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Khosla, C. J.

The question of jurisdiction must be considered by itself. The jurisdictional value of the suit or the claim brought by the respondents was Rs. 130 and they are entitled to agitate it in a Court which has jurisdiction to entertain claims of that value. They cannot of course raise a plea of *res judicata* because that has relation to time and previous decision. The fact that the petitioners have not chosen to file an appeal will not make their claim for Rs. 5,900 *res judicata* if they choose to raise it. They can legally raise it in the appeal in the suit for accounts but it can have no effect whatsoever on the question of jurisdiction. The plaintiffs' claim still remains a claim for rendition of accounts. It does not change its jurisdictional value, and because the petitioners have a right to file cross-objections and to re-agitate the question of the claim of Rs. 5,900 is not a ground for compelling the respondents to file an appeal in the High Court, they can choose their forum according to the jurisdictional value. For these reasons, I hold that the decision of the trial Court with regard to the jurisdiction was right and that this revision has no force. I accordingly dismiss it with costs and direct that the appeal will be disposed of by the District Judge as early as possible. The parties are directed to appear before the District Judge on 5th of October, 1961.

R. S.

APPELLATE CIVIL

Before Inder Dev Dua, J.

NAND SINGH—*Appellant.*

versus

PUNJAB KAUR,—*Respondent.*

Regular Second Appeal No. 1343 of 1959.

1961

Oct., 10th

Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act (III of 1953)—Section 3—Ownership rights acquired by a widow, she being the occupancy tenant at the relevant date—Whether

constitute her self-acquired property—Payment of compensation to the landlord—Whether relevant—Code of Civil Procedure (Act V of 1908)—Order 41 rule 27—Additional evidence—Admission of—When justified—Discretion of the lower appellate Court admitting or declining to admit additional evidence—Whether can be interfered with by High Court in second appeal.

Held, that the ownership rights are conferred on the occupancy tenant under section 3 of the Paiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, and they became the self-acquired property of the occupancy tenant who is there at the relevant date. If the occupancy tenant be a widow, the ownership rights acquired by her constitute her self-acquired property and they do not form an accretion to her deceased husband's estate. The payment of compensation to the landlord is not relevant for the extinguishment of his rights and the vesting of the ownership rights in the occupancy tenants as they take place automatically under the Act on the relevant date.

Held, that the expression 'for any other substantial cause' in clause (h) of rule 27, Order XLI of the Code of Civil Procedure should be read with the word "requires" occurring in the beginning of that clause. So read, it is only for the appellate Court to decide whether it requires additional evidence for any substantial cause. This power to admit additional evidence has to be exercised cautiously and sparingly and only in exceptional cases. The mere discovery of fresh evidence subsequent to the decision of the Court below by itself hardly constitutes a sufficient ground for its admission on appeal. The appellate Court must in addition require the evidence either to enable it to pronounce judgment or for some other substantial cause and a still further requisite, which the courts, by and large, look for, is the exercise of due diligence by the party claiming the indulgence of the right if it may be so described. The power of the appellate Court to admit additional evidence is not arbitrary or wholly uncontrolled, as is clear from the fact that the Court is under a statutory obligation to record its reasons for such admission. The order admitting additional evidence as such is not appealable, though, on an appeal being preferred against the final judgment or decree, the decision of the Court admitting additional evidence is open to challenge, but this challenge is

of a very limited nature since the impugned order depends on the discretion of the Court admitting or refusing to admit additional evidence. If the order does not travel outside the scope of rule 27 of Order 41, Civil Procedure Code, and if the discretion cannot be described to be contrary to well-recognised judicial principles, the Court of second appeal possesses no jurisdiction to interfere with that order.

Second Appeal from the decree of the Court of Shri Jasmer Singh, Additional District Judge, Barnala, dated 28th July, 1959 affirming with costs that of Shri Kahan Chand Kalra, Sub-Judge, First Class, Malerkotla, dated 18th October, 1958, granting the plaintiff a decree for possession of the land in dispute against the defendant with costs.

