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civilised system of law is bound to provide remedies for what has been called unjust enrichment or unjust benefit, and according to the English law which has been incorporated in India, a remedy is provided for restitution under section 65 of the Indian Contract Act in such transactions styled as quasi-contracts.

In this view of the matter. I would uphold the decision of the lower appellate Court and dismiss this appeal with costs. This judgment would not stand in the way of the appellant Charanji Lal from claiming the pipes should he be found entitled to recover their possession.

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APPELLATE CIVIL.

Before Shamsher Bahadur, J.

CHAUDHRY AND ANOTHER,—Appellants.

...
versus

DUNI CHAND AND ANOTHER,—Respondents.

Regular Second Appeal No. 378 of 1959.

1959

Oct., 13th

Punjab Tenancy Act (XVI of 1887)—Sections 50, 50-A and 77—Tenant ejected without consent filing suit for recovery of possession within one year of ejection—Whether exclusively triable by a Revenue Court—Decision arrived at by Revenue Court in such suit—Whether operates as res judicata.

Held, that a suit by a tenant, who has been dispossessed without his consent of his tenancy, for recovery of possession or occupancy, filed within one year of his dispossession, is exclusively triable by a Revenue Court under the provisions of sections 50, 50-A and 77 of the Punjab Tenancy Act. Any decision arrived at by a revenue court in such a suit is binding on the parties and would operate as *res judicata*.

Note.—L.P.A. No. 440 and 441 of 1959 filed against this Judgment was dismissed on 22nd January, 1960 by Mehar Singh and Gosain, JJ.— [Editor].

Second Appeal from the decree of the Court of Shri Manohar Singh, District Judge, Hoshiarpur at Dharamsala; dated the 18th day of December, 1958, affirming with costs that of Shri Sewa Singh. Senior Sub-Judge, Kangra, at Dharamsala, dated the 24th February, 1958, granting the plaintiff a declaratory decree as prayed for and leaving the parties to bear their own costs.

M. R. MAHAJAN, for Appellants.

Y. P. GANDHI, for Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—This judgment would dispose of R.S.A. No. 378 of 1959, and S.A.O. No. 9 of 1958. Both these appeals arise out of a suit brought by Duni Chand, plaintiff-respondent for a declaration that he is in possession of 19 *kanals* 8 *marlas* of land leased to him by the landlord Raja Harminder Singh of Dada Siba in Kangra District.

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The estate of Raja Harminder Singh was originally under the Court of Wards and it was given on lease to the appellant Chaudhri Ram in the years 1951-52 and 1952-53. While the estate was still under the Court of Wards, the plaintiff Duni Chand took the lease of the land in auction for the year 1953-54. It is the case of Duni Chand that he acquired peaceful possession of the land from Chaudhri Ram who delivered it voluntarily. On the other hand, it is asserted by Chaudhri Ram that he was forcibly dispossessed. Nothing really turns on the question whether the possession was taken peacefully or by force. To seek his redress, Chaudhri Ram repaired to the revenue Court where he filed his suit within one year of his dispossession. The Assistant Collector by his order dated 1st of February, 1955, (Exhibit D. 1), decreed the suit of Chaudhri Ram and it was directed that

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he should be put in possession of the suit land under section 50 of the Punjab Tenancy Act.

Thereafter, the present suit was instituted by Duni Chand for a declaration that he is in possession of the suit land and is not liable to be evicted. It was pleaded by Chaudhri Ram that the suit was not triable by civil Court and in any case it was barred under the provisions of section 11 and order 2, rule 2, Civil Procedure Code. A plea of limitation was also raised. The learned trial Judge found that the Civil Court had jurisdiction to try the suit but it was barred under the rule of *res judicata*. The trial Judge further held that the decree of the revenue Court was a final adjudication between the parties and the matter could not be re-agitated. The question of limitation was decided in favour of Duni Chand, plaintiff. In the appeal preferred by Duni Chand, Bakhshi Manohar Singh, District Judge, took a different view and held that as no relationship of landlord and tenant existed between the parties, the suit could not be tried by a revenue Court. The plea of *res judicata*, according to the District Judge, was not available and the suit was, therefore, remanded to the trial Court for decision on merits. S.A.O. 9 of 1958, is directed against the judgment and decree of the District Judge, Hoshiarpur, dated 20th of January, 1958, remanding the suit under Order 41, rule 23 of the Code of Civil Procedure.

