(15) In the light of the discussion above, we do not find any merit in this petition and dismiss the same but with no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia C.J., S. P. Goyal and J. V. Gupta, JJ.

AMAR SINGH and another,—*Appellants*

versus

DALIP,—*Respondent.*

Regular Second Appeal No. 1821 *of* 1978.

March 12, 1981.

Punjab Tenancy Act (XVI *of* 1887)—*Section* 77—*Code of Civil Procedure* (V *of* 1908)—*Sections* 3 *and* 11—*Suit for the ejectment of a tenant instituted in a Revenue Court—Such Court—Whether competent to determine the jural relationship of landlord and tenant—Decision of the Revenue Court regarding such relationship—Whether operates as* res judicata *in a subsequent suit in a Civil Court—Explanation VIII to section* 11 *of the Code—Whether covers a court of limited jurisdiction other than a civil court.*

Held, (per majority S. P. Goyal and J. V. Gupta, JJ. S. S. Sandhawalia, C.J. contra) that a persual of section 77 of the Punjab Tenancy Act, 1887 would show that the Revenue Court has been invested with the jurisdiction to decide certain disputes between the landlord and tenant which necessarily means that the existence of relationship of landlord and tenant between the parties is a condition precedent before any matter specified therein can be taken cognizance of by a Revenue Court. There is no provision in whole of the section which authorises the Revenue Court to pass a decree regarding the relationship of the parties. It is, therefore, obvious that the Revenue Court is only entitled to pronounce on the relationship between the parties for the purposes of deciding disputes within its cognizance as enumerated in that section and the Legislature has not conferred any jurisdiction on the Revenue Court to pronounce finally on the jurisdictional facts, i.e., the existence of the relationship of landlord and tenant between the parties. The determination of the status of the parties or a question of title between them may involve very intricate questions of civil law and nobody can even suggest that the Revenue Court has jurisdiction to pronounce on such questions or that such a decision can be final and binding on the parties. If that is so, then it has to be ruled that the Revenue Court has no jurisdiction to pronounce finally on the question of status of the parties or any other question of title because no distinction can be made between a simple question of title and question of title which involve intricate and complicated questions of law so far as the extent of jurisdiction is concerned. It is, therefore, held that though the Revenue Courts

under the Punjab Tenancy Act may have to pronounce on the relationship of landlord and tenant between the parties to exercise jurisdiction vested in them by the statutes but their decisions would not be binding on the parties and they will not operate as *res judicata* in a subsequent suit in a civil court.

(Paras 11 and 18).

Muni Lal vs. *Chandu Lal*, 1968 P.L.R. 473.

Ambala Bus Syndicate vs. *Indra Motors*, 1968 P.L.R. 960.

OVERRULED.

Held (per majority S. P. Goyal and J. V. Gupta, JJ. S. S. Sandhawalia, C.J. contra.) that section 11 of the Code of Civil Procedure 1908 deals with the decisions of the civil courts only and the decisions of the Court of exclusive jurisdiction/Tribunals are not covered by that section. The decisions of Tribunals and Courts of exclusive jurisdiction debar the raising of the issued in a civil suit on matters which are exclusively within their jurisdiction not because of section 11 but because of the provisions contained in the statute creating those Tribunals or Courts. Sometimes, their decisions operate by way of *res judicata* under the general principles of *res judicata* also but never because of the provisions of section 11. Moreover, the words "Court of limited jurisdiction" refer to Civil Courts governed by the Code of Civil Procedure and not such Tribunals or Courts of exclusive jurisdiction. Though Civil Court is not defined in the Code but section 3 makes it clear that the courts which are governed by Code are the High Court, District Court. Civil Courts inferior to that of District Court and the Court of Small Causes. That apart Explanation VIII was added not to cover the decisions of Tribunals or Courts of limited jurisdiction otherwise than the civil courts. It was introduced to nullify the provisions contained in the main section which required that the decision of the earlier court would operate *res judicata* only if it was competent to try the subsequent suit. (Para 17).

Held (per S. S. Sandhawalia, C.J. contra.) that Revenue Courts under section 77(3) of the Punjab Tenancy Act are *stricto sensu* Courts of law with all the necessary consequences flowing from this position and therefore they have the fullest jurisdiction to decide the jural relationship of landlord and tenant if it is disputed before them. The decision of a Revenue Court of competent jurisdiction on the point of jural relationship of landlord and tenant would be equally binding on the parties on the general and larger principles of *res judicata* apart from the strict provisions of section 11 of the Code. (Paras 36, 39 and 44).

Held (per S. S. Sandhawalia, C.J. contra.) that in view of the earlier state of law, the legislative history and the object and purpose of the amending provisions of 1976, the mischief which it had sought to correct and the use of the phrase 'Court of limited jurisdiction' would all inevitably bring a Revenue Court and similar courts of special jurisdiction well within the ambit of the newly inserted Explanation VIII to section 11 of the Code and, therefore, the Explanation would statutorily render the decision of a Revenue Court on the issue of jural relationship between the parties to *res judicata* in a subsequent suit. (Paras 51 and 54).

Held (per S. P. Goyal, J.) that the authorities under the Rent Control Laws may have to pronounce on the relationship of landlord and tenant between the parties to exercise jurisdiction vested in them under those statutes but their decisions would not be binding on the parties and operate as *res judicata* in a subsequent suit. (Para 18).

Case referred by Hon'ble Mr. Justice S. P. Goyal,—vide *order dated 6th March, 1979 to a larger Bench for decision of the question of law involved in this case. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice S. P. Goyal, and Hon'ble Mr. Justice J. V. Gupta decided the question referred to on 12th March, 1981.*

Regular Second Appeal from the order of the Court of Shri Krishan Kant Aggarwal, Additional District Judge, Gurgaon, dated 7th September, 1978 reversing that of Shri J. D. Chandna, Sub-Judge, 1st Class, Ballabgarh, dated the 4th November, 1977, accepting the appeal and setting aside the judgment and decree, dated 4th November, 1977 passed by the learned trial Judge and passing a decree for declaration in favour of the plaintiff against the defendants to the effect that the plaintiff/appellant is in possession of the land in dispute asserting his status as a mortgagee qua that land and there is no relationship of tenant and landlord between the plaintiff/appellant and defendants/respondent and that the impugned order and decree of ejectment (copies Ex. P. 7 and Ex. P. 8), dated 29th October, 1976 passed by the A.C.I.G., Ballabgarh are without jurisdiction and ineffective against the plaintiff/appellant and a decree for possession of the land in dispute detailed in para No. 1 of the plaint in assumed character of Mortgagee is also hereby passed in favour of the plaintiff/appellant and against the defendants/respondents and this shall, however, be without any prejudice to the rights of the defendants/respondent who are owners of the suit land to take possession of the suit land from the plaintiff/appellant in due course of law and the parties are left to bear their own costs throughout.

Present :

H. L. Sarin, Senior Advocate with M. L. Sarin and R. L. Sarin, Advocates, *for the Appellants.*

Rajesh Chaudhry, Advocate, *for the Respondent.*

JUDGMENT

S. P. Goyal, J.

(1) The following question of law was referred by me in R.S.As. Nos. 1821 and 1822 of 1978 to a larger Bench as the correctness of several decisions of this Court was challenged on the basis of a number of Supreme Court cases:

> "Whether the decision of Rent Controller under the rent control laws or a Revenue Court under section 77 of the Punjab Tenancy Act upon the relationship of landlord and tenant between the parties operates as *res judicata* and is not open to challenge in a subsequent suit or in other collateral proceedings between the parties?

The brief facts giving rise to the present controversy are that the appellants filed a suit in the Court of Assistant Collector First Grade Ballabhgarh for the ejectment of the respondent on the ground of non-payment of rent and personal need which was decreed on October 29, 1976. Instead of filing any appeal against that judgment, the respondent brought the present suit for declaration that he was in possession of the land in dispute as a mortgagee; that there was no relationship of landlord and tenant between the parties and that the judgment and decree of ejectment was without jurisdiction and void. As he was dispossessed during the pendency of the suit in execution of the decree of the Revenue Court, relief of possession was introduced by way of amendment of the plaint.

(2) The trial Court, after appreciating the evidence of the parties, held that relationship of landlord and tenant existed between the parties and dismissed the suit. The finding of the trial Court was reversed, on appeal, by the learned Additional District Judge with the result that the decree of the Revenue Court was declared

to be void and the suit decreed. Aggrieved thereby, the defendants have filed the said second appeals in this Court.

(3) The main ground urged by the learned counsel to impugn the decree under appeal was that the judgment of the Revenue Court operated as *res judicata* between the parties and was not open to challenge in a civil suit. Reliance for this proposition of law was placed on a Supreme Court decision in *Om Parkash Gupta* v. *Dr. Rattan Singh and another* (1), and three Division Bench judgments of this Court in *Muni Lal* v. *Chandu Lal* (2), *Ambala Bus Syndicate (P) Ltd.* v. *M/s. Indra Motors, Kurali* (3), and *J. G. Kohli* v. *Financial Commissioner, Haryana & another* (4). The learned counsel for the respondent, on the other hand, claimed that *Om Parkash Gupta's case* (supra) does not support the proposition of law put forward by the appellants and challenged the correctness of the three Division Bench decisions of this Court relying on the said Supreme Court case and two other decisions in *Magiti Sasamal* v. *Pandab Bisnoi and others* (5), and *Shri Raja Durga Singh of Solan* v. *Tholu and others* (6). It was under these circumstances that the above-noted question was referred by me for decision to a larger Bench.

(4) Though in these appeals, we are directly concerned with a judgment of the Revenue Court under the Punjab Tenancy Act and not with the judgment of the Rent Controller under the East Punjab Urban Rent Restriction Act, 1949, yet I framed the question in such a fashion so as to include the judgments of both the Revenue Court as well as the Rent Controller because all the judgments relied upon by the learned counsel for the appellants related to the proceedings under the Rent Act. Otherwise also, so far as the proposition of law involved is concerned, there is no distinguishing feature between the judgment of the Rent Controller and the Revenue Court under the said Acts.

(5) The question referred to us, in my view, stands fully covered by the judgment of the Supreme Court in *Om Parkash Gupta's*

(1) 1963 P.L.R. 543.
(2) 1968 P.L.R. 473.
(3) 1968 P.L.R. 960.
(4) 1975 A.I.R. Control Journal 689.
(5) A.I.R. 1962 S. C. 547.
(6) A.I.R. 1963 S.C. 361.

case (supra), and has to be answered in the negative. But a contrary view was taken by a Division Bench of this Court in *Muni Lal's case* (supra), relying on the same decision of the Supreme Court which was followed in the other two Division Bench cases noticed above. The rule laid down in *Muni Lal's case,* however, runs counter not only to the decision in *Om Parkash Gupta's case* (supra) but several other decisions of the Supreme Court.

