

I allow the appeal of accused Chander to this extent only that while I maintain his conviction I reduce his sentence to a period of five years' rigorous imprisonment.

Chander  
v.  
The State  

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Tek Chand, J.

LETTERS PATENT APPEAL

*Before Bhandari, C. J., and Mehar Singh, J.*

FATAH AND OTHERS,—*Plaintiffs-Appellants.*

*versus*

SARDARA AND OTHERS,—*Respondents.*

**Letters Patent Appeal No. 74 of 1954.**

*Code of Civil Procedure (V of 1908)—Section 100—Finding of fact—Whether can be disturbed in second appeal—Land, whether held by a particular person, finding as to—Whether a finding of fact.*

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*Punjab Tenancy Act (XVI of 1887)—Section 59—Presumption as to occupation of land by common ancestor, when rebutted.*

*Evidence Act (I of 1972)—Section 114—Presumption—Nature of.*

*Held*, that section 100 of the Code of Civil Procedure accords statutory recognition to the well-known principle that a Court of second appeal will not determine disputed or doubtful questions of fact or disturb findings on pure questions of fact when such findings are supported by evidence and are not unreasonable or perverse. If, therefore, the judgment of the first appellate Court is in accord with correct principles of law and based on competent evidence reasonably tending to support the findings, the order of the first appellate Court will be affirmed even though it would have decided otherwise if it had occupied the place of the trial Court or the first appellate Court.

*Held further*, that *prima facie* the finding as to whether a particular person has or has not occupied a particular plot of land involves a question of fact. Occupation of a

plot of land is an act or series of acts which are capable of being perceived by the senses. Occupation requires that something should be done on the land which is apparent to the ordinary observation. One may occupy land by cultivating it, or by enclosing it, or by stocking material on it, or by exercising other rights of dominion on it. Each method involves action which is capable of being perceived by some one or other and an act is a fact as that word is known to jurisprudence. The occupation is therefore, a fact susceptible of proof like any other fact.

*Held*, that the land held by an occupancy tenant at the regular settlement can under section 59 of the Punjab Tenancy Act be presumed to have been occupied by his father. But the presumption so raised is rebutted by showing that no other son or descendant was recorded as an occupancy tenant.

*Held*, that a presumption is a rule of law that attaches definite probative value to specific facts or directs that a particular inference as to the existence of one fact not actually known shall be drawn from a fact which is known and proved. It furnishes *prima facie* evidence of the matter to which it relates and relieves the party of the duty of presenting evidence until his opponent has introduced proof to rebut the presumption. It raises such a high degree of probability in its favour that it must prevail unless clearly met and explained and overturned by explanatory proof to the satisfaction of the Court. Presumptions hold the field in the absence of evidence, but when facts appear, presumptions recede.

*Letters Patent Appeal under Order 10 of the Letters Patent against the decree, dated 25th June, 1954, of Hon'ble Mr. Justice S. S. Dulat, in Regular Second Appeal No. 954 of 1949, modifying that of Sh. Guru Datta, Additional District Judge, Rohtak, dated the 27th August, 1949, affirming that of Sh. Jawala Singh, Senior Sub-Judge, Rohtak, dated the 15th November, 1948, and decreeing the suit of the plaintiffs in respect of field Nos. 976 and 978 and dismissing the suit in respect of others.*

F. C. MITTAL, for Appellants.

D. N. AGGARWAL, for Respondents.

## JUDGMENT

BHANDARI, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether it is within the competence of a Court of second appeal to disturb findings of fact arrived at by a Court of first appeal when such findings are supported by evidence and are not unreasonable or perverse. Bhandari, C. J.

Mst. Bharto, wife of Arjan, a tenant having a right of occupancy in a plot of land, died in or about the year 1948, and the revenue officers mutated the right in favour of the male collateral relatives of her deceased husband. The landlords challenged the correctness of this decision and brought a suit for possession against the collaterals on the ground that the latter were not entitled to succeed to the right of occupancy as Than Singh, the common ancestor of the deceased occupancy tenant and of the collaterals, had never occupied the said land. The trial Court held that Than Singh had six sons, that at the time of the first settlement in the year 1845, fields Nos. 976 and 978 were in occupation of one Kishan Das, who was unconnected by ties of blood or relationship with Than Singh, that the remaining portion of the land was in the occupation of a son and two grandsons of Than Singh, who were described as occupancy tenants, that the land was not shown to be in the occupation of any other son or grandson of Than Singh, that the land was not in the possession of all the descendants of Than Singh in their ancestral shares, that in the circumstances it could not be presumed that the son and grandsons, who were in occupation of the land in suit had got it from Than Singh and consequently that Than Singh could not be said to have occupied the land. In this view of the case, the trial Court decreed the landlords' suit and the order of the trial Court was upheld by the learned District Judge in appeal. The learned Single Judge to whom a second appeal was preferred came to a

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contrary conclusion. He held that as a son and two grandsons of Than Singh were recorded as occupancy tenants in the year 1845 in respect of this plot of land, a presumption arose that Than Singh must have occupied the said land. This presumption could not be demolished by the mere circumstance that every one of his sons was not so recorded, for it may well be that the common ancestor occupied a large area of land and later on some of his sons occupied one portion and the others occupied the other portion. The learned Single Judge accordingly expressed the view that a presumption arose that the common ancestor had occupied the land, that this presumption was not rebutted and that the collaterals had succeeded in proving that the land in suit, excepting fields No. 976, and 978, was occupied by the common ancestor. He accordingly, allowed the appeal, decreed the landlords' suit in respect of fields No. 976 and 978 and dismissed the suit in respect of the other fields. The landlords are dissatisfied with the order and have come to this Court in appeal under clause 10 of the Letters Patent.