After remand the short point for determination for the trial Court was whether the plaintiff Duni Chand was in possession of the land in dispute as a tenant under Raja Harminder Singh. This question was answered in the affirmative and a decree was accordingly passed in favour of the plaintiff on 24th of February, 1958. Chaudhari Ram having failed in his appeal before the learned

District Judge, Hoshiarpur, has filed regular second appeal No. 378 of 1959, in this Court.

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The decision in both these appeals turns on the question of competency of the revenue Court which decreed the suit of Chaudhri Ram for possession on 1st of February, 1955, (Exhibit D. 1), Section 50 of the Punjab Tenancy Act under which the suit was entertained by the revenue Court is as follows :—

“In either of the following cases, namely :—

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

(b) * * * * *
the tenant may, within one year from the date of his dispossession or ejection, institute a suit for recovery of possession or occupancy, or for compensation, or for both.”

According to Mr. Mahajan, the counsel for the appellant, all that a person has to show is that he has been a tenant and has been dispossessed of his tenancy within one year from the date of institution of the suit. Clause (g) of sub-section (3) of section 77 of the Punjab Tenancy Act further provides that “suits by a tenant under section 50 for recovery of possession or occupancy, or for compensation, or both shall be instituted in and heard and determined by revenue Courts, and no other Courts shall take cognisance of any such dispute or

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matter with respect to which any suit might be instituted". The counsel argues that these provisions of the Punjab Tenancy Act leave no room for speculation whether the suit is to be entertained by a Civil Court or a revenue Court. He submits that the matter is really beyond any controversy.

Mr. Gandhi for Duni Chand, respondent, on the other hand, contends that the provisions of the Punjab Tenancy Act are applicable only to subsisting tenancies and has relied for his support on sub-section (5) and sub-section (8) of section 4 of the Punjab Tenancy Act in which a tenant means "a person who holds land under another person, and is, or but for a special contract would, be, liable to pay rent for that land to that other person." In sub-section (8) tenancy has been defined to mean "a parcel of land held by a tenant of a landlord under one lease or one set of conditions". Chaudhri Ram, admittedly was deprived of his possession and at the time of institution of his suit in the revenue Court, he did not hold any land for which he was liable to pay rent and could not, therefore, invoke the provisions of section 50 of the Punjab Tenancy Act in his favour. This argument, in my view, overlooks altogether sections 50 and 50-A of the Punjab Tenancy Act which are designed to protect a tenant who has been dispossessed forcibly and brings a suit within one year of his dispossession. Under section 50-A of the Punjab Tenancy Act "no person whose ejectment has been ordered by a Revenue Court..... under section 50, may institute a suit in a Civil Court to contest his liability to ejectment, or to recover possession or occupancy rights, or to recover compensation". The authorities cited by Mr. Gandhi in support of his proposition clearly lay down that the rule with regard to subsisting tenancy cannot be applied in cases which are