(6) In *Om Parkash Gupta's case* (supra), the landlord filed an application before the Rent Controller for eviction of Om Parkash Gupta on several grounds. Om Parkash Gupta denied the allegations that he was a tenant and pleaded that the building was on lease with the All India Postal and R.M.S. Union for office-cum-residential purposes. Because of non-compliance of the order of the Rent Controller under Section 15(7) of the Delhi Rent Control Act, 1958 for the deposit of rent, the defence of the tenant was struck off and *ex parte* ejectment order was passed against him holding that *prima facie* the relationship of landlord and tenant had been established on the basis of certain rent receipts. The tenant having failed in the first and second appeals approached the Supreme Court by way of special leave which was granted by the learned Vacation Judge on June 5, 1962. The main contention urged on behalf of the tenant in the Supreme Court was that the authorities under the said Act had no jurisdiction to entertain the proceedings inasmuch as it was denied that there was any relationship of landlord and tenant between the parties. This contention was overruled with the following observations:—

> "* * * Ordinarily it is for the Civil Courts to determine whether and if so, what jural relationship exists between the litigating parties. But the Act has been enacted to provide for the control of rents and evictions of tenants, avowedly for their benefit and protection. The Act postulates the relationship of landlord and tenant which must be a pre-existing relationship. The Act is directed to control some of the terms and incidents of that relationship. Hence, there is no express provision in the Act empowering the Controller, or the Tribunal, to determine whether or not there is a relationship of landlord and tenant. In most cases such a question would not arise for determination by the authorities under the Act.

A landlord must be very ill-advised to start proceedings under the Act, if there is no such relationship of landlord and tenant. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejectment in the Civil Courts, untrammelled by the provisions of the Act. It is only when he happens to be the tenant of premises in an urban area that the provisions of the Act are attracted. If a person moves a Controller for eviction of a person on the ground that he is a tenant who had, by his acts or omissions, made himself liable to be evicted on any one of the grounds for eviction, and if the tenant denies that the plaintiff is the landlord, the Controller has to decide the question whether there was a relationship of landlord and tenant."

Although there is a specific provision under section 15(4) of the said Act which authorises the Controller to decide as to who would be entitled to the rent deposited by the tenant in case of a dispute between the parties, yet it was furher observed that the Act does not, in terms, authorise the Authority under the Act to determine the initial question of relationship of landlord and tenant, that such decision may not be *res judicata* in a regular suit in which similar issue may directly arise for decision. The following propositions of law, therefore, emerge from the decision of the Supreme Court in *Om Parkash Gupta's case* (supra):

(1) that the Rent Controller, under the Delhi Rent Control Act, the provisions of which are in *pari materia* with the East Punjab Urban Rent Restriction Act, 1949, has not been invested with specific, much less exclusive jurisdiction, to finally determine the relationship of landlord and tenant between the parties,

(2) that the Rent Controller for the purposes of exercising jurisdiction vested in him under the provisions of the rent control laws would be competent to determine the question of relationship of landlord and tenant, if disputed, in any proceedings before him and the mere denial of the said relationship would not debar the Rent Controller from exercising any jurisdiction under the said Act,

(3) that the decision of the Rent Controller on the question of the relationship of landlord and tenant between the parties would not be *res judicata* in a regular suit in which a similar issue may arise for decision.

(7) Regarding the third proposition, an attempt was made to build an argument because of the use of word, "may" in the said judgment and it was urged that the Supreme Court never categorically said that the decision of the Rent Controller would not be *res judicata* in a regular suit. The argument, however, has no merit. The use of the word, "may" does not connote that the Supreme Court had any doubt on the question whether the decision of the Rent Controller operates as *res judicata* or not in a regular suit. Otherwise, there was no reason to make these observations as no such question was directly involved there. It was to clarify the real nature of the order of the Rent Controller and the extent of its jurisdiction that this observation was made in the absence of which there was a lot of scope for confusion and misapplication of the observation that the Rent Controller has the jurisdiction to determine the issue of relationship made in the earlier part of the judgment. On the other hand, if the decision of the Rent Controller could operate as *res judicata* in a regular suit, the Supreme Court would have certainly said so instead of making the above observation.

(8) The law on the exact extent to which the powers of statutory tribunals are exclusive was thus settled by Lord Esher in the *Queen* v. *The Commissioner for Special purposes of the Income Tax* (7):

"When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and if they

(7) (1888) 21 QBD 313.

exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more."

The dictum of Lord Esher was first cited with approval and relied upon by Fazl Ali, J,. who spoke for the Bench in *Rai Brij Raj Krishna and another* v. *Messrs S. K. Shaw and Brothers* (8). In this case also, the order of the Rent Controller ordering the eviction of the tenant because of non-payment of rent was challenged in the Civil Court on the ground that no case of non-payment of rent in law had been established. The trial Court as well as the Appellate Court dismissed the suit but it was decreed by the High Court in second appeal. The judgment of the High Court was reversed with the observation that because under the Act the Rent Controller has been entrusted with a jurisdiction to determine whether there is non-payment of rent or not the case would fall within the second category mentioned by Lord Esher and its finding on non-payment of rent and the consequent order of eviction, therefore, would not be open to challenge in the Civil Court. The rule laid down by Lord Esher was again approved and followed by the Constitution Bench of the Supreme Court in *Addanki Tiruvankata Thate Desika Charyulu (Since deceased) and after him his legal representatives* v. *State of Andhra Pradesh and another* (9). In *Desika Charyulu's case* (supra) the order of the Settlement Officer passed under the Madras Estates (Reduction of Rent) Act (30 of 1947) was under challenge. Clause (d) of section 3(2) of the said Act defines the word, "Estate" with which the Court was concerned, as under:—

"3. In this Act, unless there is something repugnant in the subject or context.....

(2) 'Estate' means—

.. ..

(8) A.I.R. 1951 S.C. 115.

(9) A.I.R. 1964 S.C. 807.

(d) any inam village of which the grant has been made confirmed or recognised by the Government, notwithstanding that subsequent to the grant, the village has been partitioned among the grantees or the successors in title of the grantee or grantees."

The question before the Court was whether the finding of the Settlement Officer that the inam village in dispute was an "estate" was challenged in a civil suit. The answer to the question was made by the Constitution Bench in the following terms:—

"Where therefore persons appearing in opposition to the proceedings initiated before the Settlement Officer under section 9 question the character of the property as not falling within the description of an 'inam village', he has of necessity to decide the issue, for until he holds that this condition is satisfied, he cannot enter on the further enquiry which is the one which by section 9(1) of the Act he is directed to conduct. On the terms of section 9(1) the property in question being an 'inam village' is assumed as a fact on the existence of which the competency of the Settlement Officer to determine the matter within his jurisdiction rests and as there are no words in the statute empowering him to decide finally the former, he cannot confer jurisdiction on himself by a wrong decision on this preliminary condition to his jurisdiction. Any determination by him of this question, therefore, is (subject to the result of an appeal to the Tribunal) binding on the parties only for the purposes of the proceedings under the Act, but no further. The correctness of that finding may be questioned in any subsequent legal proceeding in the ordinary courts of the land where the question might arise for decision. The determination by him of the second question whether the 'inam village' is an inam estate is, however, within his exclusive jurisdiction and in regard to it the jurisdiction of the Civil Courts is clearly barred.

(9) The learned counsel for the respondent relied on three other decisions of the Supreme Court, namely, *Chaudhri Jagdish Prasad and another* v. *Ganga Prasad Chaturvedi* (10), *Bhagwan Dayal* (*since*

(10) A.I.R. 1959 S.C. 492.

deceased) and thereafter his heirs and legal representatives Bansgopal Duby and another v. *Mst. Reeti Devi (deceased) and after her death, Mst. Dayavati, her daughter* (11), and *Katikara Chintamani Dora and others* v. *Guatreddi Annamanaidu and others* (12). But it is not necessary to notice them, in detail, because in view of the decisions discussed above, the law on the question of the binding nature of the order of Tribunal/Court of special jurisdiction appears to be well settled and may be stated thus:—

(1) that the decision of Tribunal/Court of special jurisdiction would operate as *res judicata* and be not open to challenge in a subsequent suit between the parties in a Civil Court on any matter which is in its exclusive jurisdiction.

(2) the decision of such a Tribunal/Court on facts on the existence of which only it gets jurisdiction to decide matters entrusted to it under the statute would not operate as *res judicata* in any subsequent suit between the parties unless such tribunal/court is also clothed expressly with the jurisdiction to decide these facts.

(10) The correctness of these propositions of law was also not challenged by the learned counsel for the appellants. He, however, urged that the impugned order of the Revenue Court as well as an order of ejectment passed by the Rent Controller on the question of relationship of landlord and tenant would fall under the Second category and, therefore, not liable to question in a subsequent civil suit. It is, therefore, not disputed that the Rent Controller under the East Punjab Urban Rent Restriction Act or the Revenue Court under the Punjab Tenancy Act has not been invested with any exclusive jurisdiction to pronounce upon the question of relationship of landlord and tenant between the parties.

(11) The question which then remains to be decided is as to whether the Revenue Court or the Rent Controller has been invested with the jurisdiction under the Punjab Tenancy Act or the East Punjab Urban Rent Restriction Act, as the case may be, to decide the question of relationship of landlord and tenant or they are entitled incidently to go into this matter for exercising the jurisdiction

(11) A.I.R. 1962 S.C. 287.

(12) A.I.R. 1974 S.C. 1069.

expressly invested in them under the said Acts. A perusal of section 77 of the Punjab Tenancy Act would show that the Revenue Court has been invested within the jurisdiction to decide certain disputes between the landlord and tenant which necessarily means that the existence of relationship of landlord and tenant between the parties is a condition precedent before any matter specified therein can be taken cognizance of by a Revenue Court. There is no provision in whole of the section which authorises the Revenue Court to pass a decree regarding the relationship of the parties. It is, therefore, obvious that the Revenue Court is only entitled to pronounce on the relationship between the parties for the purposes of deciding disputes within its cognizance as enumerated in that section and the Legislature has not conferred any jurisdiction on the Revenue Court to pronounce finally on the jurisdictional facts, i.e., the existence of the relationship of landlord and tenant between the parties. The reason for not doing so is also not far to seek. The determination of the status of the parties or a question of title between them may involve very intricate questions of civil law. For example, the status of the landlord may depend on the proof and validity of adoption or a will. Nobody can even suggest that the Revenue Court has jurisdiction to pronounce on the validity of adoption or a will or that such a decision could be final and binding on the parties. If that is so, then it has to be ruled that the Revenue Court has no jurisdiction to pronounce finally on the question of status of the parties or any other question of title because no distinction can be made between a simple question of title and question of title which involve intricate and complicated questions of law so far as the extent of jurisdiction is concerned. Furthermore, not a single decision has been cited at the bar wherein it may have been ruled that the decision of the Revenue Court under the Punjab Tenancy Act on the question of title or status of the parties is final and not open to challenge in a civil suit. On the contrary, as early as the year 1935, a Division Bench of the Lahore High Court in *Mt. Harnam Kaur* v. *Narain Singh and other* (13), while interpreting the scope of the jurisdiction of the Revenue Court took the view that where a revenue suit is instituted for ejecting the tenants and this is the only jurisdiction exclusively vested in the Revenue Courts, that court cannot determine the question of title in that case and its decision, therefore cannot operate so as to prevent the civil Court, from

(13) A.I.R. 1935 Lah. 739.

entertaining the subsequent suit which involves the question of title. This view has held the field for all these years and its correctness has never been doubted in any decision so far. A similar view was taken by a Full Bench of the Madras High Court in *Pollapalli Vankatarama Rao and others* v. *Masunuru Venkayya and others* (14), while dealing with the question of exclusive jurisdiction of the Revenue Court under the Madras Estates Land Act (1 of 1908), which is evident from the following passage:—

> "If a particular matter is one which does not fall within the exclusive jurisdiction of the revenue court, then the decision of a revenue court on so such matter, which might be incidently given by the revenue court, cannot be binding on the parties in a civil court. One practical test would be to determine if that particular matter would not be a matter in respect of which the civil court would have jurisdiction. To give an obvious instance, suppose in a suit under section 55 for the grant of a patta instituted by a person claiming to be the adopted son of the ryot who was a pattadar, the landlord raises a plea that he is not entitled to the patta because his adoption is not valid. It may be that the revenue court would have to summarily go into the question whether the person suing is or is not the validly adopted son of the previous ryot. Can it possibly be said that the finding of the revenue court on the issue of adoption is binding on the parties in a subsequent suit in a civil court in which the validity of the adoption might fall to be decided ? There can be no doubt about the answer.
>
> That is because the dispute as to the validity of the adoption is not a dispute in respect of which a revenue Court has exclusive jurisdiction. Such a dispute is a matter well within the jurisdiction of a civil court. Therefore, it cannot be within the exclusive jurisdiction of the Revenue Court, and the decision of such a dispute by a revenue court cannot be binding in a civil court."

