(13) From a close perusal of the decisions relied upon on either side, it is evident that section 151 of the Code confers only a procedural jurisdiction on the Civil Court. Unless the parties can show the existence of some substantive right, inherent powers of the Court, under section 151 of the Code, cannot be invoked to issue any interim order relating to such substantive rights the existence of which has yet to be determined. Keeping in view this settled principle of law, it has to be held that the trial Court had no jurisdiction to grant interim maintenance to the plaintiff-respondent under the purported exercise of the inherent jurisdiction under section 151 of the Code even if the equitable consideration regarding maintenance was in favour of the plaintiff-respondent who had parted with all his property by way of gift.

(14) For the reasons mentioned above, the revision petition is allowed and the order of the trial Court granting the interim maintenance is set aside. However, there will be no order as to costs.

H. S. B.

Before Prem Chand Jain and Harbans Lal, JJ.

BHUPINDER SINGH,—*Petitioner.*

versus

STATE OF PUNJAB and others,—*Respondents.*

Civil Writ No. 3329 of 1971

November 7, 1971.

Punjab Security of Land Tenures Rules 1956—*Rule 6 sub-clauses* (5) *and* (6)—*Land of big land-owner declared surplus—Tenant re-settled under the Utilization Scheme on such land—Order declaring land surplus subsequently set aside and case remanded for de novo determination of surplus area—Re-settled tenant—Whether a necessary party in proceedings after the remand—Opportunity of hearing to such tenant—Whether necessary.*

Held, that from a reading of sub-clauses (5) and (6) of Rule 6 of the Punjab Security of Land Tenures Rules 1956 it is evident that the reference to the tenants in this rule is clearly to such tenants

who were already on the land of the landlord in their capacity as such before the declaration of the surplus area by the Special Collector. Such tenants were considered to be necessary parties and it was imperative to hear them because the scheme of the Punjab Security of Land Tenures Act is clear that the land of a tenant who was cultivating the same as such at the time of the enforcement of the Act could not be reserved by a big landlord at the time of the declaration of surplus area by the Special Collector. However, so far as a re-settled tenant is concerned he is brought on the surplus land of the landlord after it is declared surplus by the Special Collector. Thus, his status as a tenant or a re-settled tenant, follows the declaration of some area out of the land of the landlord as surplus. Once the decision regarding the declaration of surplus area is set aside by a competent authority the status of a re-settled tenant automatically comes to an end and in the proceedings for *de novo* determination of surplus area he is a stranger and thus cannot be treated as a necessary party. For the purpose of declaration of surplus area afresh, after setting aside of the previous order any person who was resettled on such surplus area before the setting aside of the same is not a necessary party and it is not necessary to provide any opportunity of hearing to him under the provisions of the Act.

(Paras 10 and 11).

Balwant Singh v. *The State of Haryana and others* 1978 P.L.J. 3.

OVERRULED.

Petition under Article 226 of the Constitution of India, praying that this Hon'ble Court be pleased to issue a writ of Certiorari, Mandamus *or any other writ or direction quashing the orders of the Collector dated 18th August,* 1964, *the Commissioner dated 29th December,* 1969 *and that of the Financial Commissioner dated the 27th May,* 1971.

It is further prayed that the costs of the petition may also be awarded to the petitioner.

B. S. Jawanda, Advocate with I. K. Mehta, K. K. Mehra, A. K. Jain, Advocates, *for the Petitioner.*

H. L. Sarin, Senior Advocate with M. L. Saini and R. N. Sarin, Advocates, *for respondents Nos.* 25, 26, 28, 30 to 32, 56, 61, 62, 63, 65 66, 70.

Ujagar Singh Advocate, *for Punjab State respondents Nos.* 1 *to* 5.

S. K. Aggarwal, Advocate for 11, 12, 14, 17, 75 to 77.

JUDGMENT

(1) This judgment will dispose of Civil Writ Petitions Nos. 3329 and 3330 of 1971, as common questions of law and fact arise in both of them.

(2) Both the writ petitions were heard by R. N. Mittal, J., on June 1, 1978. According to the learned Judge,—*vide* order, dated June 1, 1978, there was a conflict of decisions of this Court on the question as to whether the resettled tenants to whom land determined once as surplus area under the Punjab Security of Land Tenures Act, (hereinafter called the Act), were necessary parties at the time when the surplus area is sought to be determined afresh after the order determining surplus area in the first instance was set aside. The learned Judge was also of the opinion that besides this question, some other questions of importance had also been raised in these two writ petitions and, therefore, referred both these writ petitions for being heard and decided by a Division Bench. It is under these circumstances that both these writ petitions have been heard by us.

