandi of 1932-33, Exhibit D. 7, the defendant was entered in the column of tenants in place of Mr. Turner and this entry has continued right up-to-date.

Two further facts may also be mentioned at this stage. When Mr. Turner applied for the mutation to be effected in pursuance of the deed of gift, Exhibit D. 3, the same was rejected. This fact is borne out by Exhibit D. 12, a mutation that was sanctioned when the land was sold in 1931 by Mr. Stephen Turner to Sukhram Das. This mutation was objected to by Beli Ram, Tulsi Ram, Bhonthu, Kehlu, Bohga, Rijhu, Puran, Mangu, Mangtu, Shib Ram, Hardyal Singh

Lambardar, Sarbarah Lambardar—Mohan Nath for himself and on behalf of other proprietors of the *Shamilat*. The objection was that 53 Kanals 10 Marlas of land, that is, the land in dispute, was owned by *Shamilat* and the vendor could not sell the same and it was prayed that the mutation of sale be not sanctioned. This mutation was sanctioned with the following remarks:—

> "Now the mutation regarding rights of ownership is not sanctioned but mutation regarding rights of possession is allowed",

and, therefore, the entries that followed the mutation in the Jamabandi were that in place of Mr. Turner, Sukhram Das was entered as a tenant in the column of tenants and in the ownership column, the land was recorded as the ownership of the *Shamilat deh hasab rasad malguzari*. It is also significant that at the time of sanction of this mutation it was also pointed out that the vendee had cut down trees from the land implying thereby that the vendee could not do so. The result was that the mutation, as mentioned above, was sanctioned.

Therefore, what emerges from the aforesaid history is that Mr. Turner took possession of the land in pursuance of the deed of gift, Exhibit D. 3, and though that deed of gift was not registered exclusive possession of the land was taken by Mr. Turner in pursuance of the same and he enjoyed the land exclusively to the exclusion of the other proprietors as a donee and not as a co-sharer, though he happened to be a co-sharer. In 1931, his successor sold the land. The sale was objected to by the proprietors and in spite of the objection, the vendee entered into possession of the land and enjoyed the same to the exclusion of the entire proprietary body. It is also significant that

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no rent was even paid by Mr. Turner or by the defendant to the proprietary body, that the land is assessed to land revenue and that valuable buildings have been constructed thereon and whenever the proprietors asserted their right to the land it was denied. It is on these facts, which are not only fully borne out on the record but are also not disputed, that the Courts below came to the conclusion that ouster of the proprietary body had been proved from the land in dispute and, therefore, the defendant and Mr. Turner have become the owners thereof by lapse of more than 12 years.

This brings me now to the consideration of the contentions raised by learned counsel for the parties.

The contention of the learned counsel for the appellant is that the trial Court has erred in holding that the defendant has become the owner of the suit property by adverse possession. It is argued by the learned counsel that Mr. Turner was a co-sharer and when he possessed the *Shamilat* land either to the extent of his share or beyond his share, he possessed it as a co-sharer and as such his possession cannot be adverse as against the other co-sharers and that, in no case, the possession of one co-sharer can be adverse against the others till partition is effected. It is further maintained that the rule is different in the case of *Shamilat* land, namely, that in the case of *Shamilat* land even if ouster is established still the possession of the co-sharer who has ousted the other co-sharers will not be adverse against them unless there is a partition. It is admitted that the rule is well settled that possession of one co-sharer cannot be adverse to another merely because one co-sharer is in exclusive possession of the property and has enjoyed the same to the exclusion of the others without payment of rent. It is also equally well settled that

one co-sharer can possess adversely against his other co-sharers provided he manifests an unequivocal intention to the knowledge of the other co-sharers to do so, that is by denying their title to the property exclusively possessed by him as co-sharer. No useful purpose will be served in quoting various authorities for these propositions, for these principles are well settled; see the famous treatise on the Law of Limitation by Rustomji, 6th Edition, at pages 878 and 883. The learned counsel for the appellant does not dispute the proposition that one co-sharer can adversely possess against other co-sharers provided he ousts the other co-sharers, that is, he denies their title openly to their knowledge, but he maintains that this rule has no application in the case of *Shamilat* land. I am unable to agree with this contention. On principle, there can be no difference between other joint property and *Shamilat* land and no reason has been shown to us for making any distinction between the *Shamilat* land and the other joint property. The same principles were applied by the Lahore High Court in *Jawala Singh* v. *Jagdish Singh* (1), and by this Court in *Jagdev Singh* v. *Surat Singh* (2), in case of *Shamilat* land. In the latter case, Dua, J., following the decision in *Jawala Singh's* case observed,—

> "To acquire title by prescription, it is incumbent on the appellants to prove some overt act or acts amounting to ouster of the rest of proprietary body for a period of more than 12 years and mere exclusive possession would hardly suffice to confer any title on them."

