

Salig Ram v. Munshi Ram and others
 Bishan Narain, J.

or advert to *Majja Singh and others v. Ram Singh* (1), or *Jagat Singh and others v. Ishar Singh* (2), and it is possible that they did not consider these judgments as relevant for decision in that case. In any case, it is not open to us to alter the custom which has been judicially recognised since 1879 by applying *Teja Singh's case* (3), on analogous or equitable grounds. I am of the opinion that the decision reported in *Teju alias Teja Singh v. Kesar Singh and others* (3), is of no assistance to the defendant in this case.

It is further argued by Mr. Shamair Chand that Hans Raj predeceased Nanak Chand and, therefore, Munshi Ram is not entitled to succeed to the estate left by Nanak Chand. There is no force in this contention. On the principles of representation Munshi Ram stands in the shoes of Hans Raj and is entitled to succeed to the estate left by Nanak Chand as his father would have succeeded if he had been alive at the time of the death of Nanak Chand.

The result is that this appeal fails and is hereby dismissed and the judgment of Soni, J., is confirmed. As the point involved was not free from difficulty, I leave the parties to bear their own costs throughout.

Bhandari, C.J.

BHANDARI, C. J.—I agree.

APPELLATE CIVIL

Before Kapur, J.

DES RAJ,—Defendant-Appellant.
 versus

RAM SINGH AND OTHERS,—Respondents.

Regular Second Appeal No. 480 of 1949.

1954

July, 7th

Punjab Restitution of Mortgaged Lands Act (IV of 1938), Sections 2, 7, and 12—Decision of the Collector as to whether the mortgage is subsisting or not, whether final—Jurisdiction of the Civil Court to examine the correctness of the decision how far barred.

(1) 43 P.R. 1879
 (2) I.L.R. 11 Lah. 615
 (3) 1953 P.L.R. 445

Held, that it could not have been the intention of the Legislature to give to the statutory tribunal, that is, the Collector, the power to decide in all cases the facts rightly or wrongly and thus arrogate to himself a jurisdiction which did not vest in him, and it is one of the functions of the Courts to see that all administrative tribunals act within their jurisdiction. As a matter of fact, it is for the Courts to canalise the jurisdiction of the administrative tribunals and to see that they do not overflow the banks. Therefore it cannot be said that the Collector had exclusive jurisdiction and the civil Court has no jurisdiction to see whether the impugned mortgage was subsisting at the date when the Collector exercised jurisdiction.

Allah Bakhsh v. Rai Sahib Tek Chand. (1). followed. *Rai Brij Raj Krishna's case* (2), *N. R. Ponnuswami v. Returning Officer, Namakkal constituency* (3), *The Queen v. Commissioners for Special Purposes of the Income-tax* (4), *the Colonial Bank of Australasia v. Willian* (5); *Wolverhampton New Water Works Co. v. Hawkesford* (6); *Theberge v. Laundry* (7); *Lachhman Singh v. Natha Singh* (8), *K. L. Gauba v. Punjab Cotton Press* (9); *The Secretary of State for India v. Mask and Co.* (10) referred to.

Second appeal from the decree of Shri Sheo Parshad, Senior Sub-Judge, with enhanced appellate powers, Karnal, dated the 4th March, 1949, affirming that of Shri Pitam Singh, Sub-Judge, 1st Class, Karnal, dated the 30th December, 1948, decreeing the claim with costs throughout against defendant No. (1).

M. L. SETHI, for Appellant.

TEK CHAND, for Respondents.

JUDGMENT

KAPUR, J. This is a defendant's appeal against an appellate decree of Mr. Sheo Parshad, Senior Subordinate Judge, dated the 4th March, 1949, decreeing the plaintiffs' suit for declaration and injunction.

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(1) 48 P.L.R. 498

(2) 1951 S.C.R. 145

(3) 1952 S.C.R. 218

(4) 21 Q.B.D. 313 at p. 319

(5) 5 P.C. 417, at p. 443

(6) 6 C.B.(N.S.) 336, 356

(7) (1876) 2 App. Cas. 102

(8) I.L.R. 1941 Lah. 71, 88 (F.B.)

