Sub Judge, II Class, Ferozepur, and entrust it to the Senior Subordinate judge, Ferozepur, and I hope the learned Senior Subordinate Judge will expedite the execution of the decree without any further delay. In the circumstances of this case, I leave the parties to bear their own costs.

S.C.K.

Before G. R. Majithia, J.

KISHAN AND ANOTHER,—*Appellants.*

versus

NARAIN DASS AND OTHERS,—*Respondents.*

Regular First Appeal No. 3365 *of* 1987

October 14, 1988.

Code of Civil Procedure (V of 1908)—O. 41, Rl. 27—Leave to lead additional evidence—Power of Court to grant such leave, Punjab Tenancy Act (XVI of 1887)—Ss. 4(3), 5 and 8—Rent—Meaning of the term.

Claim—Claim in suit for declaration of Occupancy tenancy rights—Setting up of such a claim—Whether results in forfeiture.

Held, that the appellate Court has the power to allow additional evidence not only if it requires such evidence to enable it to pronounce judgment but also for any other substantial cause and even in cases where it considers that in the interest of justice something which remains obscure should be filed up so that it can pronounce judgment in a more satisfactory manner and the defect may be pointed out by a party or that party may move the Court to supply the defect. In this view of the matter, I allow the application filed under O. XLI, Rl. 27 of the Code of Civil Procedure, 1908 and allow the copies of jamabandis.

(Para 9).

Held, that the history of rent in the Punjab is that it owes its origin mainly to fiscal arrangements, and not directly to economic causes. In large number of cases tenants-at-will have been paying land revenue or cesses with or without a small additional payment on account of *Malkana*. Payment of rent and cesses to the State on behalf of the land owners will be in lieu of rent. The term land in sub-section (3) of section 4 of the Act is wide enough to include the payment of land revenue and cesses on behalf of the landlord.

(Paras 12 and 13).

Held, that the plaintiff claims that they had become occupancy tenants under the provisions of Ss. 5 and 8 of the Punjab Tenancy Act and on the commencement of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 they became the owners of the land. They never denied the title of the landlord. Setting up a permanent tenancy is not a denial of title of the landlord and it will not tentamount to disclamer of the landlord's title and hence calls for forfeiture of their right as tenants at will.

(Para 14).

Regular Second Appeal from the decree of the Court of the Additional District Judge Gurgaon dated the 2nd day of November, 1987 affirming with costs that of the Sub Judge II Class, Gurgaon, dated the 21st November, 1985, dismissing the suit of the plaintiffs for declaration that they are owners in possession of the suit land detailed in para No. 1 of the plaint and the sale deed dated 18th January, 1982 executed by defendant No. 4 in favour of defendant No. 6 is null and is not binding upon the rights of the plaintiffs, and leaving the parties to bear their own costs.

Arun Jain, Advocate, *for the Appellants.*

C. B. Goel, Advocate, *for the Respondents.*

JUDGEMENT

G. R. Majithia, J.

(1) This Regular Second Appeal has been filed by unsuccessful plaintiffs and is directed against the judgment and decree of the Additional District Judge, Gurgaon, who on appeal affirmed the judgment and decree of Subordinate Judge 2nd Class, Gurgaon, dismissing their suit for declaration that they had become owners of the suit land under the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Right) Act, 1953 (hereinafter referred to as the 'ACT').

(2) The plaintiffs came to the court with the allegations that they had been cultivating the suit land for more than two generations on a fair rent and at the time of inception of the tenancy, the predecessor-in-interest of the defendants agreed that the predecessor-in-interest of the plaintiffs, will never be evicted from the suit land. They fulfilled all the conditions of Sections 5 and 8 of the Punjab Tenancy Act and after the commencement of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, they had become the owners of the suit land and they were wrongly described as the

tenants-at-will in the revenue record. They further disputed the right of defendant No. 4 to transfer 1/4th share of the disputed property to defendant No. 5 and alleged that the sale was not binding on the rights of the plaintiffs.

(3) The defendants denied the allegations of the plaintiffs and pleaded that there was no relationship of landlord and tenant between the parties; that the plaintiffs were only licensees on the land in dispute and they were cultivating the suit land with the permission of the defendants on account of relationship. It was asserted that defendants No. 4 Smt. Shanti Devi was competent to transfer 1/4th share in the disputed property to defendant No. 5 and the sale was perfectly legal and valid.

(4) The learned trial Judge, framed the following issues:—

1. Whether the plaintiffs have become occupancy tenants of the suit land as alleged in the plaint and thus the owners of the suit land ? OPP.

