with the mortgagees after the mortgage had been extinguished and even though the possession was not surrendered to the mortgagors the possession cannot, in the absence of a hostile act, be deemed to be adverse to the mortgagors.

Bhandari, C. J.

For these reasons I would uphold the order of the learned Single Judge and dismiss the appeal with costs. Ordered accordingly.

FALSHAW, J.—I agree.

Falshaw, J.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat and D. K. Mahajan, JJ.

HARNAM KAUR AND ANOTHER,—*Defendants-Appellants.*

versus

SAWAN SINGH AND OTHERS,—*Plaintiffs-Respondents.*

Regular Second Appeal No. 307(P) of 1953.

1959

Aug., 14th

Punjab Tenancy Act (XVI of 1887)—Sections 4 and 59—Tenancy-at-will and occupancy tenancy—Difference between—Occupancy tenancy—Nature of—Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act (III of 1953)—Occupancy tenant a widow holding life estate under custom acquiring ownership rights under the Act—Whether becomes absolute owner or remains a life holder.

Held, that unlike a tenancy-at-will an occupancy tenancy cannot be resumed at will of the landlord. So long the occupancy tenant pays the fixed rent to the landlord, he is entitled to retain the land and its succession is regulated by section 59 of the Punjab Tenancy Act. In case an occupancy tenant transfers the tenancy without the consent of the landlord, the transfer is voidable at the instance of the landlord. In case of a transfer the transferee stands in the same position *qua* the landlord as his transferor stood. It is also settled law that on the death of an occupancy tenant leaving no heirs who can succeed to him under section 59 of the Tenancy Act, the

right of occupancy is extinguished. Thus the occupancy tenant is nonetheless a tenant though having better rights than a tenant-at-will or a tenant for a fixed term. But it cannot be said that he is the owner of the land. The ownership of the land always vests in the landlord and moment the occupancy rights come to an end for any reason, that is, by abandonment, non-cultivation for a number of years or non-payment of rent or the death of the tenant without heirs or by sale by the tenant of his rights to the landlord, the land vests in the landlord, not because he has acquired any right to it, but because the lesser estate has disappeared or merged in the greater estate.

Held, that under the rule of Hindu law, when there is an accretion to the estate left by the husband while in the hands of his widow, she does not become an absolute owner with respect to the property added by accretion but her status *qua* that property is that of a holder of a life estate. This principle, however, has no application and was never extended to persons who follow customary law. Where a widow governed by custom succeeds to the occupancy rights left by her husband and she acquires ownership rights under Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, it cannot be said that what she acquires is as part of her husband's estate. The ownership rights are not accretion to the occupancy rights, when by operation of law such rights are annihilated. There can be no accretion to a thing that itself ceases to exist. The acquisition is a fresh acquisition though the basis for it may be the possession of certain rights which came to the widow from her husband or by collateral succession or even otherwise. The widow does not acquire the ownership rights as a life estate for the benefit of the reversioners; she does so in her own capacity and becomes an absolute owner thereof.

Badri Narain Jha and others v. *Rameshwar Dayal Singh and others* (1), *Jagat Singh and others* v. *Mst. Raj Devi and others* (2), *Charanji Lal* v. *Partapo* (3), *Sangat Singh and another* v. *Ishar Singh and others* (4), referred to

(1) A.I.R. 1951 S.C. 186
(2) I.L.R. 19 Lah. 271
(3) L.P.A. 1-P of 1956
(4) A.I.R. 1927 Lah, 536

Mst. Karmi and others v. *Bachna and others* (1), *disapproved.*

Second Appeals from the decree of the Court of Shri Sardari Lal Chopra, Additional District Judge, Sangrur, dated the 28th day of October, 1953, modifying that of Shri Mohinder Singh, Sub-Judge, 2nd Class, Sangrur, dated the 31st December, 1952 (granting the plaintiffs a declaratory decree to the effect that the gift in dispute would not affect their reversionary rights after the death of Shrimati Fatto and leaving the parties to bear their own costs) to the extent of granting the plaintiffs a declaratory decree only with regard to 113 bighas 7 biswas of land (as detailed in mutation No. 8) which was inherited by Shrimati Fatto from her son, Harchand Singh and dismissing the plaintiffs' suit regarding the remaining land, i.e., 109 bighas 15 biswas (as detailed in mutation No. 2) which Shimati Fatto inherited collaterally representing her husband and leaving the parties to bear their own costs.

TIRATH SINGH,—for Appellants.

K. N. TEWARI AND PURAN CHAND, for Respondents.

JUDGMENT

MAHAJAN, J.—This appeal raises questions which are arising frequently on account of the abolition of occupancy rights in land by legislation. Mahajan, J.