(12) In *Raja Muhammad Abdul Hussan Khan* v. *Pran and others* (15), a notice of ejectment under the United Provinces

(14) A.I.R. 1954 Madras 788.

(15) A.I.R. 1916 Privy Council 150.

Land Revenue Act was got issued by the Plaintiff against the defendants. In the suit filed in the Revenue Court to contest their liability for ejectment, the defendants set up the plea that they were not tenants and instead held Zimidari rights which were in the nature of under-proprietary rights. This plea/defence was upheld upto the highest Revenue Court. Thereafter, the plaintiff filed a suit in the Civil Court to establish that the defendants had no proprietary or under-proprietary rights in the suit land which obviously meant that they were only tenants under him. While explaining the nature and extent of the jurisdiction under the said Act it was held that the Court of Revenue has exclusive jurisdiction to determine what is the status of a tenant on lands and what are the special terms upon which such tenant holds and that the Civil Courts have the exclusive jurisdiction to decide whether or not a person in possession of lands holds a proprietary or an under proprietary rights in the land.

(13) The very question which is being debated before us came for consideration before a Full Bench of the Patna High Court in *Kishun Sah* v. *Harbindandan Prasad Sah and others* (16). The order of eviction passed under section 11 of the Bihar Buildings, Lease, Rent, and Eviction Control Act, 1947 was challenged on the ground that there was no relationship of landlord and tenant between the parties. The plea of the landlord that this question stood finally decided by the Rent Controller was negatived by the Full Bench in the following words:

> "It is well settled that, unless the legislature expressly confers upon a tribunal of limited jurisdiction the exclusive power to decide facts upon which it can assume jurisdiction to do a certain act or to pass a certain type of order ; it has no jurisdiction to decide these preliminary or jurisdictional facts finally. While it has necessarily to come to its own conclusions on these facts in order to exercise its jurisdiction relating to matters within its exclusive jurisdiction, its decision on these facts is liable to be challenged in the Civil Court. A tribunal of limited jurisdiction cannot have unlimited power to determine the limit and to assume jurisdiction or, in other words, it

(16) A.I.R. 1963 Patna 79.

cannot usurp jurisdiction on a wrong decision relating to jurisdictional facts.

Where on an application for eviction of a tenant under section 11, Bihar Buildings, Lease Rent and Eviction Control Act, 1947 an order for eviction of the tenant on ground of personal necessity of the landlord is passed by the final appellate authority under that Act, the order can be challenged by a suit in the Civil Court or the ground that no relationship of landlord and tenant existed between the parties. No power has been given to the Controller under the Act to decide finally and conclusively the question of existence of the relationship of landlord and tenant between the parties or the question as to whether the premises occupied by the tenant is a building. These are jurisdictional facts, and, with regard to these facts, the Controller or his higher authorities cannot possibly be held to have exclusive jurisdiction. The provision relating to the finality of their decision in section 18 of the Act can only apply to their decision relating to matters which are within their exclusive jurisdiction. It follows, therefore, that a decision of the Controller as to existence of the relationship of landlord and tenant between the parties is not final and its correctness is liable to be examined by the Civil Court."

(14) In *Smt. Kanta Devi and others* v. *Shri Surinder Kumar and another* (17). V. D. Misra, J., negatived the plea that the decision of the Rent Controller on the question of relationship of landlord and tenant between the parties operated as *res judicata* with the following observations :—

"The Delhi Rent Control Act, 1958 was enacted to provide for the control of rent and evictions. The powers are to be exercised by the Controller appointed under the Act. Chapter III of the Act controls the eviction of tenants. Section 14 falls under this Chapter. This section pre-supposes the relationship of landlord and tenant between the parties before any order of eviction can be passed. Where

(17) 1979 (1) R.C.R. 31.

this relationship is in dispute, the Controller has to incidently decide it in order to decide the question of eviction. Sub-section (1) of section 50 of the Act takes away the jurisdiction of the Civil Courts to decide questions which the Controller is empowered to decide under the Act.

Subject to the provisions of sub-section (4) of section 50 the decision of the Controller on the question of eviction of a tenant, or on a matter which the Controller is empowered by or under the Act to decide, is final. Though the Controller has not been empowered to decide a question of title to property or any question as to the persons entitled to receive the rent, he can decide these questions incidently. This, in fact, is necessary in order to determine questions of rents and evictions of tenants for which the Controller was empowered by the Act. The exclusive jurisdiction of the Controller, as is apparent from the scheme of the Act, is only to decide questions relating to rents eviction of tenants and grant of possession to landlords.

This Act does not give exclusive jurisdiction to the Controller to decide finally the relationship of landlord and tenant."

(15) Now, I may also notice two other decisions of this Court wherein a view was taken that the Rent Controller would have no jurisdiction to decide the question of relationship of landlord and tenant if it involved a complicated question of title. In *Shri Beant Singh* v. *Smt. Harbans Kaur,* (18), the original landlord left behind three daughters and one of them claiming to be the exclusive owner of the demised building on the basis of a will alleged to have been executed in her favour by the original landlord, sold the demised building to Smt. Harbans Kaur who on the basis of the sale-deed executed in her favour filed an ejectment application against the tenant in occupation on the ground of non-payment of rent as well as personal requirement. The tenant denied that there was relationship of landlord and tenant between the parties and pleaded that she was the owner of one-third share in the demised building, having purchased the same from the daughter of the original landlord. The validity of the will was also questioned by him. On these facts, my

(18) 1980 P.L.R. 310.

learned brother J. V. Gupta, J., held that as the Rent Control Authority had no jurisdiction to decide the the question of the validity of the will in dispute, it being a question of title, the application for ejectment under the East Punjab Urban Rent Restriction Act could not be maintained.

(16) In *Messrs Kharati Ram Bansi Lal and others* v. *Shmt. Radha Rani and another* (19), a Division Bench consisting of D. K. Mahajan and P. C. Jain, JJ., was of the view that if the Rent Controller comes to the conclusion that he cannot decide the question of relationship of landlord and tenant between the parties without determining the complicated question of title, he will, in that event, stay his hands. The learned Judges doubted the correctness of the decision in *Muni Lal's case* (supra) having been based on a decision of the Patna High Court in *Baijnath Sao* v. *Ram Prasad* (19-A) which was later on overruled in *Kishun Sah's case* (supra). The observations in **Kishun Sah's case** were approved as these were in consonance with the judgment of the Supreme Court in *Om Parkash Gupta's case* (supra) (Paragraph 11, page 983).

(17) An attempt was also made by the learned counsel for the appellants to argue on the basis of the newly added Explanation VIII to section 11 of the Code of Civil Procedure that after the introduction of this explanation even the decision of the Court of limited jurisdiction would operate as *res judicata*. The argument is wholly misconceived. Section 11 deals with the decisions of the Civil Courts only and the decisions of the Court of exclusive jurisdiction/ Tribunals are not covered by that section. The decisions of Tribunals and Courts of exclusive jurisdiction debar the raiding of the issues in a civil suit on matters which are exclusively within their jurisdiction not because of section 11 but because of the provisions contained in the statute creating those Tribunals or Courts. Sometimes, their decisions operate by way of *res judicata* under the general principles of *res judicata* also but never because of the provisions of section 11. Moreover, the words, "Court of limited jurisdiction" refer to civil Courts governed by the Code of Civil Procedure and not such Tribunals or Courts of exclusive jurisdiction. Though the Civil Court is not defined in the Code but section 3 makes it clear that the Courts which are governed by the Code are the High

(19) 1968 P.L.R. 978.
(19-A) A.I.R. 1951 Patna 529.

Court, District Court, Civil Courts inferior to that of District Court and the Court of Small Causes. That apart Explanation VIII was added not to cover the decisions of Tribunals or Courts of limited jurisdiction otherwise than the Civil Courts. It was introduced to nullify the provisions contained in the main section which require that the decision of the earlier court would operate as *res judicata* only if it was competent to try the subsequent suit. For example, a person files a suit for realization of Rs. 2,000 in the Court on account of rent from a tenant. This suit is cognizable by the Court of Sub-Judge 2nd Class. In this suit if a question is raised regarding the status of the parties or the ownership of the property, any decision made by the Court would not operate as *res judicata* in a subsequent suit for possession filed by the landlord where jurisdictional value of the suit is more than pecuniary limits of Sub-Judge 2nd Class because of the said provision in the main section. After the introducion of Explanation VIII that decision of Court of Sub-Judge 2nd Class would now on the question of ownership operate as *res judicata* although it did not have the jurisdiction to try the subsequent suit in which the question has again been raised. The said provision in the main body of section was resulting in an anomalous situation such as even if the finding of the Sub-Judge 2nd Class was confirmed upto the High Court, it was still not binding on the parties and was open to challenge in the second suit. It was to do away with this anomaly that Explanation VIII was introduced and not to cover the decisions of the Courts or Tribunals of exclusive but limited jurisdiction within the ambit of the said section. The contention raised, therefore, has no merit.

(18) The problem regarding the orders of the authorities under the rent control laws is much simpler because these authorities are not Courts and are only Tribunals of exclusive jurisdiction only on matters laid down in the statute creating them. The authorities under these Acts are not required to observe the detailed procedure of the Civil Court and the jurisdiction conferred on them is of a summary nature. A reference to section 13 of the East Punjab Urban Rent Restriction Act which deals with the ejectment of the tenant would show that the Rent Controller, if satisfied that the claim of the landlord is bona fide, can make an order directing the tenant to put the landlord in possession. Of course, the procedure adopted by the Rent Controller has to conform to the norms of natural justice but all the same it is not required to adopt an elaborate procedure of a

Civil Court. In case of an application by the landlord who is a member of the Armed Forces, the Rent Controller is required to dispose of the same within one month as far as it may be possible and mode of his satisfaction has also been circumscribed by attaching finality to the certificate issued by the prescribed authority regarding the requiremnt that the landlord is serving under special conditions. In these circumstances, it is not possible to hold that the Legislature intended to confer any plenary jurisdiction on the authorities under the said Act to pronounce finally even on facts which are known as jurisdictional facts and on the existence of which alone the said authorities can proceed to pass orders on matters within their jurisdiction. I am, therefore, of the considered view that though the authorities under the rent control laws may have to pronounce on the relationship of landlord and tenant between the parties to exercise jurisdiction vested in them under these statutes but their decisions would not be binding on the parties and operate as *res judicata* in a subsequent suit.