(3) In order to appreciate the controversy and the questions of law arising between the parties, the facts in brief with reference to Civil Writ Petition No. 3329 of 1971 may be summarised below.

(4) Bhupinder Singh, petitioner in Civil Writ Petition No. 3329 of 1971, was a joint landowner in village Conaina, Tahsil Muktsar, district Ferozepur, along with his bother, Sarupinder Singh, in equal share. After the death of Sarupinder Singh in 1946, one-half of his share was inherited by his mother and the remaining one-half, that is, one-fourth of the total land was mutated in the name of Bhupinder Singh, petitioner. Consequently, Bhupinder Singh, petitioner became the owner of three-fourth of the land out of which he made a number of alienations of different parcels of land in favour of different persons including Shrimati Pritam Kaur, his mother-in-law, and his two minor sons, the petitioners in the other writ petition, are pre-emptors of some of the alienees of Bhupinder Singh, petitioner. An area measuring 95 standard acres, 9 units out of his total land was declared surplus by the Collector,—*vide* his order, dated February 27, 1962, ignoring all alienations. In appeal, the Commissioner,—*vide* his order, dated March 18, 1964, set aside the order of the Collector and remanded the case for *de novo* decision. The petitioner was directed to appear before the Collector on April 15,

1964. As he did not put in appearance in spite of service, *ex parte* order was passed on August 18, 1964, according to which an area measuring 86 standard acres 7¼ units was declared surplus. All the alienations made by him were again ignored as being in violation of the provisions of the Act. That order was challenged through two appeals before the Commissioner, one by Bhupinder Singh, petitioner, and the other jointly by Shrimati Pritam Kaur and the two sons, petitioners in the other writ petition. Both the appeals were dismissed by one order, dated December 29, 1969, Annexure R. This was challenged through two separate revision petitions by the same parties before the Financial Commissioner. Before the Financial Commissioner, two objections were raised, firstly, that the resettled tenants were not necessary parties and secondly, that the allienees were necessary parties and had not been heard. Both the revision petitions were dismissed by the Financial Commissioner by his order, dated May 27, 1971, Annexure S. That order was challenged in these two writ petitions.

(5) Mr. Jawanda, the learned counsel for the petitioners, has challenged the impugned orders on the following grounds:

(1) That notice to the alienees of Bhupinder Singh, petitioner, was essential. As they were not served and were not afforded opportunity of hearing, the orders pertaining to the determination of surplus area of the land cannot be sustained; and

(2) After the determination of surplus area on February 27, 1962 and before the same was set aside by the Commissioner, eligible tenants had been settled on the surplus land. Those tenants were also necessary parties who were also not heard.

(6) Regarding the first contention, there is no dispute that in view of the law settled by a Full Bench of this Court in *Harnek Singh* v. *State of Punjab,* notice to alienees of Bhupinder Singh, petitioner, was essential. However, so far his mother-in-law Pritam Kaur and his two minor sons are concerned, they were adequately heard in the matter of determination of surplus area. It is crystal clear from a perusal of the order of the Commissioner, Jullundur

(1) 1971 P.L.J. 727.