Section 100 of the Code of Civil Procedure accords statutory recognition to the well-known principle that a Court of second appeal will not determine disputed or doubtful questions of fact or disturb findings on pure questions of fact when such findings are supported by evidence and are not unreasonable or perverse. If, therefore, the judgment of the first appellate Court is in accord with correct principles of law and based on competent evidence reasonably tending to support the findings, the order of the first appellate Court will be affirmed even though it would have decided otherwise if it had occupied the place of the trial Court or the first appellate Court (*Shree Meenakshi Mills, Ltd., Madurai v. Commissioner of Income-tax, Madras* (1)).

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(1) A.I.R. 1957 S.C. 49.

*Prima facie* the finding as to whether a particular person has or has not occupied a particular plot of land involves a question of fact. Occupation of a plot of land is an act or series of acts which are capable of being perceived by the senses. Occupation requires that something should be done on the land which is apparent to the ordinary observation. One may occupy land by cultivating it, or by enclosing it, or by stocking material on it, or by exercising other rights of dominion on it. Each method involves action which is capable of being perceived by someone or other and an act is a fact as that word is known to jurisprudence. It seems to me, therefore, that occupation is a fact susceptible of proof like any other fact. If the finding of the learned District Judge that the common ancestor did not occupy the land is a finding of fact and if this finding of fact is supported by evidence and is not unreasonable or perverse, it was not within the competence of the learned Single Judge, in view of the provisions of section 100 of the Code of Civil Procedure, to set it aside.

The learned counsel for the collaterals frankly admits that the finding recorded by the learned District Judge that the common ancestor did not occupy the land is a finding of fact, but he contends that this finding of fact is vitiated by the fact that the learned District Judge has failed to take notice of the law as laid down in a long string of authorities that the land held by an occupancy tenant at the time of the regular settlement and of which he is recorded as a *maurusi* was inherited by him from his father and that the father must be presumed to have occupied the land for the purposes of section 59 of the Punjab Tenancy Act (*Ballhu and Barhan v. Charat Singh and seven others* (1), *Pallu v. Mahamad Husain and others* (2),

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(1) 18 P.R. 1876  
(2) 62 P.R. 1882

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*Girdhari v. Pirthi Singh* (1), *Shankar Dass and others v. Sher Zaman* (2), *Sipadar Khan and others v. Kadheru and others* (3), *Ganda Singh and others v. Jawand Singh and others* (4). This presumption, it is contended, is founded upon the result of human reason and experience that a person who is found in possession of landed property is not usually the first of his line and that it is much more probable that he had obtained it by inheritance from his father. It is for this reason that when occupation is traced a long way back through several generations, it is the duty of the Courts to raise a presumption in favour of possession by inheritance rather than in favour of possession by acquisition.

A presumption is a rule of law that attaches definite probative value to specific facts or direct that a particular inference as to the existence of one fact not actually known shall be drawn from a fact which is known and proved. It furnishes *prima facie* evidence of the matter to which it relates and relieves the party of the duty of presenting evidence until his opponent has introduced proof to rebut the presumption. It raises such a high degree of probability in its favour that it must prevail unless clearly met and explained and overturned by explanatory proof to the satisfaction of the Court. Presumptions hold the field in the absence of evidence, but when facts appear presumptions recede. "Presumptions", as happily stated by a light hearted jurist, "may be looked on as the bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts". They have no place in the presence of actual facts.

The collaterals in the present case have proved that according to the revenue records of 1845, a son and two grandsons of the common ancestor were in occupation

(1) 154 P.R. 1883.

(2) 56 P.R. 1900.

(3) 101 P.R. 1908

(4) A.I.R. 1939 Lah. 171

of a part of the land in dispute and that they were recorded as occupancy tenants. A presumption at once arose that the land had descended to the son and grandsons from the common ancestor. This presumption relieved the collaterals of the duty of presenting further evidence in support of their assertion that the land in question was occupied by Than Singh and imposed a duty on the landlords to show that he did not occupy the land. They endeavoured to produce evidence in rebuttal in the shape of entries to the effect that no other son or descendant was recorded as an occupancy tenant. As the landlords offered evidence contrary to the presumption, the presumption disappeared and the case stood on the facts and whatever inference could be drawn therefrom. The trial Court and later the District Judge took the whole evidence into consideration and came to the conclusion that Than Singh did not occupy the land. This was a finding of fact; it was not unsupported by evidence and was not unreasonable or perverse. The weighing of such evidence and the inferences to be drawn therefrom, were matters entirely within the power of the Lower appellate Court and could not be disturbed on appeal. It seems to me, therefore, that this decision could not be contested in second appeal.

For these reasons, I would accept the appeal, set aside the order of the learned Single Judge and restore that of the trial Court. The landlords will be entitled to costs throughout.

MEHAR SINGH, J.—I agree.

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APPELLATE CRIMINAL

*Before Tek Chand, J.*

KARTARA *alias* KARTAR SINGH,—*Convict-Appellant.*  
*versus*

THE STATE,—*Respondent.*

Criminal Appeal No. 628 of 1956.

*Indian Penal Code (XLV of 1860)—Section 366—  
“Seduced to illicit intercourse”—Meaning of—Whether*

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Aug., 6th