(19) Now we may notice the decisions relied upon by the learned counsel for the appellants. The basic and the main judgment is of the Division Bench in *Muni Lal's case* (supra) holding that the decision of the Rent Controller on the question of existence of relationship of landlord and tenant between the parties operates as *res judicata* in a subsequent suit. Reliance for this proposition was placed on *Om Parkash Gupta's case* (supra) and a decision of the Andhra Pradesh High Court in *Kunta Hari Rao and another* v. *Yelukur Subha Lakshmanna* (20), Narula, J., who wrote the judgment interpreted that Supreme Court judgment in the following manner:—

> "It was observed that Tribunals under the Act being creatures of the statute have limited jurisdiction and have to function within the four corners of the statute creating them. At the same time held the Supreme Court, they are Tribunals of exclusive jurisdiction within the provisions of the Act and their orders are final and not liable to be questioned in collateral proceedings like a separate suit or application in executing proceedings."

The learned Judge then proceeded to say:—

> "Moreover, the authoritative pronouncement of the Supreme Court has finally settled the controversy about the decision of the Rent Controller on the disputed question being

(20) (1966)1 A.W.R. 122.

within his jurisdiction. In this state of law, we cannot but hold that the Rent Controller as well as the Appellate Rent Control Authority did have the jurisdiction to decide whether the relationship of landlord and tenant existed between the parties or not."

(20) With utmost humility and respect to the learned Judges, I am of the view that no such proposition of law could be propounded on the authority of the decision in *Om Parkash Gupta's case* (supra). I have already discussed this decision in the earlier part of the judgment and the same need not be repeated here. The Supreme Court never held in that case that the Rent Controller has exclusive jurisdiction to pronounce on the question of relationship of landlord and tenant between the parties and only ruled that the Rent Controller would be competent to decide this question for exercising its jurisdiction under the rent control laws. On the contrary it was further made clear that such a decision on the question of the status of the parties would not operate as *res judicata in* a subsequent suit.

(21) The other decision of the Andhra Pradesh High Court in *Kunta Hari Rao's case* (supra) relied upon by the Bench had absolutely no bearing on the question in hand. What was held in that case was that the Rent Controller was competent to enquire and decide the question of jural relationship of landlord and tenant. Neither any question as to whether the decision of the Rent Controller would be binding on the parties in any subsequent suit was raised nor decided.

(22) In the case of *Ambala Bus Syndicate (P.) Ltd.,* (supra), the decision in *Muni Lal's case* (supra) was followed but with an additional observation that as the orders of the authorities under the East Punjab Urban Rent Restriction Act are made final by the provisions of section 15, they would not be liable to be challenged in a Civil Court. There is no gainsaying that the order of the authority under the said Act has been made final on matters upon which the said authority has the jurisdiction to pronounce under the provisions of the Act. As discussed, in detail, in *Om Parkash Gupta's case* (supra), the Rent Controller under the said Act has the jurisdiction to pronounce only on two matters, apart from some other incidental matters, namely, the fixation of fair rent and the eviction of

tenant if the conditions laid down in the statute are fulfilled. So any decision of the Rent Controller regarding the fixation of the Rent or on the question whether the ground of ejectment exists or not would certainly be final. For example, if the ejectment has been ordered on the ground of non-payment of rent a suit would not be competent to challenge that order on the ground that the finding of the Rent Controller on the question of non-payment of rent was not correct or that it was erroneous in law. As the question of relationship of landlord and tenant between the parties is not within the exclusive jurisdiction of the Rent Controller and any order in this respect would not become final under the provisions of section 15, though the Rent Controller would be competent to pronounce on the matter for the purpose of exercising its jurisdiction under the said Act.

(23) So far as the decision in *J. G. Kohli's case* (supra) is concerned, suffice it would to say that the present question was not before the Bench at all and the only argument raised there was that as the relationship of landlord and tenant was denied, the authorities under the East Punjab Urban Rent Restriction Act had no jurisdiction to proceed in the case. The matter had come before the Bench in a petition under Article 226 of the Constitution of India against the orders of the authorities under the said Act. It was held relying on *Om Parkash Gupta's case* (supra) that there was a specific issue on the question of relationship of landlord and tenant and the Rent Controller had the jurisdiction to decide the same. Further observation that such decision could not be challenged in any subsequent civil suit is in the nature of *obiter dicta* and was made simply relying on *Muni Lal's case* (supra). No considered opinion was expressed in that case and the same is, therefore, of no help to the appellants. Similarly, in *Balbbadar and others* v. *Hindi Sahitya Sadan (Registered Body) through its President Ram Kishan Gupta* (21). again this question did not fall for consideration and the only point to be decided was whether the authorities under the East Punjab Urban Rent Restriction Act are competent to pronounce upon the question of relationship of landlord and tenant between the parties, when disputed. So this decision again is hardly of any assistance so far as the present controversy is concerned.

(24) The last two Supreme Court decisions in *Lal Chand (dead) by L.Rs. and others* v. *Radha Kishan* (22) and *Shrimati Raj Lakshmi*

(21) 1980 (1) R.C.J. 376.

(22) A.I.R. 1977 S.C. 789.

Dasi and others v. *Monamali Sen and others* relied upon by the learned counsel for the appellants also have no bearing on the question in hand because in both these cases the matter decided by the Tribunal was in its exclusive jurisdiction. In *Lal Chand's case* (supra), the question whether a tenant of a building in a slum area should or should not be permitted to be evicted therefrom, was within the exclusive jurisdiction of the authorities under the Slum Areas (Improvement and Clearance) Act, 1956. Similarly, in *Srimati Raj Lakshmi Dass's case* (supra) the question of apportionment of compensation was within the exclusive jurisdiction of the District Judge under the Land Acquisition Act. The orders passed under the said statutes by the competent authorities were consequently held to be final and not open to challenge in the Civil Court. Both these decisions obviously have no bearing on the present case.

(25) In view of the above discussion, the question referred to this Bench is answered in the negative and it is held that the decision of the Rent Controller under the rent control laws or the Revenue Court under section 77 of the Punjab Tenancy Act upon the relationship of landlord and tenant between the parties would not operate as *res judicata* and be open to challenge in a subsequent suit or any other collateral proceedings between the parties.

S S. Sandhawalia, C.J.

(26) I have the privilege of perusing the lucid and exhaustive judgment recorded by my learned brother S. P. Goyal, J. With the greatest respect it appears to me that the question framed by him, in his referring other for the consideration of the Full Bench. as also in the judgment recorded, does not in terms arise from the facts of the two Regular Second Appeals before us. It is well settled that the Courts should eschew the determination of questions which do not directly fall for determination and inevitably if they do so, the observations necessarily would be in the nature of *abiter dicta* and would not be of binding force. I am clearly of the view that on the present set of facts before us, the only question that can possibly arise is with regard to the decisions of the revenue courts under the Punjab Tenancy Act. Indeed clubbing this issue with that of the decision by a rent controller which admittedly has no relevance efen remotely to the facts of the present cases seems to have considerably warped the consideration of the basic issue that fell for determination.

(27) To appreciate the aforesaid observations, it becomes necessary to advert in some detail to the matrix of facts giving rise to these two appeals.

(28) The appellants, Amar Singh and another claiming to be the owners of the land in dispute under the provisions of the Punjab Occupancy (Vesting of Proprietary Rights) Act, preferred a suit in the court of the Assistant Collector 1st Grade, Ballabgarh on July 29, 1975 under Section 77 of the Punjab Tenancy Act seeking the ejectment of the respondents *inter alia* on the ground that they were small land-owners and the respondents had defaulted in the payment of rent of the land. The said suit was duly decreed on October 29, 1976. Admittedly, no appeal was preferred against the said judgment and subsequently the respondent-tenants were evicted in the execution of the decree of the revenue court and the appellants were put in possession thereof.

(29) The respondent-Dalip Singh then instituted a suit in the civil court seeking a declaration that in fact he was in possession of the land in dispute as a mortgagee and that there was no relationship of landlord and tenant between the parties and that the judgment and decree of ejectment of the revenue court was without jurisdiction and void. As he was dispossessed during the pendency of this suit, the plaintiff amended the plaint to add the relief of being put in possession of the suit land as well.

(30) The suit was contested by the appellants. It was admitted on their behalf that they had obtained a decree for ejectment of the plaintiff from the land in dispute, from the revenue court, and they asserted that they had already taken possession of the said land in execution of the said decree. The other allegations of the plaintiff-respondent were denied. On the pleadings of the parties, six issues were framed, but the material ones that call for notice are issues Nos. (1) and (2), which are reproduced below :—

(1) In what capacity the plaintiff is in possession of the property in dispute and to what effect ?

(2) Whether the order of Assistant Collector dated 29th October, 1976 is against law and without jurisdiction and not binding upon the plaintiff as alleged in para No. 4 of the plaint ?

The trial court decided issue No. (1) against the plaintiff-respondent and on issue No. (2) it was held that the order of the Assistant Collector was within jurisdiction and the same was binding upon the parties and this issue was also decided against the plaintiff. As a necessary consequence the suit of the plaintiff-respondent was dismissed. On appeal by the plaintiff-respondent, the learned Additional District Judge reversed the aforesaid findings on issues Nos. (1) and (2) which alone were challenged before him. The appeal was allowed and the suit of the plaintiff-respondent was decreed. Aggrieved thereby the defendant-appellants have preferred these two Second Appeals in this Court which originally came up before my learned brother S. P. Goyal, J. who noticed a conflict of precedent and framed a question of law for consideration by the larger Bench.

(31) It would be manifest from the above resume of facts that the only question that does and can possibly arise is with regard to the judgments of the revenue courts under Section 77 of the Punjab Tenancy Act. The Rent Controllers under the East Punjab Urban Rent Restriction Act, 1949 and the effect of their judgments would not even remotely enter for consideration. Indeed my Learned brother Goyal, J. was fully alive to this aspect and has himself observed at page-4 of his judgment that though in these appeals we were only concerned with the judgment of the revenue court under the Punjab Tenancy Act, yet he had framed the question in such a fashion so as to include the judgments of the Rent Controllers as well for the reason that some judgments relied upon by the learned counsel for the parties related to proceedings under the Rent Act. With the greatest respect it appears to me that merely because by way of analogy judgments pertaining to the Rent Controllers were cited, that alone would not bring in the question with regard to their nature and force when on the facts it does not even remotely arise in the present set of appeals. It deserves recalling that mere analogy or similarity is not identity and in precisely formulating an issue of law for decision by the Full Bench, only the question directly arising therein can be considered and adjudicated upon. An added reason given by my learned brother is that there is no distinguishing feature between judgments of the rent controllers and the revenue courts under two altogether different and distinct statutes. Herein again with the greatest respect I would beg to differ. Within this court it has been settled ever since the decision of the Full Bench in *M/s. Pitman's Shorthand Academy* v. *M/s.*

B. Lila Ram & Sons & others, (23), that a Rent Controller is merely a *persona designata.* On the other hand Section 77(1) of the Punjab Tenancy Act itself categorically declares that it is only the revenue courts which can exercise jurisdiction with respect to any suit as described in sub-section (3) thereof. At this stage it would be repetitive to elaborate this point as the sharply distinguishing features betwixt the two would be manifest from what is said hereafter.

(32) I would, therefore hold that the question that calls for determination before us herein can be strictly formulated only in the following terms :—

> "Whether the judgment of the revenue court under Section 77 of the Punjab Tenancy Act specifically on the point relationship of Landlord and tenant between the parties would operate as *res judicata* and is not open to challenge in a subsequent suit in civil court ?"