ATMA RAM, ADVOCATE, for the Appellant.

M. R. SHARMA, ADVOCATE, for the Respondent.

JUDGMENT

Dua, J.

DUA, J.—Shrimati Punjab Kaur, respondent in this Court, instituted a suit for possession of 52 *bighas* 1 *biswa* of the agricultural land situated in village Saadatpur, tehsil Malerkotla. This property was held by Shrimati Shamo, widow of Mali, as *dakhil kar*. By the enforcement of Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act of 1953, (President's Act No. 3 of 1953), Shrimati Shamo acquired ownership rights in the said land with the result that the proprietary rights became her own acquisition. Shrimati Shamo died in June, 1956. On her death a dispute regarding the mutation of the estate left by her arose. The plaintiff claimed that the land being the self-acquired property of Shrimati Shamo and she being the daughter of Shrimati Shamo and Mali was entitled to inherit it to the exclusion of the reversioners. Nand Singh appellant in this Court claiming to be a reversioner of Mali on the other hand lay claim to the land on the allegation that it was ancestral *qua* him, and, therefore, the daughter had no right to inherit the land. It is to solve this dispute that the plaintiff instituted the present suit for possession

as already noted. During the pendency of the suit, however, the mutation was actually sanctioned by the revenue officer in favour of the plaintiff on the 3rd April, 1958.

The pleadings of the parties gave rise to the following two issues:—

(1) Whether the plaintiff is the daughter of Mali;

(2) Whether the land in question is ancestral *qua* the defendant ?

The trial Court decided both the issues in favour of the plaintiff and decreed her suit. The Court considered the relevant provisions of the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, and relying on a decision of this Court *Faqiria and others* v. *Mt. Rajo and another* (1), concluded that the property should be considered to be the self-acquired property of Shrimati Shamo.

Nand Singh went up in appeal but the learned Additional District Judge, Barnala, disallowed the same and confirmed the decree of the Court of first instance. The lower appellate Court began its discussion of the question of the character of land by observing that the certified copy of the Jamabandi for the year 1952-53 recorded Shrimati Shamo to be the owner of the land in dispute. The learned Judge opined that as the presumption of correctness was attached to this entry, therefore, it was for the appellant to establish that this entry was untrue. The Court then noticed the argument that Shrimati Shamo could not have been declared the owner of the property because section 9 of the Pepsu Abolition of Biswedari Ordinance No. 23 of 2006 BK., as amended by Ordinance 36 of 2006 Bk., and Pepsu Act No. IV of 2006 Bk., had been held as illegal and inoperative by the Pepsu High Court in *Pirthi Singh and others* v. *State of Pepsu and others* (2). The contention presumably was

(1) A.I.R. 1957 Punj. 79
(2) A.I.R. 1953 Pepsu 161

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that the entry in 1952-53 must have been made in pursuance of the statutory provision just mentioned and since these provisions were declared bad, the entry in the *jamabandi* should also be considered to be contrary to law and, therefore, ineffective. The lower appellate Court, however, repelled this contention by observing that the objection raised could have been taken by the landlords in whom the proprietary rights of the land vested and their failure to do so showed that the entry in the *jamabandi* was accepted by them.

The learned Additional District Judge then considered the provisions of the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, which came into force on the 29th August, 1953, and after considering the relevant provisions of law concluded that Mst. Shamo had under this Act become owner of the land in her lifetime. A contention was also raised that Mst. Shamo is not proved to have paid any compensation to the landlord, and, therefore, she could not become an owner without such payment. A reference was in this connection made at the bar in the lower appellate Court to a decision of this Court *Mst. Karmi and others* v. *Bachna and others* (1). The Court further observed that there is a presumption as to regularity of all official acts and as Shrimati Shamo was shown to have become owner by entries in the revenue records, this would lead to a presumption that she had actually paid compensation. It was also noted that the defendant had never pleaded in his written statement that Shrimati Shamo had failed to pay compensation, and, therefore, could not become owner of the property. On these conclusions, the Court observed that the land could not be considered to be ancestral *qua* the plaintiff.

