

## APPELLATE CIVIL

*Before Tej Chand, J.**BALBIR SINGH,—Appellant.**verses**SURMUKH SINGH,—Respondent.*

R. S. A. 1307 of 1965

February, 16, 1968.

*Punjab Security of Land Tenures Act (X of 1953)—S. 9—Application for ejectment of tenant—Jurisdiction of the Revenue Officer challenged by the tenant—Matter, whether automatically taken out of the purview of Revenue Officer—Revenue Officer—Whether can decide the question of his jurisdiction—Order of the Revenue Officer—Whether can be challenged before any Court or authority other than those under the Act.*

*Held*, that on an application for ejectment of a tenant of agricultural land, if he questions the jurisdiction of the Revenue Officer, the matter would not be automatically taken away from the purview of that Revenue Officer. The Revenue Officer has to see whether he has the jurisdiction and the matter is such which falls within his exclusive purview. If an objection is raised to his jurisdiction, that matter may be considered by him and then a decision arrived at as to whether the contention of the party challenging his jurisdiction was well founded or not. The question of existence or non-existence of jurisdiction is not left to the plea taken on behalf of a defendant before the Revenue Officer.

*Held*, that section 25 of the Punjab Security of Land Tenures Act confers exclusive jurisdiction on the Revenue Officers and provides that the validity of any proceedings under the Act shall not be called in question in any court or before authority, except in accordance with the provisions of this Act. This Act provides for appeals, reviews and revisions and makes sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act applicable. It is up to the unsuccessful party to question the decision of the Collector before the Commissioner or the Financial Commissioner and not before any other Court or authority.

*Second appeal from the decree of Shri Sarup Chand Goyal Additional District Judge Gurdaspur, dated the 15th May, 1965 reversing that of Shri Om Parkash, Senior Sub-Judge Gurdaspur, dated 15th December, 1964, and decreeing the plaintiffs suit.*

BAKHTAWAR SINGH WITH MANMOHAN SINGH, ADVOCATE, for the Appellant.

I. S. VIMAL FOR C. L. LAKHANPAL, ADVOCATE, for the Respondent.

## JUDGMENT

TEK CHAND, J.—This is a regular second appeal from the judgment of the Additional District Judge, Gurdaspur, allowing appeal from the judgment of the Senior Subordinate Judge.

The facts giving rise to this litigation are that the defendants appellants are the landlords of an agricultural land and the plaintiff respondent is stated to be the tenant. The landlords had moved the Assistant Collector, First Grade, Gurdaspur, for the eviction of Surmukh Singh on the ground that he was the tenant and was liable to ejection under the Punjab Security of Land Tenures Act. An objection was raised before the Assistant Collector by Surmukh Singh that he had no jurisdiction as there did not exist relationship of tenant and landlord between them. This contention of his was repelled by the Assistant Collector and he ordered his eviction. Surmukh Singh then filed an appeal before the Collector who affirmed the order of the Assistant Collector. It was agitated before the Collector that Surmukh Singh was owner of the land by adverse possession. This contention did not prevail before the Collector. Surmukh Singh then instituted a civil suit in the Court of the Senior Subordinate Judge for a declaration that the order of the Collector affirming that of the Assistant Collector for his ejection from the land which measured 49 kanals was without jurisdiction, illegal, *ultra vires* and he prayed for the consequential relief in the form of permanent injunction to restrain the defendants from dispossessing him from the said land in execution of the order of the Collector. The landlords who were the defendants before the trial Court maintained that the plaintiff was their tenant and the Revenue Officers acted within the scope of their jurisdiction which exclusively vested in them under the Punjab Security of Land Tenures Act. On the pleadings of the parties, the following issues were framed:

- (1) Whether the plaintiff was not a tenant of the defendants?
- (2) What is the effect of the finding of the Revenue Officer on the present suit ?
- (3) Relief.

The trial Court took up the first two issues together, and after going through the revenue records and after hearing the evidence, found, that the plaintiff had failed to establish that he was not a tenant on the land in suit under the defendants. He further held that the finding of the Revenue Officer that the relationship of tenant and

landlord stood between the parties was binding on the plaintiff and that the order could not be challenged by him in the Civil Court. The plaintiff's suit was consequently dismissed with costs.

The plaintiff then took up the matter in appeal which was heard by the Additional District Judge. He expressed the view that the jurisdiction of the Assistant Collector came to an end the moment one of the parties denied that he was a tenant. In other words, the question of existence or non-existence of jurisdiction was left to the plea taken on behalf of the defendant before the Revenue Officer. If the defendant contended that the Revenue Officer had no jurisdiction, his mere *ipse dixit* was sufficient for taking away the jurisdiction of the Revenue Officer. It was no longer possible for the Revenue Officer to determine that he had jurisdiction. Reference was made to a decision of the Supreme Court in support of the above proposition cited in *Shri Raja Durga Singh of Solan v. Tholu and others* (1). The Additional District Judge declined to determine as to whether the plaintiff appellant had succeeded in proving that he was not a tenant under the respondents. The evidence on the question of existence or otherwise of the relationship of tenant and landlord was, therefore, not gone into. The appeal was allowed and the order of the trial Court was set aside and consequently the plaintiffs suit stood decreed and an injunction was issued restraining the defendants-respondents from evicting him in execution of the order of the Assistant Collector, dated 22nd of June, 1963.