Ere I proceed to examine the aforesaid question, it becomes necessary to highlight another aspect in view of the observations made by my learned brother S. P. Goyal, J., in his judgment. Now it appears to me that what truly calls for an answer herein is whether the specific issue of the jural relationship between the parties decided by a revenue Court will operate as *res judicata* in a subsequent suit in the civil Court. The question before us is not whether any issue of title determined by the revenue Court would be *res judicata* or otherwise. It is elementary that the determination of the question of relationship betwixt a landlord and tenant in innumerable cases may well involve no question of title at all. It may merely resolve around the construction of a lease, rent or any other deed or document executed between the parties and the relationship flowing or deducible there from. In many other cases indeed no dispute pertaining to title may even remotely arise betwixt the parties before a revenue Court. It is a moot point whether, an issue of title incidentally determined by the revenue Court whilst pronouncing on the point of jural relationship between the parties may or may not be *res judicata.* For ought one knows it may indeed be not so and on first impression that would be my view, but

(23) 1950 P.L.R. 1.

my view, but I would refrain from expressing any considered opinion thereon as the point has not been debated before us by the learned counsel. Indeed in my humble view the question seems to have been slightly distarted by the assumption of my learned brother Goyal, J., that the question before the Full Bench necessarily raises the issue of the determination of questions of title. I would re-iterate for emphasis that the point before us is not whether the determination of the question of title by a revenue Court is *res judicata* in a subsequent suit but only limited to the issue whether the jural relationship of landlord and tenant between the parties when determined by a competent revenue Court having jurisdiction would bind the parties in a subsequent suit. Viewing the aforesaid question thus narrowly I would now proceed to consider the same.

(33) Before one adverts inevitably to the mass of precedent it would be refreshing to examine the matter first on principle. It appears to me that the question before us is plainly divisible into following four distinct ones and lucidity demands that it should be succinctly dealt thereunder :—

(i) Whether the forum provided by section 77(3) for the institution and decision of suits is *stricto sonsu* a Court of law ?

(ii) If so, whether such a revenue Court has the jurisdiction to decide the issue of the relationship of landlord and tenant, if disputed before it ?

(iii) Whether the decision of such a revenue Court strictly on the point of relationship of landlord and tenant would be binding between the parties on the general principles of *res judicata* ?

(iv) Whether irrespective of the general principles of *res judicata,* the newly added Explanation VIII to Section 11 of the Code of Civil Procedure would render the decision of the issue of jural relationship between the parties *res judicata* in a subsequent suit ?

(34) Now adverting to the aforesaid question (i) it seems unnecessary to elaborate the basic distinction between a revenue officer and a revenue Court under the Punjab Tenancy Act. Sub-section (1) of section 77 of the Act is in the following terms :—

> "77 (1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3) ; or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a revenue Court."

It would be evident that this gives statutory recognition to this fact that suits under sub-section (3) are to be determined by a revenue Court. Now by adverting to sub-section (3) and the proviso thereto it is plain that the suits in the three groups enumerated thereafter are to be tried by a revenue Court, and the same bars all other Courts to take cognizance of any such suit. The proviso even makes it mandatory that where in a suit cognizable by and instituted in a civil Court it becomes necessary to decide any matter which could be heard and determined only by a revenue Court then it must endorse upon the plaint the nature of the matter for decision and return the plaint for presentation to the Collector. A reference may then be made to section 83 (2) of the Act. This provides for the procedure of the revenue Court and it being the admitted position that no rules having been framed the provisions of the code of Civil Procedure would apply *mutatis mutandis* to all the procedings in the revenue Courts, whether before or after the decree. The use of the word 'decree' in this section and another would again be a pointer to the nature of the revenue Courts because the term decree is inevitably linked to a Court of law. Section 99 empowers the revenue Court to refer matters with regard to jurisdiction to the High Court for decision. Mr. Sarin the learned counsel for the appellants drew our attention to section 100 of the Punjab Tenancy Act, which incorporates a provision for a reference being made to the High Court by a civil Court or a revenue Court, as the case may be, and the validation and registration of the decree under the orders of the High Court. It would be manifest from the aforesaid provisions that the revenue Courts provided under section 77 (3) of the Act are in essence Courts of law having all the trappings of a civil Court and exercising an exclusive jurisdiction closely analagous thereto and are also governed by the Code of Civil Procedure which applies to the civil Courts.

35. To highlight the distinction it may be pointed out that the position of the Rent Controller on the other hand is in no way identical with that of the revenue Court. It is unnecessary to elaborate the matter because in *Messrs Pitman's Shorthand Academy* v. *Messrs B. Lila Ram and Sons and others,* (24), the Full Bench has authoritatively observed as follows:—

> "* * * With great respect, therefore, I must differ from the pronouncement of the Division Bench of the Lahore High Court and it is clear to me that the intention of the Legislature was to appoint *persona designata* to perform specific duties and it was further the intention that these persons would not be governed by the ordinary rules of procedure, nor would their decisions be subject to appeal or revision in a Court of law, and I must, therefore, hold that the Rent Controller and the 'appellate authority' are not Courts of law subordinate to the High Court within the meaning of section 115, Civil Procedure Code."

Some doubts were raised about the correctness of the aforesaid view but the same was reiterated by a Bench of five Judges in *Smt. Vidya Devi* v. *Firm Madan Lal Prem Kumar,* (25). It would be thus clear that both on the statutory provisions as also precedent, a Rent Controller is merely a *persona designata* and it is thus not necessary here to equate it with a revenue Court.

36. It must, therefore, be held on the question (i) aforesaid that the revenue Courts under section 77(3) are *stricta sensu* Courts of law with all the necessary consequences flowing from this position.

37. Coming now to question No. (ii) aforesaid it appears to be now so well-settled by a precedent of the final Court and a string of Division Bench judgments of this Court that it would be wasteful to examine the issue on principle. In *Om Parkash Gupta* v. *Dr. Rattan Singh and another,* (26), an identical question arose under the rent

(24) 1950 P.L.R. 1.
(25) 1971 P.L.R. 61.
(26) 1963 P.L.R. 543.

jurisdiction. It was contended before their Lordships that in a Tribunal of limited jurisdiction, like the Rent Controller, if the relationship of the landlord and tenant is denied then it has no jurisdiction to adjudicate thereon and must stay its hands forthwith. Categorically repelling the same it was observed as follows:—

> "* * * . If a person moves a Controller for eviction of a person on the ground that he is a tenant who had, by his acts or omissions, made himself liable to be evicted on any one of the grounds for eviction, *and if the tenant denies that the plaintiff is the landlord, the Controller has to decide the question whether there was a relationship of landlord and tenant.* If the Controller decides that there is no such relationship the proceeding has to be terminated, without deciding the main question in controversy namely, the question of eviction. If on the other hand, the Controller comes to the opposite conclusion and holds that the person seeking eviction was the landlord and the person in possession was the tenant the proceedings have to go on. *Under section 15(4) of the Act the Controller is authorised to decide the question whether the claimant was entitled to an order for payment of rent,* and if there is a dispute as to the person or persons to whom the rent is payable, he may direct the tenant to deposit with him the amount payable until the decision of the question as to who is entitled to that payment."

and again—

> "* * * The Act proceeds on the assumption that there is such a relationship. If the relationship is denied, the authorities *under the Act have to determine that question also because a simple denial of the relationship cannot oust the jurisdiction of the tribunals under the Act. True, they are tribunals of limited jurisdiction the scope of their power and authority being limited by the provisions of the statute. But a simple denial of the relationship either by the alleged landlord or by the alleged tenant would not have the effect of ousting the jurisdiction of the authorities under the Act, because the simplest

> thing in the world would be for the party interested to block the proceedings under the Act to deny the relationship of landlord and tenant. The tribunals under the Act being creatures of the Statute have limited jurisdiction and have to function within the four-corners of the Statute creating them. *But within the provisions of the Act, they are tribunals of exclusive jurisdiction and their orders are final and not liable to be questioned in collateral proceedings like a separate suit or application in-execution proceeding.*"

The enunciation of the law aforesaid appears to me as categoric in laying down that even a *persona designata,* like the Rent Controller (*See Messrs Pitman's Shorthand Academy* v. *M/s. B. Lilla Ram & Sons*) has the fullest jurisdiction to decide the question of the relationship of landlord and tenant when it is raised before it. That view has been unreservedly followed in this Court in a series of Division Bench decisions which at this stage may only be noticed chronologically, that is, *Muni Lal* v. *Chandu Lal,* (27) *Ambala Bus Syndicate (P.) Ltd.* v. *M/s. Indra Motors Kurali,* (28) and *J. G. Kohli* v. *Financial Commissioner Haryana and another,* (29). In passing it may be noticed that some doubts about the correctness of the view in the aforesaid judgments was raised by a learned Single Judge which was considered in depth and the earlier view was re-affirmed afresh in the recent Division Bench judgment in *Balbahadar and others* v. *Hindi Sahitya Sadan,* (30), to which I was a party.

38. With the foresaid overwhelming weight of precedent staring him in the face learned counsel for the respondents, Mr Chaudhri was forced to concede that there was now not a single judgment of the final Court or of this Court and for that matter of any other High Court which had taken a contrary view. Therefore, it must be held that there is an unbroken line of decision on the point that even a *persona designata,* that is, the Rent Controller has

(27) 1960 P.L.R. 473
(28) 1968 P.L. R. 650
(29) 1975 R.C.J. 689.
(30) 1980(1) R.C.J. 376.

the fullest jurisdiction to decide the question of relationship of landlord and tenant when agitated before him.

39. Once it is held as above, if follows by necessary implication that the position would even be more so in the case of revenue Courts. I have already noticed that these are Courts of law *stricto sensu*. It was not even sought to be disputed before us that the revenue Courts are in essence Courts of law. What is said, therefore, with regard to the determination of the relationship of landlord and tenant in the context of the rent jurisdiction applies doubly and with greater force to the same question, when raised and decided by the revenue Courts. On question (ii), therefore, it must be unreservedly concluded that the revenue Courts have the fullest jurisdiction to decide the jural relationship of landlord and tenant, if it is disputed before them.

40. Adverting now to question (iii), it first deserves highlighting that once a court or tribunal has jurisdiction to decide an issue, then on the basis of the celebrated dictum of Lord Hobhouse it inevitably has jurisdiction to decide the same rightly or wrongly. Merely because in a court of limited jurisdiction, the procedure may not be as elaborately formal as in the general Civil Courts, or the Presiding Officers thereof may not be presumed to be so well versed or versatile in the intricacies of civil law, would be no reason to detract from the decision of such a court. Indeed herein also the doubts raised about the revenue courts are more imaginary than real. Section 80 of the Punjab Tenancy Act provides an elaborate and detailed procedure for appeals from the orders of the revenue courts. Section 84 then provides an equally elaborate revisional jurisdiction over and above the appellate forum. This vests in the Financial Commissioner, the same powers which a High Court can exercise in its revisional jurisdiction against any order or decree of a Civil Court. In the present day context one can then not lose sight of the fact that the decisions of the Financial Commissioner acting as the revisional court in the revenue jurisdiction are further amenable both to the superintendence of the High Courts under Article 227 of the Constitution of India and also the more wide ranging jurisdiction under Article 226 thereof. Once the High Court is seized of the matter, inevitably the Special Leave jurisdiction of their Lordships of the Supreme Court is equally attracted. It cannot, therefore, be easily said that the jurisdiction of the revenue

Courts and the hierarchy of the appellate, revisional and constitutional jurisdictions therein is in any way a secondary or inferior forum whose competence must be necessarily suspected. To reiterate, once the law vests jurisdiction in a forum, it includes within it the right to decide rightly or wrongly and judgment rendered within the four corners of that jurisdiction cannot be and in fact could not be allowed to be easily ignored or by-passed.