A further contention was raised in the Court below that the common ancestor had actually held the land as *dakhil kar* and that it has come to the hands of the last male owner by descent. This

(1) 61 P.L.R. 313.

argument was also repelled after referring to the evidence on the record. According to the revenue papers exhibited on the record, no part of the land was, according to the Court below, provide to have been held by the common ancestor at any time. An attempt was made by the defendant-appellant to produce additional evidence in the form of copies of the *shajranasab* and *shajrakishtwar*, but the lower appellate Court declined to accept them. As a result, as already noticed, the appeal was dismissed with costs.

On second appeal preferred by Nand Singh, his learned counsel has very ably contended that the additional evidence should have been allowed by the learned Additional District Judge. He has submitted that the documents which are sought to be relied upon are genuine and there can be no question of their having either been forged or their being spurious or untrustworthy. According to the learned counsel the lower appellate Court has rejected the prayer for additional evidence in an arbitrary and unceremonious manner without applying his mind to the matter as enjoined by law. It is submitted that the defendant had tried to get the evidence of the Qanungo after a reference to all the necessary revenue papers. The Qanungo, however, could not get hold of the relevant *intkhab* with the result that his evidence was practically incomplete. Now having got hold of the *intkhab* after the conclusion of the suit in the trial Court, an attempt was made to have the evidence by a reference to the *intkhab* brought on the record. This, according to the counsel, has been wrongly omitted from consideration by the learned Additional District Judge.

The learned counsel for the respondent has, on the other hand, submitted that a party is not entitled to lead additional evidence on appeal as a matter of right. The trial, according to the learned counsel, was held at Malerkotla and the Qanungo was summoned from Sangrur. If the documents

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were not available with the Qanungo at that time, efforts should have been made to secure them and to seek adjournment from the trial Court for that purpose. Having been guilty of negligence or carelessness, the defendant was not entitled to adduce the additional evidence at the appellate stage. It is emphasised that the discretion to admit additional evidence was of the learned Additional District Judge and he having failed to exercise that discretion in favour of the defendant, this Court on second appeal could not interfere with that order. The law relating to additional evidence in appellate Court is contained in Order 41, rule 27 of the Code of Civil Procedure. Clause (a) of this rule is obviously inapplicable to the case in hand because the trial Court had not refused to admit evidence which ought to have been admitted. It is clause (b) under which the appellant had to bring his case in the Court of the learned Additional District Judge. According to this clause, the appellate Court may allow additional evidence to enable it to pronounce judgment or for any other substantial cause. In so far as ability to pronounce judgment is concerned, it is obvious that the lower appellate Court did not require the additional evidence for that purpose, and indeed the learned counsel for the appellant before me has also not concentrated on this aspect. The question is, if there was any other substantial cause justifying the admission of additional evidence and if I can on second appeal interfere with the decision of the lower appellate Court. Now the expression "for any other substantial cause" should be read with the words "requires" occurring in the beginning of clause (b). This would suggest that it is only for the appellate Court, which requires additional evidence for any other substantial cause, that the applicability of this provision would be attracted. Now this power to admit additional evidence has to be exercised cautiously and sparingly and only in exceptional cases. The mere discovery of fresh evidence subsequent to the decision of the Court below by itself hardly constitutes a sufficient ground for its admission on appeal, and indeed this

