

1962

February 22.

TEKAN AND OTHERS

v.

GANESHI

(P. B. GAJENDRAGADKAR, A. K. SARKAR and
K. N. WANCHOO, JJ.)

Landlord and Tenant—Security of land Tenures—Landowner—Lessee—Mortgage—Tenant—Lessee not landowner—No right to eject—Punjab Security of Land Tenures Act, 1953 (Punjab 10 of 1953), ss. 2 (1), 9 (1), 14A (1)—East Punjab Displaced Persons Land Resettlement Act, 1949 (East Punjab 36 of 1949), s. 2—Punjab Land Revenue Act, 1887 (Punjab 17 of 1887), ss. 3 (2) 4 (5)—Punjab Tenancy Act, 1887 (Punjab 16 of 1887).

The appellant is a lessee from the owner of the land and his lease comprises a large area of land including the land of which the respondent is the tenant. The appellant applied to the Assistant Collector under s. 14A (1) read with s. 9 (1) of the Punjab Security of Land Tenures Act for the ejectment of the respondent on the ground that the appellant was a land owner and he required the land for his own cultivation. The application was allowed. The respondent thereupon appealed to the Collector alleging as the main ground that only a landowner could dispossess a tenant-at-will and that since the appellant was not a landowner within the meaning of s. 2 (1) of the Act was not entitled to ask for ejectment under s. 14A (1). The Collector accepted this contention and allowed the appeal. Thereafter the appellant appealed to the Commissioner who allowed the appeal on the ground that a lessee being like a mortgagee with possession was a landowner for all purposes. On revision the Financial Commissioner held that the appellant was not a landowner and therefore not entitled to ejectment. The appellant appealed to this Court by special leave. The only contention that was urged in the appeal was that appellant was a landowner within the meaning of s. 2(1).

Held, as a lessee the appellant holds land under another person namely the owner of the land from whom he has taken the lease and is liable to pay rent. The appellant therefore being a tenant within s.4 (5) of the Punjab Tenancy Act cannot be a landowner under s.3(2) of the Punjab Land Revenue Act or a landowner within the meaning of s. 2 (1) of the Punjab Security of Land Tenures Act. Hence he is not entitled to eject the respondent.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No 367 of 1959.

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Appeal by special leave from the judgment and order dated November 23, 1957, of the Additional Commissioner Punjab, in Revision No. 143 of 1956-57.

I. M. Lal and *A. G. Ratnaparkhi*, for the appellants.

Achhru Ram and *K. L. Mehta*, for the respondent.

1962. February 22. The Judgment of the Court was delivered by

Wanchoo J

WANCHOO, J.—This is an appeal by special leave from the order of the Financial Commissioner Punjab in respect of the application made by the appellant under s. 14-A(i) of the Punjab Security of Land Tenures Act, No. X of 1953, (hereinafter referred to as the Act), read with s. 9 (1) thereof, for ejectment of the respondent, on the ground that he was a small landowner. The appellant claimed that he was the landowner and the respondent was a tenant-at-will under him. He therefore claimed ejectment of the respondent on the ground that he had less than thirty standard acres and required the land for his own cultivation. The application was filed before the Assistant Collector who held that the respondent was liable to ejectment and allowed the application. Thereupon there was an appeal by the respondent to the Collector and it was urged there that only a landowner could dispossess a tenant-at-will under s. 14-A, (i) and as the appellant was not a landowner but merely a landlord of the respondent he was not entitled to the benefit of s. 14-A(i). The Collector accepted this contention and held that the appellant was not a landowner and therefore allowed the appeal and dismissed the application for ejectment. The appellant then went