As I have already said, I am not prepared to agree with the contention of the learned counsel that the

(1) A.I.R. 1941 Lah. 144.
(2) I.L.R. 1962 (2) Punj. 300.

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rules as to adverse possession by one co-sharer against the others are different in the case of joint property and the *Shamilat* land. In my view both stand on the same footing and neither on principle nor on authority any distinction can be made on this score. Therefore, the only question that requires to be settled is whether on the proved facts of this case, ouster is established. It is significant that Mr. Turner entered into exclusive possession of the land in dispute as a donee and not as a co-sharer. An unregistered document though inadmissible in evidence to prove title of the person relying on the same is nonetheless admissible in evidence to prove the nature of his possession. It has been held in a very large number of cases that—

> "proof as to the nature of character of a person's possession is really proof of a transaction showing in what character a person has come upon the land. Such a transaction is really a collateral one which, by itself, does not require to be effected by a registered deed. An unregistered document is, therefore, held to be admissible as evidence of the nature or character of a person's possession."

This statement of law finds support from a vast number of decisions which will be found colated at page 391 of Chitaley's Registration Act, 2nd Edition. The learned counsel for the appellant does not dispute the correctness of this statement of law. Therefore, it is permissible to look at the unregistered deed of gift in order to determine the nature of the possession of the defendant and there is no escape from the conclusion that the defendant is in possession as a donee and not as a co-sharer. Apart from this whenever an occasion arose viz-a-viz the land in dispute, and the co-sharers asserted their right to the same, it was denied by the

defendant or his predecessor-in-interest. I have already set out in detail the history of this piece of land and those facts clearly prove beyond any doubt that the defendant and his predecessor-in-interest ousted the proprietary body from the enjoyment of this land, and asserted their exclusive title to the same. They openly constructed valuable buildings, put an orchard, fenced the land and made retaining walls. All these acts were done openly and to the knowledge of the other proprietors. It was observed by Dalip Singh, J,. in *Jiwa Ram* v. *Man Singh* (3), "that, exclusive possession by a co-sharer is not an assertion of exclusive title. What amounts to ouster is a question of fact depending on the circumstances of each case. Where the co-sharer has built his residential house on the land, it amounts to an assertion of hostile and exclusive title to the knowledge of the co-sharers." These observations fully apply to the facts of the present case.

The directions of the revenue officers to other proprietors at the time when they disputed the defendant's title to the suit land to get their rights determined in a civil Court went unheeded by them and, therefore, they can make no grievance at this stage that they did not know or were unaware that the defendant or his predecessor-in-interest had taken exclusive possession and had asserted exclusive title to the suit property as against them. We are, therefore, firmly of the view that the Court below was right in coming the conclusion that the defendant had become owner of the suit property by adverse possession. It was held by Martineau J. in *Mahammad Hassan* v. *Sohara* (4), that—

> "Where a co-sharer in possession of joint property has by an overt act shown to his co-sharers that he would hold adversely to

(3) A.I.R. 1934 Lahore 84.
(4) A.I.R. 1924 Lah. 389.

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them, his possession does not cease to be adverse merely because, subsequently, the names of his co-sharers were entered in the revenue records as co-sharers. Title to the waste land will go with title to the cultivated area."

The mere fact that the land was recorded as Shamilat land in the revenue papers would be of no consequence so far as the defendant is concerned.

This brings me to the consideration of the two other arguments raised by the defendant's counsel based on the provisions of the Punjab village Common lands (Regulation) Act, 1961. If the provisions of section 2(g) (vi) and (viii) are kept in view, there is no escape from the conclusion that the land in dispute does not fall within the definition of *Shamilat deh* as now defined in section 2 (g) of the Act. Part of the land is covered by clause (vi) and the remaining by clause (viii) of section 2(g). Learned counsel for the appellant contends that the house in clause (vi) will only include a residential house and no other building or orchard. With regard to clause (viii) he contends that this clause will only apply if all the co-sharers are in cultivating possession and not if one of the co-sharers is in cultivating possession of the same. I am, however, unable to agree with any of the aforesaid contentions of the learned counsel for the appellant with regard to clauses (vi) and (viii) of section 2(g). Clause (vi) does not use the word 'residential house'. Whenever the Legislature intended to confine the word 'house' only to residential premises the word 'residential' has been prefixed to the word 'house'. See in this connection the provisions of section 60 of the Code of Civil Procedure, section 2 and 13 of the East Punjab Urban Rent Restriction Act, 1949, and section 31 of the Displaced