proposition has not been controverted by the appellant; the appellate court must in addition require the evidence either to enable it to pronounce judgment or for some other substantial cause; a still further requisite, which courts, by and large, look for, is exercise of due diligence by the party claiming the indulgence of the right if it may be so described. That the power of the appellate court to admit additional evidence is not arbitrary or wholly uncontrolled, is also clear from the fact that the court is under a statutory obligation to record its reasons for such admission. The order admitting additional evidence as such is not appealable, though on an appeal being preferred against the final judgment or decree the decision of the court admitting additional evidence is open to challenge, but this challenge is of a very limited nature since the impugned order depends on the discretion of the court admitting or refusing to admit additional evidence. If the order does not travel outside the scope of rule 27 of Order 41, Civil Procedure Code, and if the discretion cannot be described to be contrary to well-recognised judicial principles, the court of second appeal possesses no jurisdiction to interfere with that order. In the instant case the learned counsel has not been able to show any legal infirmity in the order disallowing additional evidence. Nor has it been shown that the discretion exercised is contrary to any recognised judicial principles.

On the merits it has been finally but very fairly conceded by the learned counsel for the appellant—though after he had made a faint attempt to urge to the contrary—that in the absence of the additional evidence it is not possible for him to challenge the finding of the court below on the ancestral nature of the *dakhilkari* rights.

Coming to the main point, on which the arguments were addressed with great emphasis, the learned counsel for the appellant referred me to section 3 of the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act (3 of 1953) which

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provides for extinguishment of rights of landlords and vesting the same in occupancy tenants. This section is in the following terms:—

"3. Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day,—

(a) all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of a landlord in the land held under him by an occupancy tenant shall be extinguished; and such rights, title and interest shall vest in the occupancy tenant free from all encumbrances, if any, created in the land by the landlord;

(b) the landlord shall cease to have any right to collect or receive any rent in respect of such land (including arrears of rent, if any, whether under a decree or not, for any period prior to the appointed day) and his liability to pay land revenue in respect of the land shall also cease;

(c) the occupancy tenant shall be liable to pay direct to the Government the land revenue payable in respect of the land;

(d) the landlord shall be entitled to receive and be paid such compensation as may be determined under this Act."

It is submitted that unless payment of compensation by Smt. Shamo to the landlord is actually proved, Shrimati Shamo could not possibly have become owner of the property. In support of this contention reliance has been placed by the appellant on a decision of a learned Single Judge of

this Court in *Mst. Karmi and others* v. *Bachana and others* (1). In the reported case nobody appeared for the respondents, and disposing of the appeal heard *ex parte,* the learned Single Judge laid down that when the widow of a deceased occupancy tenant acquired proprietary rights under section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Right) Act, the land becomes the self-acquired property of the deceased holder and upon the widow's death the right to the land would be governed by custom applicable to the deceased and, therefore, the daughter of the deceased is to be preferred over the collaterals. In the body of the judgment, however, the learned Judge made the following observation, upon which stress has been laid by the counsel—

> "Thus, the estate of Hari Singh acquired the rights of ownership in the land by payment and not by mere operation of law."

"A little lower down again the learned Judge observed:—

> "on the death of Gango, it was the non-ancestral property of Hari Singh deceased that was available for succession. It had ceased to be ancestral property by acquisition of the rights of ownership in it on payment of compensation."

These observations clearly seem to me to be *obiter,* for, they were hardly necessary for the disposal of the appeal so far as is discernible from the report. Being mere *obiter,* though it is entitled to respect, the dictum cannot possibly have the same binding effect which an observation, on which the decision itself is based, would have. As a matter of fact, these observations also come up for consideration before a Division Bench of this Court in *Harnam Kaur and another* v. *Sawan Singh and others.* [Regular Second Appeal No. 307(P) of 1953], in which D. K. Mahajan, J., who wrote the

(1) 1959 P.L.R. 313

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judgment on behalf of the Bench, observed that ownership rights in the case before him had been conferred on the widow by operation of law, because it was the legislation that had put an end to the occupancy rights as such. The observations of Mehar Singh, J., in *Mst. Karmi's case* were dissented from and it was observed that those observations were justified neither in principle nor on authority. The case before the Division Bench was from Pepsu and, therefore, is a direct authority for me so far as the case in hand is concerned. I may, however, note that the provisions of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act (No. VIII of 1953) also fell for consideration by me in *Jiwan* v. *Sampat and another* (Regular Second Appeal No. 217 of 1956). After considering the relevant case-law and the language of the various provisions of that Act, I expressed my opinion as follows:—

