

Custodian,  
Evacuee  
Property  
and others  
v.

Firm Dhaam  
Paul Asu Ram  
and others

G. D. Khosla, C. J.

subsequent objection petition is clearly barred by time, and further it cannot be entertained on the ground that the matter has already been disposed of.

In this view of the matter, I do not find any conflict between section 17(2) on the one hand and the law of limitation and the principle of *res judicata* on the other. The provisions of section 4, therefore, do not come into play and it cannot be argued that section 17 abrogates the law of limitation in execution proceedings or that it abrogates the principle of *res judicata*. The objections of the Custodian were rightly dismissed by the learned District Judge and this appeal must fail. I would accordingly dismiss it with costs.

Tek Chand, J.

. TEK CHAND, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before D. K. Mahajan, J.

HANS RAJ AND OTHERS,—Appellants

versus

SMT. BRAHMI DEVI,—Respondent

Regular Second Appeal No. 703 of 1955.

1960  
Jan., 18th

*Punjab Tenancy Act (XVI of 1887)—Sections 42, 43, 44, 47, 49, 74 and 88—Landlord and tenant—Relation between—When terminated—Whether on the passing of the decree or order of ejection or on actual dispossession in execution of that decree or order—Tenant dispossessed in execution of the decree of ejection at a time outside the period prescribed in section 47—Whether legal—Delivery of possession to the landlord without assessing the standing crop—Whether legal—Symbolical possession—Effect of.*

Held, that the relationship of landlord and tenant comes into being by contract or by statute and the landlord has an

inherent right to eject the tenant in accordance with the terms of the contract or of the law under which the tenancy comes into being. In case the tenant does not vacate the tenanted property voluntarily after his tenancy comes to an end, the remedy of the landlord is to eject him through court. Therefore, the moment the Court on the landlord's petition passes a decree or order for ejectment, it clearly does no more than to declare that henceforth the parties cease to be landlord and tenant. The fact that the decree or order has to be executed in order to dispossess the tenant and put the landlord in physical possession does not and cannot mean that till the decree or order is not executed the status of the parties *qua* one another has not been determined. The decree or order determines the rights of the parties *inter se* and the execution of that decree or order merely gives effect to that determination. Thus it cannot but be held that the final order of ejectment in the instant cases put an end to the relationship of landlord and tenant and the tenants cannot after the date of the order be held to be occupancy tenants on the ground that they remain in possession or that they were illegally dispossessed in execution of the order.

*Held*, that the court or the officer passing the decree or the order can, under section 47 of the Punjab Tenancy Act, 1887, direct that the landlord be put in possession at any time and not necessarily during the time specified in the section, namely, 1st of May to the 15th of June.

*Held*, that the non-compliance with the provisions of section 49 of the Punjab Tenancy Act, 1887, does not make the delivery of possession of the land under crops to the landlord illegal. If no assessment of the crops is made or no period is fixed to postpone the delivery of possession, in order to enable the tenant to gather his crops and the possession is delivered to the landlord, the delivery of possession does not become illegal. The remedy available to the tenant in such cases is provided in section 74 of the Act, i.e., to make an application for compensation within one year.

*Held*, that the delivery of symbolical possession in execution is equivalent to delivery of actual possession and operates as dispossession of the judgment-debtor.

*Second Appeal from the decree of the Court of Shri Mohinder Singh Matharu, Senior Sub-Judge, with Enhanced Appellate Powers, Hoshiarpur, dated the 26th day of May, 1955, modifying that of Shri Om Parkash Garg, Sub-Judge, III Class, Una, dated the 7th February, 1955 (granting the plaintiffs a decree for possession of the suit land and further ordering that the possession was to pass on or after 1st May, 1955), to the extent of granting the plaintiffs a decree for possession of land bearing Khasra Nos. 2206, 2207, 5792, 2225 and 5041, 26 Kls. 3 Mls. in area, which was lying vacant at the time of the delivery of possession on 10th August, 1951, and dismissing their suit with respect to the other Khasra Nos. 2122, 2125, 5322, 5797, 5798; 2299, 5609, 5328 and 5207, total 19 Kls. 5 Mls. and leaving the parties to bear their own costs throughout.*

P. C. PANDIT, for the Appellant.

SHAMAIR CHAND with MR. P. C. JAIN, for the Respondents.

#### JUDGMENT

Mahajan, J. MAHAJAN, J.—This order will dispose of seven connected appeals. The parties to these appeals are landlords on one side and the erstwhile occupancy tenants on the other. There is no dispute on facts. It is the questions of law that have been debated before me. It would, therefore, be proper to set out those questions :—

- (i) Whether a decree or an order of ejectment passed against a tenant *per se* puts an end to the relationship of landlord and tenant or that it is necessary to go further and execute the decree or order and actually dispossess the tenant ?
- (ii) If there has to be actual dispossession, whether in the cases under appeal, the tenants were dispossessed in accordance with law and if not what is the effect ?