It is common ground that the land in dispute measuring 223 Bighas 2 Biswas was held by Smt. Fatto as an occupancy tenant. Part of this land, that is, 113 Bighas 7 Biswas was inherited by her from her son Harchand Singh and the balance 109 Bighas 15 Biswas from a collateral of her husband Kehar Singh. It is also common ground that on the 11th of March, 1947, a *Firman-i-Shahi* was issued by His Highness the Maharaja of Patiala, whereby the occupancy tenants and the landlords were to become absolute owners of the land in the ratio of two-third and one-third respectively, and

(1) 1959 P.L.R. 313

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the occupancy tenancy was to come to an end. This *Firman-i-Shahi* was later on repealed by the Patiala and East Punjab States Union Abolition of Biswedari Ordinance (No. XXIII of 2006 Bk.) whereby the ratio was changed from two-third and one-third to three-fourth and one-fourth, and an option was given to the tenants to purchase the one-fourth as well. This Ordinance was later on replaced by the Patiala and East Punjab States Union Occupancy Tenants(Vesting of Proprietary Rights) Act (No. III of 1953), whereby the ratio was done away with and the entire land was to vest in the occupancy tenants as absolute owners and the landlords were to be given compensation in lieu of their rights.

On the 12th of January, 1951, Smt. Fatto made a gift of the entire 223 Bighas 2 Biswas to her daughter Harnam Kaur. This gift was challenged by Sawan Singh, a fifth degree collateral of Kehar Singh, on the usual ground that the widow had no power to make a gift of the ancestral land and the same would not be binding on his reversionary rights. This suit was decreed by the trial Court on the 31st of December, 1952, on the short ground that a widow has no power to make a gift of the ancestral or the self-acquired property whether inherited from her husband or by way of collateral succession. It was further held, that as regards Harchand Singh's property the position of Harnam Kaur was that of a sister and a sister being not an heir under custom, the gift to her would not be valid and as such there will be no accelaration of succession. Against this decision, an appeal was preferred by Harnam Kaur. The learned District Judge on appeal reversed the decision of the trial Court with regard to the property which Smt. Fatto had collaterally succeeded,

that is, 109 Bighas 15 Biswas on the ground that *qua*, this property her position was that of a daughter and as such she was a preferential heir to the property which was non-ancestral than the fifth degree collateral of Kehar Singh. The decision of the trial Court with regard to the estate which Smt. Fatto inherited on the death of Harchand Singh was, however, upheld as *qua* this estate her position was that of a sister and not that of a daughter. Dissatisfied with this decision both parties have come up in second appeal to this Court, and this order will dispose of Regular Second Appeal No. 307(P) of 1953 and Regular Second Appeal No. 9(P) of 1954.

In order to arrive at a correct decision it is necessary to examine closely the enactments bearing on the matter. In the earlier part of this judgment I have mentioned the three enactments and the substance thereof. It will be evident from them that they aim at the extinction of the occupancy rights. It cannot be disputed that unlike a tenancy-at-will an occupancy tenancy cannot be resumed at will of the landlord. So long the occupancy tenant pays the fixed rent to the landlord, he is entitled to retain the land and its succession is regulated by section 59 of the Punjab Tenancy Act. In case an occupancy tenant transfers the tenancy without the consent of the landlord, the transfer is voidable at the instance of the landlord. In case of a transfer the transferee stands in the same position *qua* the landlord as his transferor stood. It is also settled law that on the death of an occupancy tenant leaving no heirs who can succeed to him under section 59 of the Tenancy Act, the right of occupancy is extinguished. Thus the occupancy tenant is nonetheless a tenant though having better rights than a tenant-at-will or a tenant for a fixed term. But it cannot be said that he is the owner of the land. The

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ownership of the land always vests in the landlord and moment the occupancy rights come to an end for any reason, that is, by abandonment, non-cultivation for a number of years or non-payment of rent or the death of the tenant without heirs or by sale by the tenant of his rights to the landlord, the land vests in the landlord, not because he has acquired any right to it, but because the lesser estate has disappeared or merged in the greater estate. In this connection it will be useful to refer to Foa on General Law of landlord and Tenant (8th Edition) page 642 where the learned author states as under:—

> "A merger takes place where a tenant acquires the immediate reversion: for when a greater estate and aeless coincide in the same person without any intermediate estate, the less is said to be merged in the greater. * * * * * * For merger, however, to take place, the two interests must come to one and the same person in one and the same right * * * * * *."