> "As is clear from the language of section 3 all rights, titles and interests recognised by any law, custom or usage of the landlord in the land held under him by an occupancy tenant automatically get extinguished on and from the appointed date, and the same is automatically deemed to vest in the occupancy tenant free from all encumbrances, if any, created by the landlord. As the language of the section shows, it is not open to any occupany tenant to elect not to acquire the right, title and interest of his landlord as provided by section 3. It is true that under clause (d) of section 3, he is liable to pay and the landlord is entitled to receive and be paid, the compensation as determined under the Act, but there is no provision of law in this Act, which makes the extinguishment of the right, title and interest of the landlord depend on the payment of the compensation by the occupancy tenant;

nor is there any provision, which postpones the vesting of the right, title and interest of the landlord so extinguished, in the occupancy tenant, till after the payment of compensation as contemplated by clause (d). Section 6, instead of advancing the case of the respondent, in my view, goes against him, because it provides a machinery for the realisation of the compensation fixed under the Act from the occupancy tenant through the Collector. Under section 6(2) in case of default by the occupancy tenant, the amount due is recoverable as an arrear of land revenue. Once the extinction of the landlord's right, title and interest and the vesting of the same in the occupancy tenant is complete, there is no question of reviving the extinct rights or divesting the occupancy tenant of the rights vested in him; and no law or convincing argument has been advanced suggesting such an intention on the part of the law-giver."

I gave my decision on 10th February, 1961. It is unfortunate that the decision of the learned Single Judge in *Mst. Karmi's case* was not brought to my notice, otherwise I would have seriously considered the desirability of referring the question to a larger Bench, for, one redeeming feature of our judicial system is that Courts do not feel hesitant in reconsidering their own prior decisions if cogent grounds are made out. Merely because the same old chaff has to be thrashed again and again after the grain may be considered by some Courts to have been removed, it does not and cannot by itself outweigh the clear advantage of rectifying mistaken views of law. I, however, must not be understood to minimise the importance of the doctrine of *stare decisis* in our system. In the instant case though, in my opinion, the observation in *Mst. Karmi's case* was merely *obiter* and, therefore, not binding on me, it would possibly, perhaps according to the general practice, have been followed by

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the subordinate courts unless their attention were also drawn to the contrary view adopted in the other unreported decisions mentioned above. Now that the question has been authoritatively settled by a Division Bench, I need say nothing more on the point. I may, however, note that the decision in *Harnam Kaur's* case has again been followed by same Bench in *Mst. Sham Kaur* v. *Puran Singh and others* (Regular Second Appeal No. 85-P of 1952).

In this view of the matter it is hardly necessary to consider if the Court below was right in raising a presumption about Mst. Shamo having actually paid the amount on the basis of the assumed regularity of official acts.

The contention based on the Full Bench decision of the Pepsu High Court in *Prithi Singh's case* was also repeated before me, but I agree with the reasoning of the Court below for rejecting it. Besides, this point also loses its importance in view of the construction placed by me on the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act.

As a result of the foregoing discussion this appeal fails and is dismissed but without any order as to costs.

R. S.

CIVIL MISCELLANEOUS

Before Inder Dev Dua, J.

THE WORKS MANAGER, CARRIAGE AND WAGON SHOPS,—*Petitioner.*

versus

GHANSHYAM DASS,—*Respondent.*

Civil Miscellaneous No. 827 of 1961.

1961

Oct. 27th

Payment of Wages Act (IV of 1936)—Section 15(3) and Payment of Wages (Procedure) Rules, 1937—Rule 8—Ex parte *proceedings—When can be ordered—"Duly instructed"—Whether include clerk instructed to seek adjournment—Rule of procedure—Considerations to be borne in mind for the application of.*