Before dealing with the aforesaid questions of law, it is necessary to set out the facts giving rise

to these appeals. There were outstanding decrees for arrears of rent in favour of the landlords against the erstwhile occupancy tenants—hereinafter to be called the tenants. This led to applications by the landlords under section 43 of the Punjab Tenancy Act (No. XVI of 1887) against the tenants for their ejection which resulted in an order for their ejection under section 44 of the Tenancy Act. In pursuance of that order, the tenants were ejected. The landlords were put in actual physical possession of the part of the land which was lying vacant and symbolical possession was delivered to them of the land under crops. Thereafter, the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (Act No. VIII of 1953) came into force with effect from the 15th of June, 1952. In order to take advantage of this Act, the tenants took forcible possession of the lands from which they had been ejected. This led to the present suits by the landlords for possession on the ground that the erstwhile tenants were trespassers having taken possession of the land without any right, and thus were not entitled to remain in possession thereof. The defence set up by the tenants was that they had never been dispossessed. In any case, it was pleaded that their dispossession was illegal being against the provisions of the Punjab Tenancy Act and they would be deemed to be still in possession with the result that by virtue of Act No. XIII of 1953, they had become absolute owners of the lands. The trial Court decreed the landlords' suits holding that the defendants had ceased to be occupancy tenants long before the Act came into force. It also held that they had been legally dispossessed. On appeal, in one set of cases, the learned Senior Subordinate Judge held that the dispossession of the tenants was legal *qua* the land which was lying vacant, but was not so *qua* the land which was under crops, with the result that

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he upheld the decree of the trial Court *qua* the land which was lying vacant and dismissed the suits with regard to the land, which was under crops. In the other set of cases, which were decided by Mr. J. N. Kapur, District Judge, Hoshiarpur, the decrees passed in favour of the landlords were maintained in their entirety and the distinction made by Mr. Mohinder Singh Matharu, Senior Subordinate Judge, Hoshiarpur, in the first set of cases regarding the vacant land and the land under crops was brushed aside. The present seven appeals are by the landlords and the tenants against the orders passed against them by the lower appellate Courts.

Before dealing with the contentions raised by the learned counsel, it will not only be convenient but proper to set out the relevant provisions of the Punjab Tenancy Act—hereinafter referred to as the Act :—

[His Lordship head Sections 42, 43, 44, 47, 49, 74 and 88 of the Punjab Tenancy Act and continued. :]

Now the questions of law that arise in these appeals and which have been set out in the earlier part of this order have to be examined. It will be proper to examine them in the very order in which they have been stated. It will, therefore, be proper to state at this stage the respective contentions of the learned counsel on the first question.

Mr. Pandit for the landlords maintains that as soon as there is final decree or order for ejectment against a tenant in favour of a landlord, the relationship of landlord and tenant comes to an end. The mere fact that in order to dispossess the tenant, the decree or the order of ejectment has to be executed is of no consequence. The possession of the tenant after the decree or order is not that of

a tenant on the same terms and conditions but is the possession of a person without any right. The contention of Mr. Shamair Chand, the learned counsel for the tenants, on the other hand, is that till the tenant is dispossessed in a legal and proper execution of the decree or order, no change in the relationship of landlord and tenant comes into being.

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After hearing the learned counsel at length, I have come to the conclusion that the contention of Mr. Pandit is correct and must prevail. It is, therefore, necessary to set out the reasons which have impelled me to accept Mr. Pandit's contention. It is well-known that the relationship of landlord and tenant comes into being by contract or by statute (See the provisions of the Punjab Tenancy Act regarding certain classes of occupancy tenants). It cannot be disputed that the landlord has an inherent right to eject the tenant in accordance with the terms of the contract or of the law under which the tenancy comes into being. It also cannot be denied that in case the tenant does not vacate the tenanted property voluntarily after his tenancy comes to an end, the remedy of the landlord is to eject him through Court. Therefore, the moment the Court on the landlord's petition passes a decree or order for ejectment, it clearly does no more than to declare that henceforth the parties cease to be landlord and tenant. The fact that the decree or order has to be executed in order to dispossess the tenant and put the landlord in physical possession does not and cannot mean that till the decree or order is not executed the status of the parties *qua* one another has not been determined. The decree or order determines the rights of the parties *inter se* and the execution of that decree or order merely gives effect to that determination. Thus on first principles it cannot but

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be held that the final order of ejection in the instant cases put an end to the relationship of landlord and tenant and the tenants cannot after the date of the order be held to be occupancy tenants on the ground that they remain in possession or that they were illegally dispossessed in execution of the order. This conclusion finds support from the decisions reported as *Jai Lal v. Bhu Dev* (1), and *Ramjibhai Virpal Shah v. Gordhandas Maganlal Bhagat* (2), and also from the provisions of section 49(1)(a) of the Act. After the order of ejection, if the tenant had continued as a tenant till ejection the legislature would have provided that he will pay the same rent which he was paying before the order of ejection. This is not so. Power under the statute is given to the Revenue Officer to order the tenant to pay for the longer occupation such rent as in his discretion is fair and equitable. Thus it would be clear that the Revenue Officer is not obliged to fix the previous rate of rent as the rent for the longer occupation but he can fix any rent which he in his discretion deems fair and equitable, which could only be possible if the decree or order did put an end to the tenancy.