governed by sections 50 and 50-A of the Punjab Tenancy Act. In *Parmanand and others v. Rakha and others* (1), Kapur, J., while holding that "a tenant is a person who has a right to hold possession and holds it and, therefore, would not include a person who has been forcibly dispossessed" observed that "no doubt for a period of one year, by operation of section 50 of the Punjab Tenancy Act, he continues to be a tenant of his landlord but that is only under the special provisions of the Act". It is only if a person so dispossessed does not avail of his remedy of instituting a suit in a revenue Court within the statutory period of one year that he puts himself out of the ambit of the definition of a tenant within the meaning of the Punjab Tenancy Act. It is not disputed in the present case that Chaudhri Ram brought a suit in the revenue Court within one year of his dispossession. By filing a suit in the revenue Court he became amenable to the exclusive jurisdiction of that Court under sections 50-A and 77 of the Punjab Tenancy Act. Again, Kapur, J., in *Kidar Nath v. Dr. Prema Nand* (2), while observing that "the word "holds" in section 4(5) must mean a person who actually holds and not a person who held or has or had a right to hold" he clearly stated that "the jurisdiction of Civil Courts is not to be excluded unless the statute expressly or by necessary intendment takes away that jurisdiction". In the instant case, the jurisdiction is expressly taken away by clause (g) of sub-section (3) of section 77 and section 50-A of the Punjab Tenancy Act. *Dalip Singh v. Court of Wards* (3), is yet another authority on which reliance has been placed by Mr. Gandhi. Harnam Singh, J., while observing that "the continuance of possession (actual or constructive) is necessary for the continuance of

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(1) A.I.R. 1952 Punjab 94
(2) A.I.R. 1952 Punjab 185
(3) A.I.R. 1952 Punjab 283

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relation between landlord and tenant" under the Punjab Tenancy Act, he was careful to point out that it was so necessary in cases for which the Legislature has laid down the contrary rule, for example, in cases covered by sections 50 and 50-A of the Punjab Tenancy Act. This trilogy of judgments of the Punjab High Court in 1952, were based on the Full Bench authority of Tek Chand, Dalip Singh, Bhide, Abdul Rashid and Muhammad Munir, JJ., in *Baru and others v. Niadar and others* (1), where it was held that "the word "holds" in section 4(5) does not include a mere "right to hold" but means "actually or constructively "holds."

The analogy of the learned District Judge drawn from sections 111 and 116 of the Transfer of Property Act, in my opinion, is wholly inapposite. The provisions of the Transfer of Property Act apply only to limited extent in the State of Punjab. By a notification of 26th of March, 1955, only sections 54, 107 and 123 of the Transfer of Property Act have been made applicable to the State of Punjab. The revenue Court, in my opinion, not only had jurisdiction to try the suit instituted by Chaudhri Ram but it had also exclusive jurisdiction to try this suit. On that conclusion, it is not open to dispute that a decision arrived at by a revenue Court is binding on the parties and would operate as *res judicata*.

In this view of the matter, the decision of the Senior Subordinate Judge, dated 16th of January, 1957, holding that the suit is barred under section 11 of the Civil Procedure Code is correct and must be upheld. The order of remand of the learned District Judge, Hoshiarpur, dated 20th of January, 1958, cannot, therefore, be sustained nor can the

(1) A.I.R. 1942 Lah. 217

ensuing decree of the District Judge, dated 18th of December, 1958, be upheld. Both the appeals are, therefore, allowed. The judgment and decree of the Senior Subordinate Judge, Hoshiarpur, dated 16th of January, 1957, is upheld and the suit of the plaintiff Duni Chand dismissed. I would leave the parties to bear their own costs.

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CIVIL WRIT.

Before D. Falshaw and G. L. Chopra, JJ.

GOVERDHAN AND OTHERS,—*Petitioners.*

versus

THE DEPUTY CUSTODIAN-GENERAL OF EVACUEE
PROPERTY AND ANOTHER,—*Respondents.*

Civil Writ No. 123-D of 1957.

*Administration of Evacuee Property Act (XXXI of 1950)
Section 18—Object of—Right to occupy the sites of houses
by non-proprietors—Whether property within the mean-
ing of the Act—Rattigan' Digest of Customary Law—
Paras 236 and 237 ordinary rules of Customary Law relating
to abandonment—Whether govern the cases of forced
abandonment by evacuees in consequence of the partition
of India.*

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Held, that the object of the Administration of Evacuee Property, Act, 1950, was to safeguard the property of Muslim evacuees principally for the purpose of rehabilitating and accommodating the displaced persons who came over to this side and were evacuees from what is now Pakistan.

Held, that the right of a non-proprietor to occupy a village site is clearly a right in property and so is property within the meaning of the Administration of Evacuee Property Act, 1950.