Division, Annexure P. 1, dated March 18, 1964, that the determination of surplus area by the order of the Collector, dated February 27, 1962, had been challenged in appeal before the Commissioner not only by Bhupinder Singh, petitioner, but also by Shrimati Pritam Kaur, his mother-in-law, and Rajmohinder Singh and Jasmohinder Singh, his two minor sons, through their mother Shrimati Jatinder Kaur. After hearing all the appellants, the order of the Collector was set aside and direction was issued to the Collector to determine the surplus area afresh after hearing the appellants. The appellants were directed to appear before the Collector on April 15, 1964. Bhupinder Singh, petitioner, put in appearance on April 15, 1964, and was given time to make his selection of land up to May 3, 1964. He was again given time up to May 28, 1964, as is clear from the order, Annexure C, dated August 18, 1964. Thereafter, registered notice was sent to him, but he refused service. Consequently, *ex parte* decision was given on August 18, 1964, whereby surplus area was reduced from 95 standard acres 9 units to 86 standard acres 7½ units. This decision was again challenged, in appeal, before the Commissioner by Bhupinder Singh, petitioner, and a perusal of the order of the Commissioner, dated December 29, 1969, Annexure R, makes it evident that Shrimati Pritam Kaur, his mother-in-law and his two minor sons, the petitioners in the other writ petition, who had been impleaded as respondents in the appeal, were allowed to be transposed as appellants at the request of Bhupinder Singh, petitioner. After hearing all the appellants, the appeal was dismissed. Against this order, separate revision petitions were filed by Bhupinder Singh, petitioner, on the one hand and Shrimati Pritam Kaur and the two minor sons on the other, which were disposed of by the Financial Commissioner,—*vide* his order, dated May 27, 1971. Annexure S. There is absolutely no doubt that not only Bhupinder Singh, petitioner, but also Shrimati Pritam Kaur and the two minor sons, were fully heard in appeal before the Commissioner and in revision before the Financial Commissioner. So far as the petitioner's mother-in-law and the two minor sons are concerned, they themselves had challenged the determination of the surplus area in the first instance along with Bhupinder Singh, petitioner, and the said decision had been set aside and by order of the Commissioner, they had been directed to appear before the Collector and to be heard in the matter of determination of surplus area *de novo*. After the re-determination of the surplus area again they were intimately associated in appeal and revision. In these circumstances, it does not lie in their mouth to challenge the decisions of the authorities

under the Act, on the ground of absence of notice or that they were not provided any opportunity of being heard.

(7) Faced with this situation, the learned counsel for the petitioners, contended that besides the mother-in-law of Bhupinder Singh, petitioner, and his two minor sons, there were quite a good number of alienees, but they were not issued any notice, nor were they given any opportunity of hearing. None of the said alienees has challenged these decisions and filed any writ petition. Apparently, they did not feel aggrieved. The petitioners in these two writ petitions have no *locus standi* to challenge the legality and validity of the orders on behalf of the other alienees even if the conclusion was to be reached that they were not issued any notice.

(8) The other contention raised by the learned counsel for the petitioners relates to the questions whether the persons, who are settled by the authorities under the utilisation of surplus area scheme on the land declared surplus, are necessary parties if the decision regarding determination of surplus area is set aside and the question regarding the existence of any surplus area and the quantification of the same has to be gone into *de novo* ? There is no dispute that those persons who are already in possession of the land as tenants before the declaration of the surplus area under the provisions of the Act, are necessary parties. It is clear from sub-rules (5) and (6) of rule 6 of the Punjab Security of Land Tenures Rules, 1956. The matter was set at rest by the decision of a Full Bench of this Court in *Dhaunkal* v. *Man Kauri and another,* (2)

(9)As regards the position of resettled tenants *vis-a-vis* the question of providing an opportunity of hearing to them in the matter of declaration of surplus area, it was held by my esteemed brother, Jain, J., in *Karnail Singh* v. *Financial Commissioner, Haryana and others,* (3), that rule 6 of the Punjab Security of Land Tenures Rules, 1956 (hereinafter called the Rules), was not attracted and the resettled tenants could not claim any right to be heard even when the question of declaration of surplus area is re-opened and is to be determined afresh though the land already declared surplus was allotted to the resettled tenants.

(2) 1970 P.L.J. 402.
(3) 1971 P.L.J. 926.

(10) Rule 6(5) and (6) of the Rules, according to which opportunity of hearing must be granted to the landlord or the tenant, as the case may be, are reproduced below:

> "6(5) In the case of a landowner or tenant, who has furnished his Forms to the Special Collector under rules 3 and 4, the Special Collector shall after giving the landlord or tenant an opportunity of being heard and after such enquiry as he thinks fit, assess his surplus area. In doing so, he shall hear any objections made by the landowner or tenant, and in a written order decide such objections. In case no objections are made, or the person affected does not appear, the fact shall be stated in the order.
>
> 6(6) In the case of landowner or tenant, who has furnished his Forms to the Collector under rules 3 and 4, the Collector shall, after giving the landlord or tenant an opportunity of being heard after such enquiry as he thinks fit, assess his surplus area. In doing so, he shall hear any objections made by the landowner or tenant, and in a written order decide such objections. In case no objections are made or the person affected does not appear, the fact shall be stated in the order."

