Division Benches. Mr. Gujral states, that the second point now urged by him is before a Full Bench on account of the abovesaid controversy. This is an additional reason why we abstain from expressing any opinion on the second submission of Mr. Gujral.

(12) For the foregoing reasons this appeal is allowed, the judgment and order of the learned Single Judge are set aside, and the writ petition is granted. The result is that the impugned orders of the Collector, dated February 24, 1961, and of the Commissioner, dated July 24, 1961, (in so far as they relate to the land gifted to the petitioners) are set aside. This order would not, however, debar the appropriate authorities from redetermining the surplus area if any, of the landowner and/or of the petitioners in accordance with law. In the circumstances of the case, we make no order as to costs.

S. B. CAPOOR, J.—I agree.

R. N. M.

REVISIONAL CIVIL

Before Mehar Singh, C.J.

GORDHAN DASS,—*Plaintiff Petitioner*

versus

SANJHA RAM,—*Defendant-Respondent*

Civil Revision 265 of 1967

November 29, 1968.

Punjab Tenancy Act (XVI of 1887)—Sections 36 and 77(3)(n)—Tenancy of agricultural land—Tenant ceasing to be in possession of the land—Suit by landlord for arrears of rent or the money equivalent thereto—Whether triable by Revenue Courts.

Held, that Sections 36(3) of the Punjab Tenancy Act provides that where a tenant quits without notice, according to section 36(1), he is liable to pay rent if the other conditions in sub-section (3) of that section are satisfied. This express provision has been made for liability of a tenant for rent after he has given up possession of the land under the tenancy, in other words, his liability to pay rent remains in spite of his having ceased to be a tenant. A suit for the recovery of such arrears of rent comes only under section 77(3)(n) of the Act. Inspite of the tenant, having given up possession of the land and having ceased technically to be

the tenant, the statute has made him liable for arrears and such arrears are recoverable under section 77(3)(n). For the matter of the recovery of such arrears, although, strictly speaking, the relationship of landlord and tenant has come to an end, the previous landlord continues to be 'landlord' for the purposes of section 77(3)(n). Hence a suit for such recovery is not within the jurisdiction of a Civil Court but is in the jurisdiction of a revenue Court. (Para 3)

Petition under section 44 *of the Punjab Courts Act,* 1919 *read with section* 115 of the Code of Civil Procedure for revision of the order of Shri J. P. Gupta, *District Judge, Hissar, dated* 1*st December,* 1966 *reversing that of Shri O. P. Gupta, Sub-Judge Third Class, Sirsa, dated* 10*th May,* 1966, *dismissing the suit of the plaintiff and leaving the parties to bear their own costs throughout.*

S. S. MAHAJAN, ADVOCATE, for the Petitioner.

DALIP SINGH CHAUDHRY, ADVOCATE, for the Respondents.

JUDGMENT.

MEHAR SINGH, C.J.—This is a revision application by the plaintiff whose suit was dismissed by the appellate Court by its decree of December 1, 1966, on the ground that under section 77(3)(n) of the Punjab Tenancy Act, 1887, it was not cognizable by a civil Court but by a revenue Court, it being a suit for recovery of the value of produce of agricultural land.

(2) The plaintiff had alleged that the defendent, who is respondent here, was his tenant and had not given him the produce of the land from Kharif 1962 to Kharif 1963, and he claimed Rs. 679 as the price of the produce for that period. It was undenied that the defendent was evicted from the land on March 22, 1964. The suit by the plaintiff was instituted on January 5, 1965, to recover the equivalent of kind rent not paid by the defendant during the currency of the tenancy. An objection was raised by the defendant that because of section 77(3)(n) of the Punjab Tenancy Act the suit was not cognizable by a civil Court. The trial Court did not accept this and proceeded to decree the suit of the plaintiff having found the claim on merits established against the defendant. On appeal, the learned District Judge is of the opinion that this is a suit covered by section 77(3)(n) of the Act and hence barred from the cognizance of a civil Court. So he has dismissed the suit of the plaintiff.

(3) In the Punjab Tenancy Act section 77, sub-section (3), clause (n), reads—

> "77. (3) The following suit shall be instituted in and heard and determined by Revenue Courts, and no other Courts

shall take cognizance of any such dispute or matter with respect to which any suit might be instituted :

(n) suits by a landlord for arrears of rent or the money equivalent of rent, or for sums recoverable under section 14."