Coming to the second point, it will again be proper to set out the respective contentions. Mr. Shamair Chand contends that as the possession was delivered outside the period prescribed in section 47 of the Act, i.e., between the 1st of May and the 15th of June, and in utter disregard of the provisions of section 49 of the Act, the dispossession of the tenants is illegal as they will be deemed to be in possession as occupancy tenants at the time when the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act came into force, and thus have by now become absolute owners of the land. The contention of Mr. Pandit, on the other

(1) 1956 P.L.R. 267

(2) I.L.R. 1954 Bomb. 615

hand, is that the possession was delivered in accordance with the provisions of section 47 though not between the 1st of May and the 15th of June, and even if there was any violation of section 49 of the Act it is not fatal and the delivery of possession in these cases is perfectly in order and as it was made long before Act No. VIII of 1953, the tenants are not entitled to its benefits.

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After going through the record, I find that the contention of Mr. Pandit is correct and must prevail. One has simply to read the orders of ejectment passed to appreciate the force of Mr. Pandit's contention along with the provisions of section 74 of the Act. The order of ejectment is in these terms :—

“Shiv Nath attorney of decree-holder is present the opposite party has refused to take notice. *Ex parte* proceedings are taken against the opposite party. Decree-holder has produced copies of the decrees in *ex parte* evidence. It is evident therefrom that the decrees against the opposite party have been passed and up to date these decrees have not been satisfied. Therefore, it is ordered that the opposite party be ejected. Let warrants of possession be issued on payment of process fee for 18th April, 1951, and it should be noted on the warrants that in case the opposite party does pay up the decretal amount at the spot, the opposite party be not ejected.”

It clearly denotes that the Revenue Officer while passing the order had the provisions of section 47 of the Act in view and ordered the ejectment of the tenants forthwith, which under the law he was



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entitled to order. It is not disputed and indeed it cannot be that the Court or the Officer passing the decree or the order could under section 47 direct that the landlord be put in possession at any time and not necessarily during the time specified in the section, namely, 1st of May to the 15th of June. It is conceded that no payment was made at the time when the warrants were executed. The actual as well as symbolical possession was delivered in August, 1951, and this fact was reported to the officer concerned, who, in view of the report, ordered that the execution be consigned to the record room as possession had been delivered. Thus the objection on the score of section 47 fails.

The other part of the objection as to the legality of the dispossession is that the provisions of section 49 of the Act were not complied with and therefore, the delivery of possession of the land under crops was illegal. This contention is also without force. If no assessment of the crops is made or no period is fixed to postpone the delivery of possession, in order to enable the tenant to gather his crops and the possession is delivered to the landlord, the delivery of possession does not become illegal. The remedy available to the tenant is provided in section 74 of the Act. The remedy provided is to make an application for compensation within one year. In this view of the matter, it is clear that the occupancy tenancies came to an end and the occupancy tenants were dispossessed long before the Act (Act No. VIII of 1953) came into force, and they cannot take advantage of the provisions of that Act and claim to have become owners of the land.

The only matter that needs to be noticed is as to what are the consequences of symbolical possession. Before dealing with this question, it may be

stated that section 88 of the Act makes the provisions of the Code of Civil Procedure applicable to the revenue Courts. It is well settled that the delivery of symbolical possession in execution is equivalent to delivery of actual possession and operates as dispossession of the judgment-debtor. In this connection reference only need be made to the decisions reported as *Jaimal Singh v. Rakha Singh and others* (1), *Mst. Mewa and others v. Amar Singh and others* (2), *Ram Singh and others v. Gainda Ram and others* (3), and *Bhulu Beg v. Jatindra Nath Sen and others* (4).

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For the reasons given above, Regular Second Appeals Nos. 703 and 838 of 1955 are allowed, and Regular Second Appeals Nos. 871, 872, 873, 874 and 875 of 1955 are dismissed. In the circumstances of the case, however, I leave the parties to bear their own costs throughout.

On an oral request made by the learned Counsel for the tenants, I certify that all these cases are fit for leave under clause 10 of the Letters Patent.

B.R.T.

SUPREME COURT

Before Bhuvaneshwar Prasad Sinha, C. J., P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta, and J. C. Shah, JJ.

SHIVJI NATHUBHAI,—Appellant

versus

THE UNION OF INDIA AND OTHERS,—Respondents.

Civil Appeal No. 428 of 1959.

*Mines and Minerals (Regulation and Development) Act (LIII of 1948)—Section 6—Mineral Concession Rules, 1949,*

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- (1) 1956 P.L.R. 591  
(2) 1958 P.L.R. 249  
(3) 1953 P.L.R. 127  
(4) 77 I.C. 1035