(9) I.L.R. 1941 Lah. 524, 529 (F.B.)

(10) I.L.R. 1940 Mad. 399, 614.

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Somewhere before 1882, but the Courts have taken it to be 1882, one Basti mortgaged the land in dispute to the predecessors-in-interest of Dalel Singh and others. On the death of Basti without any issue or a widow his estate was mutated in favour of the *shamilat patti* which included Des Raj and others or their predecessors-in-interest. Des Raj and others applied for restitution of the mortgage under the Restitution of Mortgaged Lands Act which was granted by the Collector on payment of some compensation. The successors of the mortgagees, Dalel Singh and others, brought a suit for declaration and for injunction. The trial Court held that the mortgage was more than sixty years old when the suit was brought and therefore the Collector could not make an order for restitution, and this on appeal was confirmed by the Senior Subordinate Judge.

In this second appeal the defendant has raised two points. Firstly, he submits that if the mortgage was subsisting when the Act came into force, i.e., in 1938, then the Collector had jurisdiction, and, secondly, that no civil suit can be brought because the Restitution of Mortgaged Lands Act is a complete code by itself and it confers exclusive jurisdiction on the Collector to decide the question whether the mortgage still subsists or not.

As to the first point, I do not think it necessary to say very much because it has been held in this Court that the time to be taken is from the date of the filing of the suit and not from the coming into force of the Act, and I would, therefore, overrule that contention.

The next question which has been raised boils down to this that the civil Courts have no jurisdiction to interfere with the decision given by

the Collector as to the subsisting nature of the mortgage. Section 2 of the Restitution of Mortgaged Lands Act hereinafter referred to as the Act provides that the Act applies to any subsisting mortgage which was effected prior to the 8th June, 1901, and according to section 7 the applicability of the Act is dependent on a finding given by the Collector that the mortgage is one to which the Act applies, and then the Collector has to proceed in accordance with the procedure laid down in the Act. By section 12 of the Act the jurisdiction of civil Courts to interfere with the orders of the Collector is excluded and it was contended that this Act is a code which supplies the remedy, lays down the procedure to be followed and excludes the jurisdiction of civil Courts and is, therefore, a complete code by itself within the rule laid down by the Supreme Court in *Rai Brij Raj Krishna's case* (1), and in *N. P. Ponnuswami v. Returning Officer, Namakkal constituency* (2).

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The former case was under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947, in which eviction had been ordered by the Controller on the ground of non-payment of rent, and in a suit brought to set aside that order, it was held that even if the Controller had wrongly decided the question as to the non-payment of rent, his order for eviction cannot be questioned in a civil Court. Reliance was placed in that case on the statement of the law by Lord Esher M. R. in *The Queen v. Commissioners for Special Purposes of the Income-Tax* (3), and to *The Colonial Bank of Australasia v. Willan* (4), where the Privy Council

(1) 1951 S.C.R. 145

(2) 1952 S.C.R. 218

(3) 21 Q.B.D. 313 at p. 319

(4) 5 P.C. 417 at p. 443

Des Raj dealing with the principles on which a writ of certiorari may be issued said—
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“Accordingly, the authorities * * * establish that an adjudication by a Judge having jurisdiction over the subject-matter is, if no defect appears on the face of it, to be taken as conclusive of the facts stated therein, and that the Court of Queen’s Bench will not on certiorari quash such an adjudication on the ground that any such fact, however essential, has been erroneously found.”

Thus, according to this, if there is a defect apparent on the face of the record a civil Court will have the power to interfere. Besides the eviction of tenants on certain grounds has been created by the Bihar Rent Control Act and the remedy has also been given under that Act, and therefore under the rule which I shall refer to presently the Controller has exclusive jurisdiction to try and decide question in regard to evictions.

The second case relates to an election matter and Fazl Ali, J., was of the opinion that if falls within the third class of cases given in the judgment of Willes, J., in *Wolverhampton New Water Works Co. v. Hawkesford* (1), where that learned Judge said—

“But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.....The remedy “provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases

of the second class. The form given by the statute must be adopted and adhered to."