Persons (Debts Adjustment) Act, 1951. So far as the dictionary goes, the word 'house' has a variety of meanings. In shorter oxford English Dictionary, Third Edition, Volume I, at page 927, 'house' means: 1. a building for human habitation; 3. a building for the keeping of cattle, birds, plants, goods, etc., 4. f. a place of business; 7. a dwelling place; place of abode, rest, deposit, etc., b. the habitation of any animal. In *Khirode Chandra Ghoshall* v. *Saroda Prosad Mitra* (5), it was held that—

> "the term 'house' embraces not merely the structure or building, but includes also adjacent buildings, cartilage, garden, courtyard, orchard and all that is necessary for the convenient occupation of the house; but not that which is only for the personal use and convenience of the occupier."

In Stroud's Judicial Dictionary, 3rd Edition, Volume II, at page 1340, the word 'house' has the same meaning as has been set out in *Khirode Chandra Ghoshall's case* (5). The author also at No. 7 gives the modern connotation of the word 'house' which has been adopted from the decision of the House of Lords in *Grant* v. *Langston* (6), as under:—

> "A hundred years ago there was not much difficulty in saying what was a 'house', but builders and architects have so altered the construction of houses, and the habits of people have so altered in relation to them that the word 'house' has acquired an artificial meaning, and the word is no longer the expression of a simple idea; but to ascertain its meaning one must understand

(5) 7 I.C. 436.
(6) 1900 A.C. 383 at page 390.

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the subject-matter with respect to which it is used in order to arrive at the sense in which it is employed in a statute".

Moreover, the definition of house in section 2(g) is an inclusive definition and, therefore, it canont be restricted to a residential house of which a courtyard has been made a part by the definition itself. In the context of the legislative measure also I would be justified in holding that all permanent structures were intended to be excluded from the definition of the word 'Shamilat Deh' and that is why the word 'house' was used without restricting it to a residential house. Therefore, there is no reason to depart from the dictionary meaning of the word 'house'. The contention of the learned counsel to the contrary is repelled.

With regard to the other contention pertaining to clause (viii) of section 2 (g) of the Act, reference has to be made to the General Clauses Act (Section 11), which is to the effect that where a singular is used in any legislative enactment, it will include a plural and where plural is used it will include a singular. The object of this provision seems to be to protect the possession of the co-sharer or co-sharers actually cultivating the land. It is hardly material whether that possession is of one co-sharer or of a number of co-sharers. There is no justification for the proposition that it must be of all the co-shares. In the present case, the requirements of clause (viii) are also satisfied. It is no body's case that Mr. Turner or the co-sharers who relinquished their rights in the land in dispute did so in respect of the land far in excess of their shares, for if that had been so, the grievance would have been made at the time of mutation or later on at the time of the sale. In my view it will be safe to assume in this case that the condition, that the land in possession of the defendant is

not in excess of the share of Mr. Turner and of the other co-sharers, who gave over the land by gift to Mr. Turner, is satisfied. It is not disputed that the other condition that 41 Kanals 13 Marlas of land is in the individual cultivating possession of the defendant is also satisfied. Therefore, in my view the Panchayat has no right to the land in dispute in view of the clear provisions of section 2(g)(vi) and (viii) of the Act. The suit land falls outside the definition of *Shamilat Deh* in section 2(g) of the Act and, therefore does not vest in the Gram Panchayat.

Mahajan, J.

So far as the argument based on the provisions of section 4(3)(ii) of the Act is concerned, there can be no doubt that the defendant's rights in the land measuring 41 Kanals 13 Marlas cannot be affected inasmuch as the defendant is in cultivating possession of the same. The provisions of section 4(3)(ii) are quite clear and admit of no other meaning. The learned counsel for the appellant also reluctantly conceded this part of the argument of the learned counsel for the respondent.

For the foregoing reasons, there is no force in this appeal. The same fails and is dismissed with costs.

PANDIT, J.—I agree with my learned brother that the Court below was right in coming to the conclusion that the defendant had become owner of the suit property by adverse possession. In this view of the matter, I consider it needless to examine and express any opinion on the other contentions raised during the course of arguments in the case. The result is that this appeal fails and the plaintiff's suit is dismissed with costs.

Pandit, J.

R.S.