It is apparent that the word 'tenant' does not appear in section 77 (3)(n). So when the suit under this clause is instituted by a landlord, the defendant need not be a tenant in the accepted sense that he should be in possession of the leased land. The suit has, however, to be by a landlord. It is said on the side of the plaintiff that the plaintiff cannot be landlord of a person who is no longer in possession of the land and thus no longer tenant, because with the dispossession of the tenant the relationship of landlord and tenant comes to an end between the parties. The reply on the side of the defendant is that for the purposes of section 77(3)(n) what is to be seen is the relationship of the parties with regard to the period for which arrears of rent are claimed and not their status at the time of the institution of the suit. In support of this contention *Fazal Din* v. *Brij Lal* (1), is referred to by the learned counsel as was done by the learned District Judge. In that case the landlord, by the time he sued to recover the arrears of rent, had transferred the land to another person. It was urged that although the tenant remained in possession of the land, but as he was, at the date of the suit, tenant of the transferee and no longer tenant of the transferor, in other words on that date the transferor was no longer the landlord, so the suit was triable by a civil Court, but the learned Judge held that the suit was one under section 77(3)(n) and was triable by a revenue Court. *Fazal Din's case* (1), is a converse of the present case, but it is of assistance to this extent that in it the person who was the landlord when the arrears of rent became due was considered as landlord for the purposes of section 77(3)(n) even though by the time he came to institute the suit the title to the land had passed to another person and relationship of landlord and tenant, on that date, could not have been said to have continued to exist between the plaintiff and the defendant in that suit. On the side of the plaintiff reliance is placed on two cases. The first case is *Kidar Nath* v. *Dr. Prema Nand* (2), but there the suit was for recovery of domages for breach of contract and, although the claim arose out of a tenancy,

(1) A.I.R. 1929 Lah. 135.
(2) A.I.R. 1952 Punj. 185.

the learned Judge was of the opinion that as the tenant had quitted so he not being in possession was no longer tenant and the suit did not fall within the scope of section 77(3) of the Act. The learned Judge considered the claim by the plaintiff not one under section 77(3)(n) but under section 77(3)(i) and in the case of a suit under section 77(3)(i) it is clearly stated to be a suit between landlord and tenant. As the learned Judge came to the conclusion that the defendant was no longer a tenant, so he obviously found that the suit was triable by a civil Court. I do not think this case is helpful so far as the present case is concerned. The second case is *Dalip Singh* v. *Court of Wards, Dada Siba Estate* (3), which again was a suit under section 77(3)(i) and not under section 77(3)(n) of the Act, and the learned Judge apparently said that for the existence of tenancy, continuance of possession, actual or constructive, was necessary. He was considering whether there was relationship of landlord and tenant between the parties. On the date of the suit the possession was not with the defendant and so it was held that the suit was not between the landlord and tenant. This again is of no assistance in so far as the facts of the present case are concerned. The question that arises in this case is whether claim for arrears of rent under the tenancy of agricultural land made by the plaintiff after the tenant has ceased to be in possession of the land and thus no longer a tenant of that landlord, is a suit by the landlord for recovery of arrears of rent or the money equivalent of rent as in section 77(3)(n) of the Act. *Fazal Din's case* (1), lends some support to the decision of the learned District Judge that such a suit is within the scope of section 77(3)(n). Sub-section (3) of section 36 of the Act provides that where a tenant quits without notice, according to section 36(1), he is liable to pay rent if the other conditions in sub-section (3) of that section are satisfied. So this express provision has been made for liability of a tenant for rent after he has given up possession of the land under the tenancy, in other words, his liability to pay rent remains in spite of his having ceased to be a tenant, because he gave up possession of the land under his tenancy. But suit for the recovery of such arrears of rent as become due under sub-section (3) of section 36 comes only under section 77(3)(n). So that in spite of the tenant having given up possession of the land and having ceased technically to be the tenant, thus there existing no relationship of landlord and tenant

(3) I.L.R. 1952 Pb. 315=A.I.R. 1952 Pb. 283.

between him and the owner of the land, statute has made him liable for arrears and such arrears are recoverable under section 77(3)(n). For the matter of the recovery of such arrears, although, strictly speaking, the relationship of landlord and tenant has come to an end, the previous landlord continues to be 'landlord' for the purposes, of section 77(3)(n). This matter is referred to in the referring order of Plowden, J., in *Kesar Singh* v. *Nihal Singh* (4), at page 243, where the learned Judge observes —"To a rule, that a tenant on being dispossessed ceases to be a tanant, the Courts must, following the Legislature, make the exception made in section 50. If we look at the converse case, namely, when a tanant wrongfully relinquishes his land, without notice, we find that he is not described in the Act as a tenant after such relinquishment. He is liable under section 36(3) for rent, under prescribed conditions; and he is liable, to be sued for arrears of rent in a Revenue Court under section 77(n), but the word tenant is excluded in that clause." Now, this lends support to the claim of the defendant that the present suit for arrears of rent by the plaintiff is not within the jurisdiction of a civil Court but is in the jurisdiction of a revenue Court under section 77(3)(n). So the approach of the appellate Court is correct.

(4) However, it is pointed out by the learned counsel for the plaintiff that even so the learned Judge in the appellate Court was in error in dismissing the suit of the plaintiff because if the suit is cognizable under section 77(3)(n) by a revenue Court, then under proviso (i) to sub-section (3) of section 77, the duty of the civil Court was to "enorse upon the plaint the nature of the matter for decision and the particulars required by Order 7, rule 10, Civil Procedure Code, and return the plaint for presentation to Collector", and this is the procedure that the Judge in the appellate Court was bound to follow. To this apparently there cannot be an answer on the side of the defendant. So, this revision application is partly accepted in that while the main decision of the learned District Judge is maintained, his decree dismissing the suit of the plaintiff is set aside and a direction is given to him now to proceed with the matter according the proviso (i) to section 77(3) of the Punjab Tenancy Act. There is no order in regard to costs in this revision application.

K.S.K.

(4) 45 P.R. 1891 (F.B.).