2. Whether the plaintiffs have no *locus standi* to file the present suit? OPD.

3. Whether the plaintiffs are estopped from filing the present suit? OPD.

4. Whether the suit is not maintainable? OPD

4-A. Whether the sale deed executed by defendant No. 4 in favour of defendant No. 5 dated 18th January, 1982, is illegal and not binding on the plaintiffs? OPP.

5. Relief.

(5) Issues No. 3 and 4 were found in favour of the plaintiffs and issues No. 1, 2 and 4A against the plaintiffs. Before the appellate court, only issue No. 1 was pressed by the appellants.

(6) The learned Additional District Judge, on the basis of the entries in the revenue record held that the plaintiffs were not paying any rent to the land owners. Consequently, there could be no relationship of landlord and tenant between the parties. The

revenue record revealed that they were in possession of the suit land on account of relationship.

(7) The learned first appellate Court refused permission to the appellants to produce the copies of jamabandis for the years 1919-20 and 1923-24, which were sought to be produced by way of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure. The learned Judge refused permission to produce these two documents on the grounds that the same were not required by him for pronouncing the judgment; the appellants were given large number of opportunities to produce the said documents before the trial court and that at the trial *Moharrir Patwari* was summoned with the excerpts but later on the excepts were not got prepared and the witness was not examined.

(8) I have heard the learned counsel for the parties. Mr. Jain, the learned counsel for the appellants submitted that the lower appellate Court was in error in refusing permission to the appellants to produce the copies of *Jamabandis* for the years 1919-20 and 1923-24 by way of additional evidence. It is correct that the appellants were negligent at the trial and they did not produce the revenue record which was sought to be produced at the appellate stage. However, in the circumstances of the present case, the learned appellate Judge ought to have granted permission to the appellants to produce the *jamabandis* for the year 1919-20 and 1923-24 by way of additional evidence. They produced *Jamabandi* for the year 1938-39 and onward. They did not produce *Jamabandi* for the period prior to 1938-39 and this was sought to be done by way of additional evidence. The entries in the *Jamabandi* for the year 1919-20 are not in conflict with the earlier entries. These are only a clarifier and explains the status of the occupier. The authenticity of the revenue record is not assailed. In revenue record in the column of cultivation the predecessors-in-interest of the appellants are shown as tenants-at-will, but in the column of rent, they are shown to be in occupation like owners on payment of land revenue. The predecessors-in-interest of the appellants and the appellants are paying land revenue. The owner never paid land revenue.

(9) Under clause (b) of rule 27 of Order XLI of the Code of Civil Procedure, the appellate Court can receive additional evidence not only when it requires such evidence to enable it to pronounce the judgment but also for any other substantial cause. There may well be cases where even though the Court finds that it is able to pronounce the judgment on the state of record as it is, and so it

cannot strictly say that it requires additional evidence to enable it to pronounce the judgment, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. In *K. Venkataramiah* v. *A. Seetharama Reddy and others* (1), their Lordships of the Supreme Court were pleased to observe as under:—

> "Under R. 27(1), the appellate Court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment," but also for "any other substantial cause". There may well be cases where even though the court finds that it is able to pronounce judgment on the state of record as it is, and so it cannot strictly say that it requires additional evidence to enable it to pronounce judgment, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence for any other substantial cause under R. 27(1)(b) of the Code."

This was followed in *Mehar Chand and others* v. *Kavti Parshad and others* (2), by R. N. Mittal, J. and it was held that the appellate Court has the power to allow additional evidence not only if it requires such evidence to enable it to pronounce judgment but also for any other substantial cause and even in cases where it considers that in the interest of justice something which remains obscure should be filed up so that it can pronounce judgment in a more satisfactory manner and the defect may be pointed out by a party or that party may move the Court to supply the defect. In this view of the matter, I allow the application filed under Order XLI Rule 27 of the Code of Civil Produce and allow the copies of *jamabandis* for the years 1919-20 and 1923-24 to be placed on record and these are exhibited P/13 and P/14.

(10) I had put it to the learned counsel for the respondents during the course of arguments that in the event, I allow the application for additional evidence whether he wants to lead any evidence in rebuttal. He replied in the negative. However, he strongly opposed the production of additional evidence in the second appellate stage. I repel his submissions for the reasons stated supra.

(1) A.I.R. 1963 S.C. 1526.
(2) 1984 P.L.R. 272.

(11) In the copies of jamabandis for the years 1919-20 and 1923-24, it is entered that the predecessor-in-interest of appellants were paying land revenue and cesses.

(12) The history of rent in the Punjab is that it owes its origin mainly to fiscal arrangements, and not directly to economic causes. In large number of cases tenants-at-will have been paying land revenue or cesses with or without a small additional payment on account of *Malikana.* Payment of rent and cesses to the State on behalf of the land owners will be in lieu of rent.