41. In the aforesaid context, it inevitably follows that the decision of a competent revenue court clothed with jurisdiction to decide the issue of the jural relationship of landlord and tenant, would be binding between the parties on general principle of *res judicata* or what their Lordships have recently termed as principles analogous to the general principles of *res judicata*. In this context there appears to be a refreshing extension of law by the final Court in a series of judgments giving judicial sanction to the well established principle that nobody should be vexed with the same cause twice. Chronologically noticing the unbroken line of authorities in this context, one may first refer to *Sirimati Raj Lakshmi Devi and others* v. *Banamali Sen and others* (31), wherein after an indepth examination, Mahajan, J., speaking for the Court observed as follows:—

> "— — The condition regarding the competency of the former Court to try the subsequent suit is one of the limitations engrafted on the general rule of *res judicata* by section 11 of the Code and has application to suits alone. When a plea of *res judicata* is founded on general principles of law, all that is necessary to establish is that the Court that heard and decided the former case was a Court of competent jurisdiction. It does not seem necessary in such cases to further prove that it has jurisdiction to hear the later suit. *A plea of res judicata on general principles can be successfully taken in respect of judgments of Courts of exclusive jurisdiction, like revenue Courts, land acquisition Courts, administration Courts, etc.* It is obvious that these Courts are not entitled to try a regular suit and they only exercise special jurisdiction conferred on them by the statute.....".

(31) A.I.R. 1953 S.C. 33.

Again in *Satyadhyan Ghosal and others* v. *Smt. Deorajin Debi and another* (32), the law on the point was enunciated in the following terms:—

> "The principle of *res judicata* is based on the need of giving a finality to judicial decisions. What it says is that once a *res is judicata*, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of *res judicata* is embodied in relation to suits in section 11 of the Code of Civil Procedure; but even where section 11 does not apply, the principle of *res judicata* has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

The aforesaid view was reiterated and re-affirmed is *Arjun Singh* v. *Mohindra Kumar and others* (33), in the following words:—

> "That the question of fact which arose in the two proceedings was identical would not be in doubt. Of course, they were not in successive suits so as to make the provisions of section 11 of the Civil Procedure Code applicable in terms. That the scope of the principle of *res judicata* is not confined to what is contained in section 11 but is of more general application is also not in dispute.....".

After an exhaustive discussions both on principle and case law, it was concluded, as follows, in *Gulabchand Chhatalal Parikh* v. *State of Gujarat* (34) :—

> "As a result of the above discussion, we are of opinion that the provisions of section 11 C.P.C. are not exhaustive, with

(32) A.I.R. 1960 S.C. 841.
(33) A.I.R. 1964 S.C. 993.
(34) A.I.R. 1965 S.C. 1153.

respect of an earlier decision operating as *res judicata* between the same parties on the matter in controversy in a subsequent regular suit and that on the general principle of *res judicata* may previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as *res judicata* in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. The nature of the former proceeding is immaterial."

However, a recent and refreshing extension of the larger principle of *res judicata* appears in *Lal Chand (dead) by L.Rs. and others* v. *Radha Kishan* (35). The pointed issue raised therein was whether the decision of the authorities under the Slum Clearance Act, earlier would be binding between the parties in a regular civil suit brought later. Holding that the larger principles of *res judicata* were plainly attracted, Chandrachud, J., (as his Lordship then was) speaking for the Court observed as follows:—

".. .. By the present suit, the respondent is once again asking for the relief which was included in the larger relief sought by him in the application filed under the slum Clearance Act and which was expressly denied to him. In the circumstances, the present suit is also barred by the principle of *res judicata*. The fact that section 11 of the Code of Civil Procedure cannot apply on its terms, the earlier proceeding before the competent authority not being a suit, is no answer to the extension of the principle underlying that section to the instant case. Section 11, it is long since settled, is not exhaustive and the principle which motivates that section can be extended to cases which do not fall strictly within the letter of the law. The issues involved in the two proceedings are identical, these issues arise between the same parties and thirdly the issue now sought to be raised was decided finally by a competent quasi-judicial tribunal. The principle of *res judicata* is conceived in the larger public interest which

(35) A.I.R. 1977 S.C. 789.

requires that all litigation must, sooner than later, come to an end. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue....".

42. Now apart from the afore-quoted decisions of the final Court, it is perhaps equally necessary to advert albeit briefly to the line of precedent in the predecessor Court of Lahore and in this Court, holding specifically that an issue decided by a Revenue Court of competent jurisdiction is *res judicata* between the parties in subsequent civil proceedings. Reference in this connection may be made chronologically to *Daulat Ram* v. *Munshi Ram and others* (36) and *Rai Singh and another* v. *Man Singh and others* (37). The judgment in *Daulat Ram's case* (supra) was then unreservedly followed by a Division Bench of this Court in *Ram Sarup s/o Tule Ram Jain Aggarwal* v. *Ram Chander and others* (38).

43. The same or an analogous view has been taken in the other High Courts in *Vedachala Gramani and others* v. *Boomiappa Mudaliar* (39), *Shiv Parkash* v. *Karna (plaintiff) and Dharamjit* (40), *Bhawan and another* v. *Madan Mohan Lal* (41), *Balwant Singh and another* v. *Sarabjit and others* (42), *Ram Lagan Bhagat* v. *Phakkar Das* (43), *Mt. Ladli Begum and another* v. *Sunder Lal and another* (44), *Raghunathji* v. *Ram Ratan and others* (45), *Jageshwar Singh and another* v. *Rameshwar Bakhsh Singh and others* (46), *Ch. Jadunath Singh and others* v. *Bisheshar Singh and others*

(36) A.I.R. 1932 Lahore 623.
(37) A.I.R. 1933 Lahore 738.
(38) I.L.R. 1978 Pb. Hy. 246.
(39) I.L.R. 1904 Mad. 65.
(40) I.L.R. 1913 All. 464.
(41) A.I.R. 1916 All. 345.
(42) A.I.R. 1927 All. 70.
(43) A.I.R. 1928 All. 343.
(44) A.I.R. 1959 All. 764.
(45) A.I.R. 1917 Oudh. 12.
(46) A.I.R. 1932 Oudh. 273.
(47) A.I.R. 1939 Oudh 17.

(47), *Banke Bihari Lal* v. *Ram Anugrah Chaudhuri* (48), *Santosh Gopala and another* v. *Rama son of Ragho and others* (49) and *Sant Ram* v. *Bansi and others* (50).

44. In view of the aforesaid authoritative enunciation of the law by the final Court itself and equally the long line of precedent within this Court and other High Courts, it appears to me as plain that the decision of a Revenue Court of competent jurisdiction on the point of jural relationship of landlord and tenant would be equally binding on the parties on the general and larger principles of *res judicata* apart from the strict provisions of section 11 of the Code.

45. Adverting now to question No. (iv), it would appear that the matter must necessarily be now viewed in the context of the afore-mentioned judicial precedents extending the horizon of the limited provision of *res judicata* as contained in section 11 of the Code of Civil Procedure on its general and larger principles. It appears to me that the insertion of Explanations VII and VIII to section 11 of the Code by the Civil Procedure Code (Amendment) Act, 1976, is essentially a statutory recognition of the larger principle enunciated in judicial precedents. To truly appreciate the intent of the legislature in this context, it becomes necessary to advert in some detail to the legal history and the background against which Explanations VII and VIII were brought on the statute book.

46. The need for certain amendments in the Code of Civil Procedure, 1908, was voiced early in the Fourteenth Report of the Law Commission rendered on September 26, 1958. It was, however, later that in the Twenty-seventh Report of the Law Commission, dated December 30, 1964 that detailed proposals for introducing these amendments were made. Even at that stage a suggestion had been made before the Commission that an express provision should be inserted extending the principle of *res judicata* not only to execution proceedings but to all independent proceedings as well. However, the Commission considered it unnecessary to make any specific provision of this nature holding that the matter could be left to be dealt with by the courts apparently upon the general and larger principles of *res judicata*. To implement the recommendations made in the Twenty-seventh Report of the Law Commission,

(48) A.I.R. 1931 Patna 215.
(49) A.I.R. 1949 Nagpur 305.
(50) A.I.R. 1953 Bilaspur 23.

a Bill was actually introduced in Parliament, but the same lapsed apparently owing to its dissolution. When the question of the re-introduction of the Bill arose, the Government made a fresh reference to the Law Commission to examine the Code afresh. It was then that the equally detailed Fifty-fourth Report of the Law Commission dated February 6, 1973, supplementing the earlier Report was drawn up. In this Report, the issue of the applicability of section 11 of the Code to Execution and independent proceedings as well was considered and recommendation for inserting a new and specific section 11-A was made in the following terms:—

> "1-D.15. As regards the first point (applicability of section 11 to execution and independent proceedings), we are of the view that an express provision is desirable. As regards the second point, there is some uncertainity. We shall deal with it later.
>
> 1-D.16. We recommend, therefore, that the principle of *res judicata* should be applied to the situations of proceedings in execution and independent proceedings.
>
> *Recommendation to insert new section* 11-*A*.
>
> 1-D.17. Accordingly, the following new section is recommended—
>
> "11-A. The provisions of section 11 apply, as far as may be, to—
>
> (a) proceeding in execution, and
>
> (b) *civil proceedings other than suits.*"

Specifically, as regards the position of the revenue courts, the Law Commission approved the view of the Full Bench in *Balwant Singh* v. *Saravij,* A.I.R. 1927 All. 70 and recommended as follows :—

> "1-D.25. Of course, if the earlier court was a court of exclusive jurisdiction such as, a revenue court on matters within its competence—its decision would be *res judicata.*"
>
> "1-D.26. The position is substantially the same in England in this respect."

47. To implement the 27th and 54th Report of the Law Commission the Bill of Code of Civil Procedure (Amendment) Act, 1974, was then introduced. In the statements of Objects and Reasons (paragraph 6 thereof), it was pointed out that one of the important changes introduced was to make the doctrine of *res judicata* more effective. In particular, paragraph 6(a) (iii) was in the follow-terms:—

> "The doctrine of *res judicata* is also being extended to independent proceedings and also to execution proceedings."

To give effect to this change, a proposed section 11-A virtually in the same terms, as recommended in the 54th Report, was incorporated in the Bill. In the specific notes on the clauses in the Bill, the rationale for its introduction was spelled out as follows in Clause 6 :—

> "Section 11 of the Code embodies the principles of *res judicata.* A question has arisen as to whether an express provision should be inserted, extending the principles of *res judicata* not only to execution proceedings but also to independent proceedings. New section 11-A is being inserted to make express provision to the effect that the principles of *res judicata sh*all apply to execution proceedings as well as to independent proceedings."

48. It would, however, appear that when the matter was considered by the Select Committee, certain changes were suggested and section 11-A was omitted and instead Explanations VII and VIII to section 11 were proposed. The rationale for doing so was as follows in clause 6 of the Report of the Committee :—

> "The Committee feel that the words 'so far as may be' used in the proposed new section 11-A are likely to lead to a doubt as to the amplitude of the principles of *res judicata* which would be applicable to a proceeding in execution. The Committee were informed that it had already been held by the Privy Council as well as the Supreme Court that the principles of constructive *res judicata* apply to the proceedings in execution. The Committee, therefore, feel that, instead of inserting new section 11-A, section should

be so amended as to ensure that the principles of *res judicata* may apply, in its full amplitude, to a proceeding in execution. A new Explanation has, therefore, been inserted in section 11 of the Code.