From the above decision, the defendants have preferred this regular second appeal in this Court. Before examining the arguments of the learned counsel on behalf of the appellants, reference may be made to salient provisions of the Punjab Security of Land Tenures Act. Section 9 refers to liability of tenant to be ejected and the landowners competence to eject a tenant is confined to specific acts of the tenant which entitle a landlord to evict him. Section 10(2) requires that on receipt of an application, the Assistant Collector shall proceed to determine the dispute summarily, after giving notice of hearing to the parties. He is required to keep a memorandum of evidence and a gist of his final order with brief reasons need only be given. When such an application has been made, any proceedings in relation to the same matter pending in any other court or before any other authority shall be stayed on receipt of information by that court or authority from such Assistant Collector of the fact

(1) A.I.R. 1963 S.C. 361.

of having received the application, and all such proceedings in a court or before any authority shall lapse when the dispute has been determined by the Assistant Collector acting under this Act, *vide* sub-section (3). Section 24 adopts for purposes of appeals, reviews or revisions, powers given in sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887, so far as applicable. Section 25 of the Act excludes the jurisdiction of any court and runs as under:—

“Except in accordance with the provisions of this Act the validity of any proceedings or order taken or made under this Act shall not be called in question in any court or before any other authority”.

The lower appellate court relied upon decision of the Supreme Court in *Shri Raja Durga Singh of Solan v. Tholu and others* (1), which may now be considered. As that decision rested on its own facts, it is desirable to give in brief the facts of that case. The appellant who was the plaintiff was the former Ruler of the State of Bhagat, one of the Simla Hill States. He had instituted a suit for the eviction of the tenants on the ground that the land in suit was his private ownership. The defendants respondents on failure to hand over the annual produce to him had incurred eviction. He had thereupon leased out the lands to one Chuku Koli for a period of one year, but the respondents had obstructed him in taking possession of the land and kept him out of possession. On the above allegations, he instituted a suit for possession and mesne profits in the civil Court. The respondents contended that they were occupancy tenants and the suit was not cognizable by a civil Court. The trial Court decreed the plaintiff's suit as against all the respondents and the District Judge affirmed the decision of the trial Court. The matter was taken up before the Judicial Commissioner, who allowed the defendants' appeal holding them to be occupancy tenants. On this, the plaintiff went up in appeal to the Supreme Court which was allowed and the decision of the trial Court and of the District Judge was affirmed. Their Lordships of the Supreme Court cited with approval the following observations of the Full Bench in *Baru v. Niadar* (2):—

“It is obvious that the bar under clause (d) is applicable to those cases only in which the relationship of landlord and

(2) A.I.R. 1942 Lahore 217.

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tenant is admitted and the object of the suit is to determine the nature of the tenancy, i.e., whether the status of the tenant falls under sections 5, 6, 7 or 8 of the Act”.

In that case the suit was instituted by someone claiming to succeed to the tenancy of certain land on the death of the occupancy tenant. The learned Judge observed :

“In a suit like the one before us the point for decision is not the nature of the tenancy, but whether the defendant is related to the deceased tenant and if so, whether their common ancestor had occupied the land. If these facts are established, the claimant *ipso facto* succeeds to the occupancy tenancy. But if they are found against him, he is not a tenant at all.”

The above observations have been construed by the lower appellate court in this case as maintaining the proposition that jurisdiction of the Court can be retained only so long as the parties admit relationship of landlord and tenant. In my view, this conclusion does not follow. If before the civil court, the relationship of landlord and tenant was admitted, its jurisdiction was obviously taken away and would vest in the revenue Court under the Punjab Tenancy Act. What had happened in this case is that the initial proceedings were taken before the Revenue Officer where Surmukh Singh questioned his jurisdiction. It does not follow from the decision of the Supreme Court that all that the defendant had to do before the Revenue Court was to question the jurisdiction of the Revenue Officer and on this, the matter would be automatically taken away from the purview of that Revenue Officer. The question in all these cases is that the Revenue Officer has to see whether he has the jurisdiction and the matter is such which falls within his exclusive purview. If an objection is raised to his jurisdiction that matter may be considered by him and then a decision arrived at as to whether the contention of the party challenging his jurisdiction was well founded or not.

Moreover, in this case, the Civil Court has gone into this issue and has come to its own independent conclusion on the basis of the evidence placed before it that the relationship of landlord and tenant was established and, therefore, the Revenue Officers, the Assistant Collector and the Collector, had exclusive jurisdiction. The

lower appellate court had, for reasons which cannot be appreciated, declined to go into that issue. If the trial Court's finding was erroneous; the Additional District Judge might possibly have said that the Civil Court and not the Revenue Officer had the jurisdiction in the matter. To my mind, section 25 of the Punjab Security of Land Tenures Act confers exclusive jurisdiction on the Revenue Officers and provides that the validity of any proceedings under the Act shall not be called in question in any court or before any other authority, except in accordance with the provisions of this Act. This Act provides for appeals, reviews and revisions and makes sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act applicable. It was up to the unsuccessful party to question the decision of the Collector before the Commissioner or the Financial Commissioner, but that does not appear to have been done in this case.

For reasons stated above, the findings of the lower appellate court are not sustainable. I would, therefore, set aside the judgment of the Additional District Judge, allow the appeal and remand the case for disposal on the first issue which had not been decided. The parties have been directed to appear in the Court of the District Judge on 25th of March, 1968, for further proceedings. Costs of this appeal shall abide the event.

*R.N.M.*

CIVIL MISCELLANEOUS

*Before P. D. Sharma, J.*

RAM MURTI CHOPRA,—*Petitioner*

*versus*

THE SENIOR SUPERINTENDENT OF POST OFFICES, LUDHIANA, AND  
OTHERS,—*Respondents.*

Civil Writ No. 2351 of 1966

February 23rd 1966

*Central Civil Services (Classification, Control and Appeal) Rules, 1965—  
Rule 10(4)—Whether lays down the circumstances in which the second enquiry  
can be ordered.*