(13) In sub-section (3) of Section 4 of the Punjab Tenancy Act, 1887, rent is defined as under:—

> "(3) "rent" means whatever is payable to a landlord in money, kind or service by a tenant on account of the use of occupation of land held by him."

The term is wide enough to include the payment of land revenue and cesses on behalf of the landlord.

(14) In Settlement Manual Roy M. Douie, 4th Ed., 1960 at page 104 para 206, it was observed as under:—

> "The chief fact in connection with the history of rent in the Punjab is that it owes its origin manly to fiscal arrangements, and not directly to economic causes. This is obvious in the cause of the rents consisting of the land revenue and cesses with or without a small additional payment on account of *Malikana,* which are still commonly paid by tenants-at-will, in some parts of the country. But it is equally true of *batai* and *zabti* rents. The former represent the share of the produce which native governments claimed under the name of *mahsul or hakimi hissa* (i.e. the ruler's portion)."

(15) One of the plaintiffs has appeared as a witness and stated that predecessors-in-interest were in possession and they had been paying the land revenue and cases. This statement was not challenged in cross-examination. From the oral and documentary evidence, it is proved that the predecessor-in-interest of the appellants although were in possession of the disputed land on account of some relationship but they were paying the land revenue and cesses to

the State and this would be deemed to be on behalf of the land owners and in lieu of rent. Thus, I hold that the predecessors-in-interest of the appellants were in possession of the land on payment of land revenue and cesses. They were in possession as tenants-at-will and the same position is occupied by the present plaintiff-appellants.

(16) The plaintiffs have failed to prove that they have acquired occupancy rights under the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (Act No. VIII of 1953). I have held that the plaintiffs have succeeded in proving that they are in possession as tenants-at-will but there is no evidence to prove that they have acquired occupancy rights. Consequently, their claim that they have become owners under the provisions of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (Act No. VIII of 1953), is rejected.

(17) Since I have held that the plaintiffs are tenants-at-will, they are liable to be evicted only in accordance with the provisions of the Punjab Security of Land Tenures Act. This appeal is, therefore, allowed to the extent indicated above. However, there will be no orders as to costs.

(18) After I had pronounced the judgment, the learned counsel for the respondent brought to my notice that his one submission that the plaintiff forfeited his tenancy right when he asserted that he had acquired higher rights of occupancy tenants and this will amount to denial of right of the owner and will cause forfeiture of their right as a tenant-at-will.

(19) This point was not raised before the courts below. However, I thought it proper to deal with this aspect of the matter. The plaintiff claimed that they had become occupancy tenants under the provisions of Sections 5 and 8 of the Punjab Tenancy Act and on the commencement of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 they became the owners of the land. They never denied the title of the landlord. Setting up a permanent tenancy is not a denial of title of the landlord and it will not tent-amount to disclaimer of the landlord's title. In somewhat similar circumstances, the apex Court dealt with this aspect of the matter and the judgement is reported as *Raja Mohammad Amir Ahmad Khan* v. *Municipal Board of Sitapur and another* (3), and it was held thus:

> "A title as a permanent lessee with a heritable and transferable right in the property was as much a title as one with

(3) 1965 S.C. 1923.

full ownership and if he stated that he was seeking a declaration from the Civil Court of his title as permanent lessee of such a character, there would, of course, be no question of his setting up a title in himself in derogation of the landlord's."

There is no substance in the submission made by the learned counsel and the same is repelled.

S.C.K.

Before J. S. Sekhon, J.

RAM SARAN SHARMA AND ANOTHER,—*Petitioners.*

versus

BANK OF INDIA AND OTHERS,—*Respondents.*

Civil Revision No. 2905 *of* 1987

September 5, 1988.

Companies Act (I of 1956)—Ss. 446 and 537—Code of Civil Procedure (V of 1908)—O. 21 Rl.2—Company in liquidation—Creditor bank filing suit for recovery of loan—Leave to prosecute suit granted by Company Judge—Suit decreed—Execution of decree—Sale of property of company in liquidation—Fresh leave of Company Judge—Whether necessary for execution of decree—Sale of property by auction without attachment—Whether proper.

Held, that once the permission of the Company Judge during the pendency of the parent suit against the Company under liquidation is taken under the provisions of section 446 of the Companies Act, 1956, no fresh sanction for execution of the decree passed in such suit is required under Section 537 of the Act. It cannot be said that the leave of the Company Judge taken under Section 446 of the Act during the pendency of the parent suit will not enure during the execution proceedings of the decree passed in that suit.

(Paras 6 & 10).

Held, that in view of the factum that the property being already under simple mortgage or hypothecated with the bank decree-holder, there was no necessity of fresh attachment of the property. Hence