The Committee also feel that clause (b) of new section 11-A, which proposes to extend the principles of *res judicata* to every civil proceeding other than a suit, is too wide and may have the effect of extending the principles of *res judicata* to proceedings which are not judicial proceedings. Having regard to the amendment proposed by the Committee to section 11 of the Code and having regard to the difficulty which may arise if clause (b) of new section 11-A is accepted, the Committee decided to omit new section 11-A.

The Committee were informed that the Law Commission had made certain recommendations with a view to ensuring that the principles of *res judicata* might apply to cases which were triable by Courts of limited jurisdiction. After careful consideration of the matter the Committee are of the view that the decisions of the Courts of limited jurisdiction should, in so far as such decisions are within the competence of the Courts of limited jurisdiction, operate as *res judicata* in a subsequent suit although the Courts of limited jurisdiction may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. A new Explanation to section 11 of the Code has been inserted accordingly."

It would be manifest from the above that the proposal to bring the execution proceedings within the ambit of section 11 of the Code was effectuated by inserting Explanation VII thereto. Similarly, the proposed intent of extending the strict rule of *res judicata* to every civil proceedings was constricted a little and was extended to only matters decided by a Court of limited jurisdiction and further the requirement that the subsequent suit should also have been triable by the court which decided the earlier proceeding was done away with. This was effectuated by inserting Explanation VIII to section 11 of the Code.

49. It is with the aforesaid back-drop of legislative history that the newly added Explanation VIII has now to be constructed. Inevitably one must turn to its specific language:—

> "An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

Now the crucial question herein is as to what did the legislature intend when it designedly used the expression "Court of limited jurisdiction" in the aforesaid provision. It bears repetition that the basic underlying idea was to extend the doctrine of *res judicata* to independent proceedings and at one stage it was proposed to bring every civil proceeding within its scope. However, this was perhaps considered to be too wide and it was, therefore, constricted to judicial or quasi-judicial proceedings before a Court of limited jurisdiction. The core of the question, therefore, is whether this expression includes within its ambit the Revenue Courts, Land Acquisition Courts, Administrative Courts, Insolvency Courts, Guardianship Courts, Probate Courts, etc. In my view, it does, and the expression has been clearly used in the larger sense.

50. Now the expression 'Court of limited jurisdiction' is not a novel concept but is a well-known one of judicial terminology and is a term of art. In the Corpus, Juris Secundum, Volume XXI, it is opined as follows :—

> "Where an Act confers on a court exclusive jurisdiction in certain cases, but abstain from conferring general jurisdiction, such court is one of limited jurisdiction."

And again—

> "Courts of limited or special jurisdiction are those, which can take cognizance of a few specified matters only; those which have only a special jurisdiction for a particular purpose or are clothed with special powers for the performance of specified duties beyond which they have no authority of any kind."

Again in the authoritative work of American Jurisprudence, Volume 14, it is stated as follows:—

> "Courts created by statute and not by the Constitution are tribunals of special and limited jurisdiction only. They can exercise only such powers as are directly conferred on them by legislative enactment and such as may be incidentally necessary to the execution of those powers...."

Then in Ballentine's Law Dictionary, a court of limited jurisdiction has been described as follows :—

> "Courts which are inferior or not of record, or not of general, but limited jurisdiction....."

Lastly in Aiyar's authoritative The Law Lexicon of British India, it is stated as follows :—

> *"Courts of general and Courts of limited or special jurisdiction,* Courts of general jurisdiction are courts which can take cognizance of all causes of a particular nature. Courts of limited or special jurisdiction are those which can take cognizance of a few specified matters only".

It would be evident from the above that the expression 'Court of limited jurisdiction' is used in contra-distinction to Civil Courts having unlimited general jurisdiction.

51. I would, therefore, hold that in view of the earlier state of the law; the legislative history and the subject and purpose of the amending provisions of 1976; the mischief which it had sought to correct; and the use of the phrase 'Court of limited jurisdiction' would all inevitably bring a Revenue Court and similar courts of special jurisdiction well within the ambit of the newly inserted Explanation VIII to Section 11 of the Code.

52. The aforesaid view is then well borne out by authority as well. In view of the relatively recent amendment, there is as yet a paucity of precedent directly on the point. However, this very question pointedly arose before a Division Bench in Nabin Majhi

v. *Tela Majhi and another* (51), and was answered in categoric terms as follows:—

> "What is then the meaning of the expression "a Court of limited jurisdiction"? In our view, Courts of limited jurisdiction are Courts other than the ordinary Civil Courts. These Courts are Revenue Courts, Land Acquisition Courts, Administrative Courts, Insolvency Courts, Guardianship Courts, Probate Courts etc. These Courts are to try certain specific matters and in that sense they may be said to be Courts of limited jurisdiction. These Courts are also Courts of exclusive jurisdiction in respect of the matters they are to try. The decisions of such Courts operated as *res judicata* in subsequent suits not by virtue of section 11 but on the general principles of *res judicata*. By enacting Explanation VIII, the legislature brought the decisions of such Courts within the purview of section 11. In other words, it is not necessary now to apply the general principles of *res judicata* but in view of Explanation VIII the decisions of the Courts of limited jurisdiction or exclusive jurisdiction will operate as *res judicata* in subsequent suits under section 11. The general principles of *res judicata* would apply where the former proceeding, is not a suit but section 11 would only apply where the two proceedings are suits. Under Explanation VIII, the provision of section 11 will apply to the subsequent suit when an issue has been heard and finally decided by a Court of limited jurisdiction in a former proceeding. There is a clear indication in that regard in Explanation VIII, for it does not say that the decision of an issue by a Court of limited jurisdiction has to be made in a former suit. This is also an indication that Explanation VIII does not contemplate that the two proceedings must be suits, but as stated already, the decision has been given in a former proceeding by a Court of limited jurisdiction and not in a former suit...."

It may also be briefly noticed that the aforesaid view was then followed in *Promode Ramjan Panerjee* v. *Nirapada Mondal* (52),

(51) A.I.R. 1978 Cal. 440.

(52) A.I.R. 1980 Cal. 181.

very recentiy the matter came up for consideration before the Division Bench of the Court in *Puthen Veettil Nolliyodan Devoki Amma and others* v. *Puthan Veettil Nolliyodan Kunhi Raman Nair and others* (53). Viewing the matter in the perspective of the recent insertion of Explanation VIII, the Division Bench went even further to hold that the expression 'Court of limited jurisdiction' would include within its ambit not only Courts of special and exclusive jurisdiction, but also a Civil Court of Limited pecuniary jurisdiction. It was observed as follows:—

> "....In our opinion the object and purpose underlying the introduction of Explanation VIII was much wider, namely, to render the principle of *res judicata* fully effective so that issues heard and finally decided between the parties to an action by any Court competent to decide such issues should not be allowed to be reagitated by such parties or persons claiming through them in a subsequent litigation.
>
> (8) It is true that while adding Explanation VIII Parliament has not deleted from the main body of the section the words "in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised". The retention of those words in the main body of the section, does provide room for the argument that only a restricted interpretation should be given to Explanation VIII. We are, however, of opinion that the correct mode of interpretation is to read the section in combination and harmony with Explanation VIII. The result that flows from such an interpretation is that a decision on an issue heard and finally decided by a Court of limited jurisdiction (which expression will include a Court of limited pecuniary jurisdiction) will operate as *res judicata* in a subsequent suit notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit. This, according to us, is the true effect of the amended provisions of Section 11 read along with Explanation VIII thereto."

It would thus be evident that the only precedents directly with regard to the newly inserted Explanation VIII are categoric that the

(53) A.I.R. 1980 Kerala 230.

phrase "Court of limited jurisdiction" would include within its ambit a Revenue Court.

53. Before parting with this aspect of the case, it is inevitably necessary to advert to the opinion recorded by my learned brother Goyal, J. on this point. He has summarily brushed aside this argument as not well conceived and taken the view that the expression 'Court of limited jurisdiction' refers only to civil courts having inferior pecuniary jurisdiction. With the greatest respect, I am unable to agree. As is evident from the judgment recorded by him, he has not adverted at all to the legislative history of the insertion of Explanation VIII to Section 11 of the Code, which was a true pointer to the purpose and object of the amendment. With great humility, it appears to me that the construction sought to be placed on the words 'Court of limited jurisdiction' by my learned brother Goyal, J. would defeat the very purpose of the amendment which expressly was to extend the principles of *res judicata* to independent proceedings of a judicial nature. Equally no reference has been made to the definition of the term of art which the legislature advisedly used by employing the phrase 'Court of limited jurisdiction' and its accepted meaning in judicial terminology. Confining the phrase 'Court of limited jurisdiction' again to merely civil courts would indeed be obliterating the basic distinction authoritatively laid betwixt the two. Equally no reference has been made to the considered view of the Calcutta and the Kerala High Courts which so far appear to be the only direct precedents on the point. Lastly, it appears to me that on the view taken by my learned brother Goyal, J., the phrase 'Court of limited jurisdiction' would in actual effect mean a "Civil Court of inferior pecuniary jurisdiction". I do not think that the two phrases can be equated or are synonymous. If the legislature had merely intended by the insertion of Explanation VIII to confine its operation to Civil Courts of inferior pecuniary jurisdiction, then it could have easily and advisedly used that terminology alone. With great humility, therefore, it appears to me that the narrowly constructed view of the phrase 'Court of limited jurisdiction' taken by my learned brother Goyal, J. is not tenable on principle and is also directly contrary to existing precedent.

54. To conclude on question No. (iv), it appears to be manifest that the newly added Explanation VIII to Section 11 of the Civil

Procedure Code would statutorily render the decision of Revenue Court on the issue of jural relationship between the parties as *res judicata* in a subsequent suit.

55. Now collating the distinct findings rendered above on questions Nos. (i), (ii), (iii) and (iv) formulated earlier in para No. 8 of this judgment, the answer to the question before the Full Bench is in evitably plain in favour of the appellants. However, before concluding it becomes necessary to advert briefly to some of the authorities relied on, on behalf of the respondents which find mention in the judgment of my learned brother Goyal, J. Before doing so, what calls for pointed notice is the fact that if the view, which I have taken on question No. (iv) above be correct, then all the earlier judgments prior to the insertion of Explanation VIII to Section 11 of the Code in 1976 cease to be relevant and can no longer hold the field in view of the meaningful change of law introduced thereby. As has been noticed earlier, authoritative judicial precedent from the very beginning had taken the view that the larger and the salutary principle of *res judicata* was not limited to the provisions of Section 11 of the Code and even where the same was not strictly applicable, the hallowed rule that a man should not be vexed twice for the same cause, was given effect to on the larger and analogous principles of *res judicata*. The legislature, while amending the Code of Civil Procedure in 1976 gave statutory recognition to the Judge-made-law and designedly widened the scope of Section 11 by bringing within its ambit the execution proceedings and the decisions of the 'Courts of limited jurisdiction' by inserting Explanations VII and VIII. Therefore, the judgments prior to 1976 which run contrary to the amendment are no longer good law. Therefore, it suffices to mention that on behalf of the respondents reliance could not be placed on any pre-amendment judgment whatsoever and the only precedents directly on the point of Explanations VII and VIII are those of Calcutta High Court in *Nabin Majhi* v. *Tela Majhi and another* (54- and *Promode, Ramjan Banerjee* v. *Nirapada Mondal* (55), and of the Kerala High Court in *Puthan Veettil Nolliyodan Deyoti Amma and others* v. *Puthen Veettil Nolliyodan Kunhi Raman Nair and others,* (56), which are an insurmountable barrier to the proposition canvassed on behalf of the respondent.