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in appeal to the Commissioner. It may be mentioned that the appellant is a lessee from the owner of the land and his lease comprises a larger area of land including the land of which the respondent is the tenant. The contention on behalf of the appellant before the Commissioner was that he was a landowner within the meaning of that word in s. 2 (1) of the Act and was therefore entitled to eject the respondent. The Commissioner held that the position of a lessee was just like a mortgagee with possession and that a lessee was a landowner for all purposes. He therefore allowed the appeal and restored the order of ejectment passed by the Assistant Collector. Thereupon the respondent went in revision to the Financial Commissioner, who held that a mere lessee with only constructive possession as in this case could not be included in the term "landowner" as used in the Act, and that even if the appellant was the landlord of the respondent he could not be held to be a landowner within the meaning of the Act. He therefore allowed the revision, set aside the order of the Commissioner and restored that of the Collector dismissing the appellant's application for ejectment. This was followed by an application by the appellant to this Court for special leave, which was granted; and that is how the matter has come up before us.

The only question that has been urged on behalf of the appellant before us is that the Financial Commissioner went wrong in holding that he was not a landowner. The question whether the appellant is a landowner or not depends upon the definition of that term in the Act, which is in these terms :—

“(1) ‘Landowner’ means a person defined as such in the Punjab Land Revenue Act, 1887, (Act XVII of 1887), and shall include an ‘allottee’ and ‘lessee’ as defined in clauses (b) and (c) respectively of section 2 of the East

Punjab Displaced Persons (Land Resettlement) Act, 1949, (Act XXXVI of 1949) hereinafter referred to as the 'Resettlement Act'.

Explanation—In respect of land mortgaged with possession, the mortgagee shall be deemed to be the landowner."

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It is not in dispute that the appellant is not an allottee or a lessee as defined in cls. (b) and (c) of s. 2 of the East Punjab Displaced Persons (Land Resettlement) Act, (No. XXXVI of 1949). It is also not in dispute that the appellant is not a mortgagee with possession. Therefore he can only claim to be a landowner within this definition if he is a landowner as defined in the Punjab Land Revenue Act, (No. XVII of 1887). In that Act the definition of the word "landowner" as given in s. 3 (2) is in these terms :—

" 'landowner' does not include a tenant or an assignee of land revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm under this Act for the recovery of an arrear of land-revenue or of a sum recoverable as such as arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof or in the enjoyment of any part of the profits of an estate."

The contention on behalf of the appellant is that he must be held to be a landowner within the meaning of this sub-section as he is in the enjoyment of the part of the profits of the estate. It is obvious that the last part of the definition on which this argument is based applies to persons who are other than tenants and assignees of land revenue, and so we will have to determine whether the appellant is a tenant; if he is, he is not a landowner. We have therefore to go to the Punjab Tenancy Act, (No. XVI of 1887), to find out who is a tenant, and

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whether the appellant is a tenant, within that Act. Definition of "tenant" in s. 4 (5) of that Act is as follows :—

"(5) 'tenant' means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person but it does not include—

(a) an inferior landowner, or

(b) a mortgagee of the rights of a landowner, or

(c) a person to whom a holding has been transferred, or an estate or holding has been let in farm under the Punjab Land Revenue Act, 1887 for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, or

(d) a person who takes from the Government a lease of unoccupied land for the purpose of subletting it;"

It is not in dispute that the appellant does not come within the four exceptions mentioned in this sub-section. It has therefore to be seen whether the appellant is a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that other person. We are of opinion that the appellant satisfies this definition of the term "tenant" in s. 4 (5). As a lessee he holds land under another person, namely, the owner of the land from whom he has taken the lease and is liable to pay rent equal to the lease money for the land which he has taken on lease to that other person. The appellant is therefore clearly a tenant within s. 4 (5) of the Punjab Tenancy Act. He cannot therefore be a landowner under s. 3 (2) of the Punjab Land Revenue Act. Incidentally we may add that this conclusion is borne out by the fact that in the copy of the Girdwari entries, the appellant is shown as a

tenant, the entry being "Tekan and others, GairmaurAsian first through Ganeshi Gair Maurasi second-half. The appellant is thus a tenant of the land of which he has taken lease and cannot be a landowner keeping in view the definition of that term in the Act and in the Punjab Land Revenue Act. The appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed.

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