From their close perusal, it is evident that the reference to the tenants in this rule is clearly to such tenants who were already on the land of the landlord in their capacity as such before the declaration of surplus area by the Special Collector. Such tenants were considered to be necessary parties and it was imperative to hear them because the scheme of the Act is clear that the land of a tenant who was cultivating the same as such at the time of the enforcement of the Act, could not be reserved by the big landlord at the time of the declaration of surplus area by the Special Collector. However, so far as the resettled tenant is concerned, he is brought on the surplus land of the landlord after it is declared surplus by the Special Collector. Thus his status as a tenant or a resettled tenant follows the declarations of some area out of the land of the landlord as surplus. Once the decision regarding the declaration of surplus area is set aside by a competent authority, the status of a resettled tenant automatically comes to an end and in the proceedings for *de novo* determination of surplus area, he is a stranger and cannot be treated as a necessary party. I have closely perused the judgment

in *Karnail Singh's case* (supra) and find myself in agreement with its *ratio.*

(11) My attention has been drawn to a judgment rendered by me and reported in *Balwant Singh* v. *The State of Haryana and others,* (4), wherein I held that the status of a resettled tenant on the surplus area was that of a tenant for all purposes and that it was imperative for the authorities to provide an opportunity of hearing to him also even if the order declaring surplus area is set aside and the question of determination of surplus area is to be gone into afresh. A perusal of this judgment shows that the judgment by Jain, J., as reported in *Karnail Singh's case* (supra), was not brought to my notice for consideration and no argument appears to have been addressed with reference to rule 6(5) and (6), as reproduced above. In *Balwant Singh's case* (supra), it was held.—

> "Once allotment was made to the petitioners as tenants, they had the same status of tenants as other and if they were to be divested of their rights, they had a right to be heard."

On deeper consideration, I am of the view, that the resettled tenants are not divested of their rights by any specific order to that effect as a result of setting aside of the order declaring some area to be surplus in the hands of a particular landlord. Once the decision relating to the declaration of surplus area is set aside on account of any legal infirmity or any other valid reason, the status of the resettled tenants as such, comes to an end automatically and unless some area is declared surplus afresh, they have no right to be considered for allotment of the same after re-declaration of the surplus area. May be that while considering the question of surplus area *de novo* no area may be found as surplus on account of any valid reason or the area declared surplus may be considerably reduced. It is only after the fresh declaration of surplus area, if any, that the right of any person or persons can be considered for the purpose of utilisation of that area by any eligible tenant or ejected tenant. Before that stage, any such person cannot be deemed to be a necessary party for the purpose of declaration of surplus area of a landlord. In view of this conclusion, I have no hesitation in holding that the view expressed by me in *Balwant Singh's case*

(4) 1978 P.L.J. 3.

(supra), should not hold the field. It is consequently held that for the purpose of declaration of surplus area afresh, after setting aside of the previous order, any person, who was resettled on such surplus area before the setting aside of the same, is not a necessary party and it is not necessary to provide any opportunity of hearing to him under the provisions of the Act.

(12) No other point has been convassed.

(13) For the reasons mentioned above, there is no merit in either of the two writ petitions which are dismissed with no order as to costs.

Prem Chand Jain, J.—I agree.

H. S. B.

Before J. M. Tandon, J.

DULI CHAND,—*Appellant.*

versus

BHAGWANTI and another,—*Respondents.*

F.A.O. No. 168-M of 1978.

November 9, 1979.

Hindu Marriage Act (25 of 1955) as amended by Marriage Laws (Amendment) Act (68 of 1976)—Sections 23(4) and 28—Memorandum of appeal filed under the Act—Whether should be accompanied by copy of the decree sheet—Amendment of section 28—Effect of.

Held, that no copy of the decree was required to accompany a memorandum of appeal under the Hindu Marriage Act 1955. Section 28 of the unamended Act provided that all decrees shall be appealable and the position remained the same under the corresponding section of the amended Act. The decrees have now been made appealable as decrees of the Court made in the exercise of original and civil jurisdiction. No doubt under section 23(4) of the amended Act, it has been made obligatory for the court to supply a copy of the decree to the parties free of cost where the marriage is dissolved by a decree of divorce but this obligation will not change the position regarding the necessity or otherwise to supply a copy of the