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Reference was also made in that case to a judgment of Lord Cairns in *Theberge v. Laundry* (1) where his Lordship had said—

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"A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction, by whomsoever it is to be exercised, should be exercised in a way that should as soon as possible become conclusive : and enable the constitution of the Legislative Assembly to be distinctly and speedily known."

It was, therefore, held by the Supreme Court because of the provisions of Article 329 (b) of the Constitution of India and Section 80 of the Representation of the People Act, 1951, the High Court had no jurisdiction to interfere with the order of the Returning Officer, and also, it was stated that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of.

Now, these were special cases dealing with special branches of law for which the Legislature has provided special remedies, but there is another class of cases which lays down that it is for the Courts of general jurisdiction to examine whether the provisions of a special Act have been complied with or the statutory tribunal created by the special Act has acted within the powers conferred on

(1) (1876) 2 App. Cas. 102

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it : see *Lachhman Singh v. Natha Singh* (1), and *K. L. Gauba v. Punjab Cotton Press* (2), which are in accord with the rule laid down by the Privy Council in *The Secretary of State for India v. Mask & Co.* (3), where Lord Thankerton said—

“It is settled law that the exclusion of jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well-settled that even if jurisdiction is so excluded, the civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.”

and the statement in the *Colonial Bank of Australasia v. Willan* (4), is to the same effect.

Indeed, it could not have been the intention of the Legislature to give to the statutory tribunal, that is, the Collector, the powers to decide in all cases the facts rightly or wrongly and thus arrogate to himself a jurisdiction which did not vest in him, and it is one of the functions of the Courts to see that all administrative tribunals act within their jurisdiction. As a matter of fact, it is for the Courts to canalise the jurisdiction of the administrative tribunals and to see that they do not overflow the banks. In my opinion, therefore, it cannot be said that the Collector had exclusive jurisdiction and the civil Court has no jurisdiction to see whether the impugned mortgage was subsisting at the date when the Collector exercised jurisdiction. The Lahore High Court in *Allah Bakhsh v. Rai Sahib Tek Chand* (5), has taken this view and I am in respectful agreement with it.

(1) I.L.R. 1941 Lah. 71, 88, (F.B.)

(2) I.L.R. 1941 Lah. 524, 529, (F.B.)

(3) I.L.R. 1940 Mad. 599, 617

(5) 5 P.C. 417, 443

() 48 P.L.R. 498

As the matter is being decided at a time when the Constitution of India has come into force the special jurisdiction of the Collector may well be an infringement of Article 14 of the Constitution and therefore hit by Article 13 of the Constitution, but as the matter has not been argued I prefer not to express any final opinion on this point.

I would, therefore, dismiss this appeal with costs throughout.

APPELLATE CIVIL

Before Kapur, J.

MST. ORKU AND OTHERS—Appellants.

versus

MST. BHODI,—Respondent.

Regular Second Appeal No. 396 of 1953.

Custom (Punjab)—Tarkhans of Dehra Tehsil in Kangra District—Whether governed by Custom. Hindu Law—Mother—Remarriage—Whether dis-entitles the mother to succeed to the estate of her son.

1954

July, 2nd

Held, that the Tarkhans of Dehra Tehsil in the Kangra District are governed by Hindu Law and not by Custom, and under the Hindu Law a mother though remarried would be entitled to succeed to the estate of her son.

Regular Second Appeal from the decree of Shri Gulal Chand Jain, Senior Sub-Judge, Kangra at Dharamsala, dated the 18th June, 1953, affirming that of Shri Pritam Singh, Sub-Judge, 1st Class, Kangra, dated the 30th January, 1953, granting the plaintiff a decree for possession of the land in suit against the defendants with costs.

M. C. SUD, for Appellants.

D. K. MAHAJAN, for Respondent.

JUDGMENT.

KAPUR, J., This is a defendants' appeal against an appellate decree of the Senior Subordinate Judge, Dharamsala, dated the 18th June, 1953, confirming the decree of the trial Court and holding that the parties are governed by Hindu Law. The trial Court had decreed the plaintiff's suit.

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