It was observed by their Lordships of the Supreme Court in *Badri Narain Jha and others* v. *Rameshwar Dyal Singh and others* (1), that "If the lessor purchases the lessee's interest, the lease no doubt is extinguished as the same man cannot at the same time be both a landlord and a tenant, *****."

In the present case Smt. Fatto was merely an occupancy tenant before the legislation making her an owner was enacted. It is no doubt true that she had only a life estate in them till then. It is also true that the legislation put an end to the occupancy rights as such. In lieu thereof

(1) A.I.R. 1951 S.C. 186 at P. 188

ownership rights were conferred on the widow. This was by operation of law. In this situation, can it be said that the ownership rights which Smt. Fatto acquired were acquired from the husband or whether they partook of the nature of the occupancy rights ? Before dealing with this question, it will be necessary to notice the rule of Hindu Law that when there is an accretion to the estate left by the husband while in the hands of his widow, she does not become an absolute owner with respect to the property added by accretion but her status *qua* that property is that of a holder of a life estate. From this it is argued that the rights which Mst. Fatto has acquired under the law, are held by her as a widow's estate and she does not become an absolute owner thereof as contended by the appellant. This principle has no application here for the simple reason that the parties are governed by custom and to those who follow the customary law, this principle has never been extended. In this connection, reference may be made to *Jagat Singh and others* v. *Mst. Raj Devi and others* (1). In any case, so far as the present case is concerned, it cannot be said that what Smt. Fatto acquired, she acquired as part of the husband's estate. The husband was merely an occupancy tenant. It cannot be said that the ownership rights are an accretion to the occupancy rights, when by operation of law the occupancy rights were annihilated. There can be no accretion to a thing that itself ceases to exist. The acqcisiion would be a fresh acquisition though the basis for it may be the possession of certain rights and those may come to the widow from the husband or by collateral succession or ever otherwise.

The question as to what is the nature of widow's rights when she acquires higher rights in lieu of

(1) I.L.R. 19 Lah. 271

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the estate inherited by her from the husband, has been the subject-matter of a large number of judicial decisions. It has been held repeatedly and consistently that the larger rights which the widow acquires in the husband's estate vest absolutely in her. She does not acquire them "as a life estate for the benefit of the reversioners". She does so in her own capacity and is an absolute owner,—*vide Jagat Singh and others* v. *Mst. Raj Devi and others* (1), where all the previous cases are notices, *Charanji Lal* v. *Partapo* (2), and *Sangat Singh and another* v. *Isher Singh and others* (3).

The decision of Mehar Singh, J., in *Mst. Karmi and others* v. *Bachna and others* (4), remains to be noticed. The observations therein to the effect that the widow acquiring rights of ownership in the land on payment of compensation remains a mere life-holder of the estate (that is ownership rights) and succession is not to be traced from her but from her husband, cannot with due respect to the learned Judge be justified either in principle or on authority. Otherwise, so far as it lays down that on the acquisition of proprietary rights in lieu of ancestral occupancy rights, the ultimate acquisition ceases to be ancestral, it is in line with the consistent course of decisions right from 1915 [*Mussammat Malap Kaur* v. *Hakim Singh and another* (5)]. The decision only goes wrong where it treats the huband of the widow as the acquirer of the ownership rights and not the widow, though in fact it was the widow who had acquired the same.

In the present case, it was conceded by the learned counsel for the respondent, and rightly so.

(1) I.L.R. 19 Lah. 271
(2) L.P.A. 1-P of 1956
(3) A.I.R. 1927 Lah. 536
(4) 1959 P.L.R. 313
(5) 8 P.R. 1915

that Smt. Fatto had become an absolute owner after the extinction of the occupancy rights and on the conferment of the ownership rights. Once it is held that Smt. Fatto became an absolute owner of the land, the plaintiff must fail because she, as an absolute owner, could make a gift to whomsoever she liked, and in this case the gift is made to the daughter who is the next heir. In any case, it is settled law that an alienation of property which belongs absolutely to a female cannot be controlled by the reversioners of the husband, and they would have no *locus standi* to bring the present suit.

For the reasons, given above, the defendant's appeal is allowed and the plaintiff's appeal is dismissed, with the result that the plaintiff's suit fails and is dismissed.

In the circumstances of the case, there will be no order as to costs.

DULAT, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

HARDIAL SINGH,—*Appellant.*

versus

THE STATE OF PEPSU,—*Respondent.*

Regular Second Appeal No. 56(P) of 1955.

1959

Aug., 14

Sovereign power—Grant made in exercise of—Whether can be repudiated by Successor State—Act of State—Meaning of—Suit to challenge the repudiation of the grant—Whether maintainable.