(54) A.I.R. 1978 Cal. 440.

(55) A.I.R. 1980 Cal. 181.

(56) A.I.R. 1980 Kerala 230.

56. Reference has been made and reliance placed on many cases under the various rent laws by my learned brother Goyal, J. As I said at the out-set, the question before us is precisely and pristinely with regard to the Revenue Courts, which are courts of law *stricto sensu*. Therefore, attempting to equate them in all respects, with a Rent Controller under the various laws (and who within this jurisdiction have been authoritatively held to be *persona designata*) indeed tends to warp the crucial issue before the Full Bench. As said earlier, I would eschew hazarding an opinion on a question not directly before the Bench and therefore, deem it unnecessary to individually deal with cases under the rent laws. I may say that in the present case, we are not called upon to examine the correctness and otherwise of their ratios and therefore, do not in any way share the doubts of my learned brother Goyal, J. with regard to them.

57. With regard to the reliance on a number of cases under the rent laws and other statutes by way of analogy on behalf of the respondent, it becomes necessary to recall the celebrated dictum of Lord Halsbury in *Quinn* vs. *Leathem*, (House of Lords), as under :—

> "..... The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may deem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. .....".

Expressly quoting and approving the above, their Lordships in *State of Orisso* v. *Sudhansu Sekhar Misra and others*, (57), have observed as follows :—

> "..... A decision is only an authority for what is actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it .....

(57) 1901 A.C. 495.
(57-A) 1968 S.C. 647.

"..... It is not a profitable task to extract a sentence here and there from a judgment and to built upon it ....."

In view of the above, it is plain that a mere passing observation or a remote analogy cannot cover the point before us when the true *ratio decidendi* of those cases is not applicable to it. This appears to be particularly true to a passing equivocal observation with regard to the question of *res judicata* in *Om Parkash Gupta* v. *Dr. Rattan Singh and another,* (58). In the present judgment which perhaps already errs on the side of prolixity, I would refrain from individually distinguishing the authorities cited on behalf of the respondent and content myself with the categoric observation that they appear to me as rather wide of the mark.

58. The vehement reliance of the learned counsel for the respondent on the well known dictum of Lord Esher M.R., in *The Queen* v. *The Commissioners for Special Purposes of the Income-tax,* (59), and some favour which it seems to have found with my learned brother Goyal, J., then calls for some notice. There is and can possibly be no quarrel with the sound and authoritative proposition laid down by Lord Esher M.R. in the aforesaid case, which has repeatedly been approved by their Lordships of the Supreme Court. Therein he observed as follows :—

"..... But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on finding that it does exist, to proceed further or do something more When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves "jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of

(58) 1963 P.L.R. 543.

(59) 1888 Q.B. 313.

> the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction.....".

I am clearly of the view that the Revenue Courts expressly created by the statutes fall squarely within the afore-quoted observations.

59. Before I close this judgment, it calls for notice that perhaps prior to the insertion of Explanations VII and VIII to Section 11 in 1976 and the binding precedents of their Lordships of the Supreme Court making a refreshing and meaningful extension of the larger and analogous principle of *res judicata* culminating with the decision in *Lal Chand (dead) by L. Rs. and others* v. *Radha Kishan*, (60), there might well have been some conflict of judicial precedent on the point. However, it appears to me that now in view of the aforesaid two factors, there is room for none. Nevertheless, assuming entirely for argument sake that two closely matched views were perhaps possible, one is called upon to decide, which of the two is to be adhered to. Long before the advent of the Constitution, Dalip Singh, J. in *Daulat Ram* v. *Munshi Ram and others*, (61), had commented in the following words on the anomaly of taking the view that the decision of an issue before it by a competent Revenue Court would not be *res judicata* in a subsequent civil suit:—

> "..... The Revenue Court proceeded to decide the suit and gave a decision thereon. It therefore had jurisdiction to decide what it decided. This being so, its decision is binding on the Civil Court so far as the issue raised than is raised again, and therefore the principle embodied in *Gokul Mandar* v. *Pudmanun Singh*, (62), does not apply to the decisions of Revenue and Civil Courts. Were this not so, all decisions of Revenue Courts or Civil Courts could be re-argued in Civil or Revenue Courts on the ground that the decision in the previous suit was not *res judicata*, for by the statute itself when their jurisdictions are exclusive it would only be a question of framing the

(60) A.I.R. 1977 S.C. 789.
(61) A.I.R. 1932 Lab. 623.
(62) I.L.R. 29 Cal. 707.

suit in such a fashion as to bring it within the jurisdiction of one or the other Court, thereby rendering the previous decision in-operative.

I, therefore, hold that the present issue is *res judicata*, and the plaintiff's appeal fails and is dismissed with costs. .....

60. Much water has flown below the bridges since the aforesaid meaningful observations were made. Now under the Constitution, decisions of the revenue tribunals are today subject to the jurisdiction of the High Court under Articles 226 and 227 and thereafter in terms amenable to the Special Leave jurisdiction of their Lordships of the Supreme Court. On the view taken by my learned brother Goyal, J. it would be possible for a cantankerous litigant to carry a *lis* through the long hierarchy of courts of revenue jurisdiction from the Assistant Collector, the Collector, the Commissioner, and the Financial Commissioner, right upto the jurisdiction of the High Court under Article 226 of the Constitution and it may even be to their Lordships of the Supreme Court under Article 136 thereof, and thereafter set the whole thing at naught by instituting a fresh suit in a Civil Court to re-agitate the issue of the relationship of landlord and tenant. Thereby he could launch on another series of actions through the hierarchy of Civil Courts right up to the final Court. The disastrous and anomalous consequences of such a course have only to be visualised. This may well create a lawyers' paradise but would indeed be the poor litigants purgatory. In such a situation which of the two views should be preferred in order to advance the hallowed rule that the citizen must never be vexed twice for the same cause, appears to me as obvious.

61. To finally conclude, I would return the answer to the question before us, as formulated in para No. 7 of this judgment in the affirmative and hold that the judgment of a Revenue Court of competent jurisdiction under Section 77 of the Punjab Tenancy Act, on the point of relationship of landlord and tenant, between the parties would operate as *res judicata* in a subsequent Civil suit.

62. The case should now go back for disposal on merits to the learned Single Judge in the light of the aforesaid answer to the pristinely legal question, which was referred to us.

J. V. Gupta, J.

63. I have the privilege of perusing both the judgments, rendered separately, by the learned Chief Justice and S. P. Goyal, J.

64. It is true that the question, as framed by my learned brother, Goyal, J., has not, in terms, arisen from the facts of the two regular second appeals before us, and, therefore, under the circumstances, the question, as formulated by Hon'ble the Chief Justice, seems to be the correct one. The moot point, thus, left in the case is whether the revenue Court, under section 77 of the Punjab Tenancy Act (hereinafter called the Act) is competent and has the jurisdiction to decide the jural relationship of landlord and tenant between the parties when the same is denied by another party, or putting it differently, can it be said that as and when such a relationship is denied by either party, can the revenue Court go into that matter at all.

65. As a matter of fact, the Act proceeds on the assumption that such a relationship exists between the parties. If it is denied, the revenue Court may, in a given case, determine the question in order to assume jurisdiction to grant the necessary relief, which relief is only within the competence of that Court under section 77 of the Act, but it does not mean that any such decision relating to the jural relationship of landlord and tenant is final and cannot be adjudicated upon in a civil Court. Suppose, in a given case, the revenue Court, comes to the conclusion that no such relationship exists, then the plaint will have to be returned for presentation to a proper Court. In such a contingency, the civil Court, when approached, may come to the conclusion that the relationship between the parties is that of a landlord and tenant and any such decision rendered by the civil Court would be binding on the parties as well as on the revenue Court. If a decision of the revenue Court, given earlier, holding that no relationship of landlord and tenant exists between the parties, is not binding on the Civil Court, or does not operate as *res judicata* between the parties, then how the decision holding the existence of the relationship of landlord and tenant, can be said to be final and binding between the parties?

66. Moreover, it may be high-lighted here that the revenue Court is not bound to decide the disputed question of jural relationship of landlord and tenant between the parties in case it is of the

opinion that it can be properly decided by a civil suit. It is in this context that it is said that the revenue court has the jurisdiction or, in other words, it may decide the issue if it is so raised by a party because the mere denial of landlord's title would not bar the jurisdiction of a revenue Court to proceed with the suit in order to grant the necessary relief under the Act. To put it more specifically, if it is held that the revenue Court has the jurisdiction to decide the issue of relationship of landlord and tenant between the parties, then, under all circumstances, the Court is bound to decide the same and it will have no jurisdiction to refer the parties to a civil Court even if it finds that the matter can be properly decided by a Civil Court. In this view of the matter, it cannot be held that even if the revenue Court decides the issue of relationship of landlord and tenant, it will operate as *res judicata* between the parties in a subsequent suit filed in the civil Court. Reference in this behalf may be made to *Jia Lal and another* v. *The State of Haryana and others*, (63) and *Khazan Singh and another* v. *Dalip Singh and another*, (64). In paragraph 8 of the judgment in the latter decision, it was held,—

> "Section 77 of the Punjab Tenancy Act gives exclusive jurisdiction to the Revenue Courts in relation to the various disputes between the landlord and the tenant, but it is now well-settled that once the relationship of landlord and tenant is disputed, then the Revenue Court as such has no jurisdiction to deal with the matter. This dispute can be settled only by a civil Court. In *Shri Raja Durga Singh of Solan* v. *Tholu and others* (65), the Supreme Court held as follows :—
>
> 'Every item in all the three groups of sub-section (3) of section 77 of the Punjab Tenancy Act relates to a dispute between tenants on the one hand and the landlord on the other. There is no entry or item relating to a suit by or against a person claiming to be a tenant and whose status as a tenant is not admitted by the landlord. It would, therefore, be reasonable to infer that the legislature barred only those suits from the cognizance

(63) 1971 Pb. L. Journal 81.
(64) 1969 Pb. Law Journal 459.
(65) 1962 P.L.R. 837=1962 P.L.J. 88.

of a Civil Court where there was no dispute between the parties that a person cultivating land or who was in possession of land was a tenant.'

It was argued on the same lines that if the relationship is disputed, as it is in the present case in view of the ejectment order the only Court which can have jurisdiction finally to decide the matter is the Civil Court."

67. As regards the interpretation of the newly added Explanation VIII to section 11, Code of Civil Procedure, suffice it to say, that even if it may be assumed that the expression "Court of limited jurisdiction", includes a revenue Court as well, it does not render the decision on the issue of jural relationship in between the parties, by a revenue Court, *res judicata* in a subsequent suit as a revenue Court cannot be held to be "competent" to decide the same, as discussed earlier.

68. In the ultimate analysis, with due deference to the learned Chief Justice, I agree with the conclusions reached by S. P. Goyal, J., so far as the question of revenue Court is concerned and as regards the matter of Rent Controller, I refrain from hazarding any answer and reserve the same for some appropriate case.

ORDER OF THE COURT

69. In accordance with the majority view it is held that the decision of the Revenue Court under section 77 of the Punjab Tenancy Act upon the relationship of landlord and tenant between the parties would not operate as *res judicata* and would be open to challenge in a subsequent suit or any other collateral proceedings between the parties.

70. The case would now go back for disposal on merits to the learned Single Judge in the light of the aforesaid answer to the legal question.

N. K. S.

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